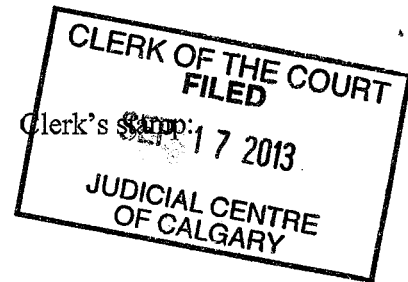


Deloitte



COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFFS: FIRST CALGARY SAVINGS & CREDIT UNION LTD.

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

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

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

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

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TABLE OF CONTENTS:

INTRODUCTION 1

NOTICE TO READER..... 4

PURPOSE OF REPORT..... 4

BACKGROUND OF THE TECHNICAL AUDIT 4

FINDINGS OF THE TECHNICAL AUDIT 8

ALBERTA NEW HOME WARRANTY PROGRAM 28

CONCLUSION..... 29

SCHEDULE 1 March 20, 2013 letter from the Condominium Corporation to the Receiver

SCHEDULE 2 April 10, 2013 letter from the Receiver to the Condominium Corporation

SCHEDULE 3 Technical Audit cover letter and findings

SCHEDULE 4 Technical Audit costs

SCHEDULE 5 May 21, 2013 letter from the Receiver to the Condominium Corporation

SCHEDULE 6 December 12, 2012 letter from Williams Engineering to Lawson Projects

SCHEDULE 7 Partial Schedule C-2 from Robertson & Associates Engineering Ltd.

SCHEDULE 8 Certificate of Inspection of the Fire Sprinkler System from Urban Fire Protection Inc.

SCHEDULE 9 Email from Calgary Fire Department dated January 3, 2012

SCHEDULE 10 September 11, 2013 letter from the Receiver to the Property Manager

SCHEDULE 11 Common Property Warranty Certificate issued by the Alberta New Home Warranty Program

INTRODUCTION

1. On March 3, 2010, Deloitte Restructuring Inc., formerly Deloitte & Touche Inc., was appointed by the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), as receiver and manager (the "**Receiver**"), without security, of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof of Perera Shawnee Ltd. ("**PSL**") and Perera Development Corporation ("**PDC**") (PSL and PDC are collectively referred to as "**Perera**" or "**PSL**") (the "**Receivership Order**") in Action No. 1001-03215 (the "**Receivership Proceedings**"). The Receivership Order was amended and restated on January 31, 2011.
2. Perera is a condominium real estate developer which has assets that consist of a three phase condominium real estate project located at 30 Shawnee Hill SW, Calgary, Alberta known as the "Highbury" (the "**Project**").
3. There are 71 residential condominium units in Phase I of the Project ("**Phase I**"), including the manager suite and sales centre: 55 of which now have been sold and conveyed to purchasers. Phase I construction was substantially completed at the date of the Receivership Proceedings and occupancy permits were granted, by the City, in December 2009 for the condominium units on floors one to seven out of a total of eight floors. The Receiver completed the construction of the interiors of the penthouses and townhouses, and occupancy permits were granted, by the City, for these units in December 2010 (the "**Occupancy Permits**").
4. "Phase II" and "Phase III" (collectively, "**Phases II and III**") of the Project were originally contemplated by PSL to include 12 stories with 85 condominium units in each

of Phases II and III. When the Receivership commenced, the construction of the parking levels in Phases II and III was incomplete. The Receiver has completed construction on parking level one, two and three for Phases II and III to meet the requirements of the City of Calgary (the "**City**"), but does not intend to complete the high-rise condominium buildings planned for Phases II and III. All three phases of the Project are under one development plan, namely Condominium Plan No. 0915321, for which the condominium corporation is Condominium Corporation No. 0915321 (the "**Condominium Corporation**").

5. A meeting of the owners of the Phase I units (the "**Owners**") was held on December 15, 2011. At this meeting, the Owners elected a Board of Directors for the Condominium Corporation (the "**Condo Board**") from amongst themselves. Effective January 1, 2012, the day-to-day management of Phase I became the responsibility of the Condo Board. The Receiver continued to manage the Phases II and III site and pay for insurance, construction fencing and other ongoing costs.
6. From the date of the Receivership Order until effectively December 31, 2011, the Receiver managed Phase I, and paid all costs associated with the ongoing operation and maintenance of all common areas, including, but not limited to, the lighting, heating, mechanical systems, elevator, parkade, and landscaping maintenance. The Owners were not charged and did not pay any monthly condominium fees until effectively January 1, 2012.
7. On May 1, 2012, the Receiver understood that the Condo Board retained FirstService Residential Ltd., formerly known as Condominium First Management Services Ltd., as the property manager for Phase I (the "**Property Manager**").

8. The Condo Board, on behalf of the Condominium Corporation, retained Lawson Projects (“**Lawson**”) in late 2012 to conduct a technical audit to identify construction deficiencies in Phase I that were left by Perera (the “**Technical Audit**”). The Receiver understood that Lawson was to complete on-site inspections and review construction drawings, engineering reports and mechanical reports to determine outstanding items required for the completion of Phase I construction and address any building deficiencies in order to comply with the original site plans and local building codes. Lawson has estimated the cost of this work to total approximately \$1.2 million (excluding the cost of amenities).

9. The Receiver is submitting this report pursuant to the Receivership Order and in response to an application filed by counsel for the Condominium Corporation to be heard on October 1, 2013 (the “**Technical Audit Application**”). The Technical Audit Application seeks, inter alia:
 - (a) An Order lifting the stay of proceedings as it relates to the Receivership Proceedings;
 - (b) An Order granting the Condominium Corporation leave to levy a disproportionate special assessment against only those units held by Perera;
 - (c) An Order declaring that the special assessment of the Condominium Corporation levied against each Perera-owned unit has priority to the interests of other secured creditors; and
 - (d) In the alternative, an Order directing that the net funds from any unit sale in the Project be held in trust pending agreement by all interested parties or further order of the Court.

NOTICE TO READER

10. This report constitutes the Sixty-Sixth Report of the Receiver (the “**Report**”).

PURPOSE OF REPORT

11. The purpose of this Report is to disclose to the Court the facts around each finding identified within the Technical Audit.

BACKGROUND OF THE TECHNICAL AUDIT

12. The Receiver received a letter dated March 20, 2013 from the Property Manager (the “**March 20, 2013 Letter**”). As outlined in the March 20, 2013 letter, a copy of which is attached as **Schedule “1”**, the Property Manager indicates that the Condo Board retained Lawson to complete the Technical Audit, but a copy of the Technical Audit was not provided at this time. According to the March 20, 2013 Letter, Lawson estimates that the cost of the work identified in the Technical Audit is approximately \$1.26 million.
13. The March 20, 2013 Letter further states “*as this \$1.26 million cost is a direct result of completing or repairing construction deficiencies that should have been resolved prior to occupancy, the Board expects that the Receiver and First Calgary pay this \$1.26 million to Condominium Corporation No. 0915321 in order to facilitate the required construction and repairs.*” The Condo Board also requested that these funds be issued within 30 days of the date of the March 20, 2013 Letter.
14. The Receiver responded by letter dated April 10, 2013 (the “**April 10, 2013 Letter**”), a copy of which is attached as **Schedule “2”**, noting that the March 20, 2013 Letter did not identify or detail the alleged deficiencies or provide reasons as to why the Receiver and

First Calgary might be responsible for these costs, and requested a copy of the Technical Audit.

15. The Property Manager advised the Receiver that the Condo Board was not immediately willing to provide a copy of the Technical Audit to the Receiver as requested and that the Condo Board was considering charging a fee for a copy of the Technical Audit, despite the fact that the Receiver, in part, paid for the Technical Audit through the monthly condominium fees for the unsold Phase I units.
16. It was not until May 8, 2013 that the Condo Board provided the Receiver with a CD-ROM disk which contained documentation which is understood to be the Technical Audit and certain of the key documentation relied upon by Lawson to conduct their review. The CD-ROM disk provided to the Receiver contained PDF copies of the Technical Audit cover letter from Lawson, certain tables showing a breakdown of \$1,205,796 of alleged completion and deficiency costs, and various other documents which appear to have been used to substantiate Lawson's findings. The Technical Audit quantified costs in the range of \$793,296 to \$1,205,796 (the "**Technical Audit Costs**"). Accordingly, it is unknown as to why the Condominium Corporation requested \$1.26 million in its March 20, 2013 Letter which is approximately \$50,000 higher than the upper range identified in the Technical Audit Costs. A copy of the findings identified in the Technical Audit (the "**Technical Audit Findings**") are attached as **Schedule "3"** and a summary of the Technical Audit Costs detailed within the Technical Audit are attached as **Schedule "4"**.
17. The Receiver provided a detailed response to the Technical Audit to the Property Manager by letter dated May 21, 2013, a copy of which is attached as **Schedule "5"**. The Receiver suggested that it would be beneficial to meet with representatives of the Condo

Board and Lawson at the Project site on May 27, 2013 to further discuss and seek clarification of certain Technical Audit Findings.

18. In spite of the urgency detailed in the March 20, 2013 Letter, representatives of the Condo Board and the Property Manager were not able to meet with the Receiver until June 12, 2013 (the "**June 12, 2013 Meeting**"). Also, in spite of the Receiver's request, no representative of Lawson attended the June 12, 2013 Meeting.
19. During the June 12, 2013 Meeting, each of the Technical Audit Findings were discussed. In certain situations, the Receiver noted that the finding was for work that was not yet complete in Phase I and for which the Receiver has agreed it would finish. For other findings, it was agreed by all attending parties that the item should be removed from the Technical Audit Findings or it was agreed that clarification from Lawson was needed because the Technical Audit was not clear as to the ultimate finding. Finally, there were other items where the Receiver did not dispute that an issue may exist, but that the remediation of that item was not the Receiver's responsibility. The parties agreed that a further meeting was necessary, and that such meeting should take place at the Highbury and include the Lawson personnel who prepared the Technical Audit.
20. On July 23, 2013 a further meeting was held which included a representative of the Condo Board, the Property Manager, Mr. Ian McMurray from Lawson, the Receiver and Bruce Moffatt, the general contractor for the Receiver (the "**July 23, 2013 Meeting**").
21. During the July 23, 2013 Meeting, the Technical Audit Findings were discussed and Lawson agreed to provide the Receiver with clarification of certain of its findings in the Technical Audit, as Mr. McMurray, who attended the meeting, was not the Lawson

employee who actually identified the deficiencies described in the Technical Audit. To date, clarification of these items has not been provided by Lawson to the Receiver.

22. At the July 23, 2013 Meeting, Mr. McMurray indicated that the Technical Audit completed by Lawson was a high level review and the Technical Audit Findings were based on what could be seen from the on-site inspections and walk-throughs, discussions with one of the Project consultants, as well as what could be understood from previous site inspection reports, construction drawings, and other reports. Mr. McMurray also indicated that the estimates included in the Technical Audit Costs were based on past experience and expertise in estimating these types of costs and were, in some cases, “order of magnitude” numbers and estimates with no detailed quotes or other third party support. In addition, Lawson recommended that destructive testing be completed in order to better understand several specific Technical Audit Findings and the related costs. This in part explains the wide range of the Technical Audit Costs.
23. Furthermore, Lawson confirmed that certain of the items noted on the Technical Audit were the result of their review of the site inspection reports that were prepared by Williams Engineering (“**Williams**”) during construction. The Williams site inspection reports appear to have been copied to professionals on site and there appears to be limited understanding as to whether any corresponding remediation work was completed. Williams, who was originally retained by Perera to provide building envelope consulting and inspection services during construction, summarized their findings by letter dated December 12, 2012 to Lawson (the Williams Letter”), a copy of which was included on the CD-ROM disk and is attached hereto as **Schedule “6”**.

24. In August 2013, the Receiver was notified that the Condominium Corporation retained legal counsel to pursue the Technical Audit Application and seek the various Orders previously detailed in this Report. The Receiver understood that discussions were ongoing in order to attempt to resolve and further clarify some of the Technical Audit Findings.

FINDINGS OF THE TECHNICAL AUDIT

25. For the purposes of this Report and to assist the Court with the Technical Audit Application, each of the Technical Audit Findings are detailed below along with the Receiver's understanding of each item.
26. The Receiver has also categorized each of the Technical Audit Findings into one of the following groupings, based on discussions with the representative(s) of the Condo Board, the Property Manager and Lawson:
- (a) **Group 1 - Unfinished Phase I work** – this group includes those items that have not been completed. The Receiver acknowledges that this work will be completed by the Receiver at its cost (“**Group 1**”);
 - (b) **Group 2 - Withdrawn by the Condominium Corporation** – this includes those items that the Receiver understands, based on discussions at the June 12, 2013 Meeting and the July 23, 2013 Meeting, have been removed from the list of Technical Audit Findings (“**Group 2**”);
 - (c) **Group 3 - Requests by the Condominium Corporation** – this includes items that appear to be outside the scope of the development plans or drawings for Phase I (“**Group 3**”);

- (d) **Group 4 – General wear and tear, repairs and maintenance** – this includes items that are the result of general wear and tear on the Phase I building, which has been occupied for over three years, or normal maintenance and inspections required on the various systems in place (“**Group 4**”); and
- (e) **Group 5 - Deficiency items** – this includes items that are deficiencies according to the Technical Audit. These items may be covered by the Alberta New Home Warranty Program (“**ANHWP**”) or they may simply be a cost that the Condominium Corporation may be required to incur in the circumstances (“**Group 5**”).

27. At the end of this section, the Receiver has divided the Technical Audit Costs into the various groups defined above. It should be noted that the Receiver is not affirming the amount of the Technical Audit Costs estimated by Lawson for any of the Technical Audit Findings but, for the purpose of this Report only, has included Lawson’s estimated costs.

Lawson Finding 1 – Builders’ liens

28. The Lawson Report noted that there are builders’ liens on certain land titles in the Project that should be removed prior to or at the same time that the Project is sold. The Receiver has stated that the liens referred to are most likely the result of Perera not paying supplier invoices. As and when the Receiver sells a Phase I condominium unit, the Court provides a vesting order that allows for the Land Titles Office to provide clean title to the Phase I condominium unit purchaser. Accordingly, it is understood that the liens that Lawson is referring to may be on the common property or on the Phase I units that were sold prior to the receivership. The Receiver has no responsibility to remove any liens except as detailed above for purchasers.

29. Following the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver understands that it was agreed that this finding should be removed from the Technical Audit. The Receiver's view is that the cost associated with this finding is part of Group 2.

Lawson Finding 2 – Roof anchors

30. The finding by Lawson within the Technical Audit is as follows:

Anchors for the swing stage need to be certified to confirm that they meet the specification, prior to the swing stage being used. Budget estimate to engage testing company to carry out certification, between \$2,000 and \$3,000.

31. As indicated during the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver recognizes that the certification of the roof anchors is not complete, and accepts that this work needs to be completed at its expense. The Receiver engaged Atlas Anchors to inspect the anchors as the first step of this certification process on July 29, 2013 and is working with Atlas Anchors to complete the work as required for certification. The cost associated with this finding is part of Group 1.

Lawson Finding 3 – Elevator main lobby lights

32. The finding by Lawson within the Technical Audit is as follows:

Elevator lobby main light fixtures were reported to overheat and will need to be investigated. The lobby main fixtures can be retro fitted with an LED lamp which will assist with operational costs. The fixtures are controlled by motion sensors

and were working at the time of the Robertson and Associates Engineering (Electrical Consultant) last report. Budget estimate to retro fix fixtures \$20,000.

33. Robertson & Associates Engineering Ltd. (“**Robertson**”) signed a Schedule C-2 as electrical consultants, a copy of which is attached as **Schedule “7”**. As shown on Schedule 7, Robertson noted that those components of the project substantially comply with the plans, specifications and other documents submitted in support of the application for the building permit. Accordingly, the cost associated with this finding is included in Group 3.

Lawson Finding 4 – Security cameras

34. The finding by Lawson within the Technical Audit is as follows:

Security cameras were in the original specification and were not installed. After speaking with the current security company Fahrenheit 451, they advised that approximately 10-12 cameras will be required. Budget estimate cost to provide and install cameras \$35,000.

35. The condominium documents indicate that security cameras would be in place at the front entry. Following discussions at the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver agreed to install a single security camera at the permanent pedestrian entrance of Phase I in addition to a single security camera at the temporary pedestrian entrance on the east side of Phase I. The cost for these two cameras is part of Group 1. If the Condominium Corporation wishes to install additional cameras, those additional associated costs would be included in Group 3.

Lawson Finding 5 – Security in the elevators

36. The finding by Lawson within the Technical Audit is as follows:

Fahrenheit 451 also advised that security should be added to the elevator by means of key fob or card recognition. Budget estimate cost to provide and install security access system \$15,000.

37. During the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver noted that no representation exists in the condominium documents to note that the elevators will have a key fob or security recognition system. The cost associated with this finding is included in Group 3.

Lawson Finding 6 – Review of the sprinkler system

38. The finding by Lawson within the Technical Audit is as follows:

It is recommended that a complete review of the sprinkler system (including unfinished units) be carried out by a qualified engineer. It was noted that a number of sprinkler heads still had caps and clips rendering them inoperable. Many escutcheon plates were also missing. Budget estimate cost to review sprinkler system \$3,000 plus a budget of \$4,000 to carry out repairs.

39. A review of the sprinkler system was performed by Urban Fire Protection Inc. covering the period from December 2011 to December 2012 (prior to the handover of Phase I to the Condominium Corporation) and no issues were noted. A copy of the clean Certificate of Inspection is attached as **Schedule “8”**. The Receiver also understands that the Property Manager recently arranged an inspection of the sprinkler system and no issues

were noted. Mr. McMurray was not aware of which specific sprinkler heads were identified as still having caps and clips during the Technical Audit. This finding is included in Group 4.

Lawson Finding 7 – Re-verification of the sprinkler system

40. The finding by Lawson within the Technical Audit is as follows:

Once the above has been carried out it is recommended that a re-verification of the sprinkler system be carried. Budget estimate cost for re-verification of sprinkler system \$5,000.

41. The Receiver has the same comments as for Lawson Finding 6 and this finding is included in Group 4.

Lawson Finding 8 – Re-verification of the fire alarm system

42. The finding by Lawson within the Technical Audit is as follows:

We have allowed for re-verification of the system in the budget estimate. A re-verification of the Fire Alarm system should be carried out by the Engineer of Record to confirm the system is operating as designed and meets code. Budget estimate cost to carry out re-verification \$5,000.

43. A review of the fire alarm system was conducted by Gary Burns of the Calgary Fire Department in November and December 2011, and he indicated that “no outstanding requirements remain” as shown in his email reproduced in **Schedule “9”**. Accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 9 – Alternative access

44. The finding by Lawson within the Technical Audit is as follows:

An alternative access on the top floor to the refrigerant storage and equipment area will need to be constructed. Budget estimate cost to construct alternative access \$3,500.

45. Following discussions which took place at the June 12, 2013 Meeting and the July 23, 2013 Meeting, it was agreed to remove this Technical Audit Finding as the existing access was deemed suitable. Accordingly, the cost associated with this finding is included in Group 2.

Lawson Finding 10 – General repairs

46. The finding by Lawson within the Technical Audit is as follows:

There are also general repairs required to the walls of the storage & equipment area. Budget estimate cost to carry out general repairs between \$2,500 & \$1,500.

47. Following discussions which took place at the June 12, 2013 Meeting and the July 23, 2013 Meeting, it was agreed to remove this Technical Audit Finding, as these general repairs may be required as a result of normal, everyday wear and tear that occurs in an occupied building. Accordingly, the cost associated with this finding is included in Group 2.

Lawson Finding 11 – Temporary parkade entrance

48. The finding by Lawson within the Technical Audit is as follows:

Entrance to the parkade is temporary and at this time the use of the intended entrance cannot be used until such time as phases 2 and 3 construction is complete. Costs have been allowed within the budget estimate to close off the temporary entrance and to complete the landscaped area with pathways as per the original design. Budget estimate cost to close off temporary entrance \$45,000. Budget estimate cost to complete side walks & landscaping (\$7,000 + \$10,000) \$17,000.

49. As indicated at the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver accepts that the backfilling of the existing temporary P4 parkade entrance and resulting landscaping and sidewalk work are its responsibility. Accordingly, the cost associated with this finding is included in Group 1.

Lawson Finding 12 – Front entrance steps

50. The finding by Lawson within the Technical Audit is as follows:

Remove & repair the front entrance steps at the main entrance to the building. Budget estimate cost to remove & reconstruct front entrance steps \$10,000.

51. The Receiver's view is that the cracking of the front steps is a result of general wear and tear. Accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 13 – Temporary fence

52. The finding by Lawson within the Technical Audit is as follows:

Supply & Install temporary or permanent fence at rear entrance, due to possible safety issue. Budget estimate cost to install temporary/permanent fence \$8,000.

53. Following discussions which took place at the June 12, 2013 Meeting and the July 23, 2013 Meeting, it was agreed to remove this item as a Technical Audit Finding, as a temporary fence is already in place. Accordingly, the cost associated with this finding is included in Group 2.

Lawson Finding 14 – Irrigation system

54. The finding by Lawson within the Technical Audit is as follows:

Lawson has also allowed for the Irrigation System to be installed, which appears not to have been completed at the time of the original construction. Budget estimate to install Irrigation System \$15,000.

55. As indicated at the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver accepts that the installation of the irrigation system is not complete and that the Receiver is responsible for this work. Accordingly, the cost associated with this finding is included in Group 1.

Lawson Finding 15 – Rear entrance

56. The finding by Lawson within the Technical Audit is as follows:

The rear entrance of the building remains in a construction area, which will not change until phase 2 & 3 construction is complete. Phase 1 construction will then be completed which includes the roofing over the bike storage, brickwork, waterproofing, drainage and landscaping which has been allowed for within the attached budget estimate. Budget estimate to complete rear entrance soffit \$5,000. Budget estimate to complete brickwork at the rear \$20,000. Budget estimate to complete stucco repairs \$2,500. Budget estimate to complete roof repairs \$9,500.

57. As indicated at the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver accepts that there is uncompleted work surrounding the permanent pedestrian Phase I entrance. Specifically, the Receiver is completing soffit and stucco work at this entranceway. The Receiver does not agree that brickwork is required, and is unaware of the need for any roof repairs in this area. At the July 23, 2013 Meeting, Lawson indicated that they would provide the Receiver with details as to why Lawson is of the opinion that this additional work is required, but nothing has been received to date. Accordingly, the costs associated with the soffit and stucco work are included in Group 1. The costs associated with the brickwork and roof repairs are included in Group 3, unless additional supportable information is provided by Lawson.

Lawson Finding 16 – Glass canopy flashings

58. The finding by Lawson within the Technical Audit is as follows:

Repairs to the Glass Canopy, angle flashings are required. Budget estimate to carry out Glass Canopy repairs \$4,500.

59. Any repairs required to the glass canopies may be the result of a construction deficiency from Perera as it appears that angle flashings are installed. Accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 17 – Interior entrance doors

60. The finding by Lawson within the Technical Audit is as follows:

Large gaps under the interior entrance doors to a number of units needs to be reviewed and to be corrected. Budget estimate to carry out entrance door repairs \$12,500.

61. Following discussions that took place at the June 12, 2013 Meeting and the July 23, 2013 Meeting, it was agreed that this item was removed as a Technical Audit Finding, as the interior entrance doors are dealt with as part of the walkthroughs on sale and possession of each individual Phase I unit. Accordingly, the cost associated with this finding is included in Group 2.

Lawson Finding 18 –Minor repairs

62. The finding by Lawson within the Technical Audit is as follows:

During the walk through it was noted that a number of areas and equipment required minor repairs to be carried out, an allowance has been carried in the budget estimate. Budget estimate allowance has been included in the amount of \$50,000.

63. Following discussions that took place at the June 12, 2013 Meeting and the July 23, 2013 Meeting, Lawson confirmed that they would provide the Receiver with details of these areas that Lawson advised required repairs. To date, nothing has been received from Lawson related to this finding. Accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 19 –Mechanical systems

64. The finding by Lawson within the Technical Audit is as follows:

All main mechanical equipment systems are running. A maintenance deficiency list has been produced by the maintenance contractor (see attached). The attached list should be reviewed by the Mechanical Engineer, and priorities set. An allowance for this work has been made in the Budget Estimate. Budget estimate to carry out maintenance deficiencies in the range of \$20,000 to \$25,000.

65. At the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver noted that the mechanical systems were fully operational when the Phase I building was handed over to

the Condominium Corporation effective January 1, 2012, and that any deficiency was a result of general wear and tear on the system from use. Accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 20 –Foundation waterproofing

66. The finding by Lawson within the Technical Audit is as follows:

Foundation Waterproofing – An allowance has been included in the Budget Estimate and it is recommended to carry an amount in reserve for ongoing maintenance of the parkade. Williams Engineering is suggesting that an allowance be carried in operating costs each year to carry out any necessary repairs to the parkade. \$10,000 has been allowed in the Budget Estimate.

67. At the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver noted that there had been no known leaks into the Phase I parkade. Furthermore, the Lawson finding within the Technical Audit notes that an allowance should be carried in operating costs to carry out any necessary repairs, and there is no indication that any repairs are currently needed. Carrying an annual allowance for potential repairs indicates that the costs associated with this finding should be included in Group 4.

Lawson Finding 21 – Windows

68. The finding by Lawson within the Technical Audit is as follows:

As per the report provided by Williams Engineering a Budget Estimate allowance has been carried in the amount in the range of \$100,000 to \$150,000. These amounts are based on having to repair between 40 to 70% of the windows, but

this cannot be confirmed until destructive testing has been carried out and a detail has been provided by Williams Engineering.

69. The Williams Letter refers to its site inspection reports which appear to have been prepared by Williams throughout the construction of the Phase I building. These site inspection reports appear to have been distributed to various individuals including the architects and Perera construction personnel.
70. It is generally understood that the basis for this finding are the Williams site inspection reports which provide observations and comments on various aspects of construction, as well as action steps that need to be taken for remediation. Each of the reports regarding the windows that are referred to in this finding was copied to Poon McKenzie Architects, to Perera as developer and to Alberta Dampproofing. The Williams Letter also notes that they received no confirmation of certain repairs being completed.
71. The Receiver and Lawson are not aware if the window repairs were completed by Perera. Williams continued to work onsite and perform inspections during construction and it is not known if additional steps and work were undertaken. The Receiver does note that, Poon McKenzie Architects, who appear to have received a copy of these site inspection reports, signed off on a Schedule C-1, noting that the components of the Project, for which they were responsible, “*substantially comply with the applicable requirements of the Alberta Building Code*”. A copy of the Schedule C-1 from Poon McKenzie Architects is attached as **Schedule “10”**. Accordingly, the cost associated with this finding is included in Group 5.

Lawson Finding 22 – Roofing

72. The finding by Lawson within the Technical Audit is as follows:

a) Scuppers on the townhouses. b) Large square hole through the concrete parapet on southernmost townhouse. Budget Estimate to carry out the two items above has been carried in the amount in the range of \$40,000 to \$50,000. This number cannot be confirmed until further investigation has taken place.

73. The Williams Letter refers to its site inspection reports which appear to have been prepared by Williams throughout the construction of the Phase I building. These site inspection reports appear to have been distributed to various individuals including Poon McKenzie, the architects of record, and Perera construction personnel.

74. It is generally understood that the basis for this finding is the Williams site inspection reports which provide observations and comments on various aspects of construction of the townhouse roofs, as well as action steps that need to be taken for remediation.

75. Since Williams did not receive confirmation of certain repairs, the Receiver does not have information as to whether the repairs were completed. Furthermore, since December 2010, when the City of Calgary issued occupancy permits for the townhouses, there have been no complaints or indication of any leaking resulting from the roofs of the townhouses. Scuppers are visible on 11 of the 12 townhouses, and the Receiver understands that the drain for the remaining townhouse is internal, thereby not requiring a scupper.

76. Regarding the finding of a “large square hole”, at the July 23, 2013 Meeting, Lawson indicated that they would provide evidence to the Receiver of this finding. To date, no clarity of this issue has been provided by Lawson to the Receiver.
77. The Receiver does not agree with the Lawson finding regarding the scuppers. Furthermore, the Receiver is unable to comment on the finding related to the “large square hole” until further evidence is provided by Lawson. Accordingly, the cost associated with this finding is included in Group 5.

Lawson Finding 23 – Cladding

78. The finding by Lawson within the Technical Audit is as follows:

Other – as per the report provided by Williams Engineering a Budget Estimate allowance has been carried in the amount in the range of \$100,000 to \$350,000. These amounts are based on having to repair between 10 to 30% of the Cladding, but this cannot be confirmed until destructive testing has been carried out and a detail has been provided by Williams Engineering.

79. It is unclear from the Technical Audit and discussions with Lawson as to the basis for the cost estimate of \$100,000 to \$350,000. The Receiver was informed in August 2010 that the bricks were installed, before the Receivership Proceedings, using a residential brick-tie and subsequently the Receiver retained a company to install high-rise brick ties, and this work was completed in November 2010.
80. Since Williams did not receive confirmation of certain repairs, the Receiver is uncertain whether the repairs identified were completed. In addition, the City of Calgary issued occupancy permits for the units on Floors 1 to 7 in December 2009, and for the

penthouses and townhouses in December 2010, effectively confirming that Phase I was built in accordance with the approved plans. Accordingly, the cost associated with this finding is included in Group 5.

Lawson Finding 24 – Drainage to front decks

81. The finding by Lawson within the Technical Audit is as follows:

Budget Estimate to carry out deficiencies on the front decks is in the range of \$40,000 to \$50,000. This number cannot be confirmed until further investigation has taken place.

82. It is unclear from the Technical Audit and discussions with Lawson as to the basis for the cost estimate of \$40,000 to \$50,000. However, there is reference in the Williams Letter to an issue with a scupper leaking in August 2012. Upon review of the corresponding site inspection report referred to in the Williams Letter, it appears that the issue with a leaking scupper was during August 2010, not 2012. This was during construction, and it is understood that the scupper leaking was resolved by the Receiver's contracted construction staff upon identification of the issue. Furthermore, there have been no subsequent incidents of leaking resulting from the drainage on the front decks, and accordingly, the cost associated with this finding is included in Group 3.

Lawson Finding 25 – Drainage front entrances / thresholds

83. The finding by Lawson within the Technical Audit is as follows:

Budget Estimate to carry out deficiencies on front entrances / thresholds is in the range of \$20,000 to \$25,000.

84. It is unclear from the Technical Audit and discussions with Lawson as to the basis for the cost estimate of \$20,000 to \$25,000. Furthermore, the Receiver has recently fixed several of the front entrances where the paving stones were very uneven and posed a tripping hazard and, accordingly, the cost associated with this finding is included in Group 4.

Lawson Finding 26 – Destructive testing

85. The finding by Lawson within the Technical Audit is as follows:

Lawson Projects recommends that the next step after the Board reviews this report is to carry out destructive testing in selected areas to determine the exact extent of the required repairs. Budget Estimate for destructive testing is in the range of \$25,000 & \$30,000.

86. As previously stated, the Receiver is of the view that the cost associated with the destructive testing to better substantiate the Technical Audit Findings and the Technical Audit Costs is included in Group 3.

Lawson Finding 27 – Additional fees

87. The Technical Audit also references in its overall budget estimate that costs for engineers and consultants and a project manager are needed in order to complete the remediation work Lawson is recommending, in addition to a contingency fee of 10% of the accumulated cost estimates. Lawson estimates these fees to be in the following ranges:

- (a) \$38,870 to \$58,970 for engineers and consultants;
- (b) \$34,309 to \$52,209 for a project manager; and

(c) \$72,116 to \$109,617 for contingency fees.

Overall, these additional fees that Lawson has estimated are in the range of \$145,295 to \$220,796, which is 18.3% of the overall budget estimate provided by Lawson. These costs are included in Group 3.

Summary of Lawson Findings

88. The following table shows the breakdown of the Technical Audit Findings and Technical Audit Costs based on the groupings outlined in paragraph 26 of this Report.

Analysis of budget estimates from Lawson Technical Audit ¹						
Finding # and description	Group 1	Group 2	Group 3	Group 4	Group 5	Total
1 - Builders liens	-	-	-	-	-	-
2 - Roof anchors	3,000	-	-	-	-	3,000
3 - Elevator main lobby lights	-	-	20,000	-	-	20,000
4 - Security cameras	3,000	-	32,000	-	-	35,000
5 - Security in the elevators	-	-	15,000	-	-	15,000
6 - Review of sprinkler system	-	-	-	7,000	-	7,000
7 - Re-verification of sprinkler system	-	-	-	5,000	-	5,000
8 - Re-verification of fire alarm system	-	-	-	5,000	-	5,000
9 - Alternative access	-	3,500	-	-	-	3,500
10 - General repairs	-	2,500	-	-	-	2,500
11 - Temporary parkade entrance	62,000	-	-	-	-	62,000
12 - Front entrance steps	-	-	-	10,000	-	10,000
13 - Temporary fence	-	8,000	-	-	-	8,000
14 - Irrigation system	15,000	-	-	-	-	15,000
15 - Rear entrance	7,500	-	29,500	-	-	37,000
16 - Glass canopy flashings	-	-	-	4,500	-	4,500
17 - Interior entrance doors	-	12,500	-	-	-	12,500
18 - Minor repairs	-	-	-	50,000	-	50,000
19 - Mechanical repairs	-	-	-	25,000	-	25,000
20 - Foundation waterproofing	-	-	-	10,000	-	10,000
21 - Windows	-	-	-	-	150,000	150,000
22 - Roofing	-	-	-	-	50,000	50,000
23 - Cladding	-	-	-	-	350,000	350,000
24 - Drainage to front decks	-	-	50,000	-	-	50,000
25 - Drainage - front entrances / thresholds	-	-	-	25,000	-	25,000
26 - Destructive testing	-	-	30,000	-	-	30,000
27 - Additional fees ²	-	-	220,796	-	-	220,796
Total	90,500	26,500	397,296	141,500	550,000	1,205,796

Note 1: The amounts shown in this table were taken from the Lawson Technical Audit. These amounts were based on upper range of the estimates prepared by Lawson, however it is unknown as to the accuracy of these estimates as details of these amounts have not been provided.

Note 2: The amounts shown in this line are composed of estimated fees for engineers & consultants of \$58,790, fees for a project manager of \$52,209 and contingency fees of \$109,617.

89. The Receiver understands that several of the Technical Audit Findings represent uncompleted work and, based on the high range of the Technical Audit Costs, the estimated cost for this work is \$90,500, as shown in the above table under Group 1. The Receiver agrees to complete this work, but makes no assurances as to the accuracy of the estimates to complete this work as provided by Lawson. The Receiver provided a letter to the Property Manager on September 11, 2013, a copy of which is attached as **Schedule "10"**, which confirms those items in the Technical Audit that are the responsibility of the Receiver to complete.
90. Based on discussions held during the June 12, 2013 Meeting and the July 23, 2013 Meeting, the Receiver understands that the items included in Group 2, and summarized in the table above with an estimated cost of \$26,500 were to be removed as Technical Audit Findings.
91. The total amount of the high range of the Technical Audit Costs within Group 3 is \$397,296 and the majority of this amount is the fees for engineers, consultants and project managers to complete the work that is identified in the findings of the Technical Audit, as well as a 10% contingency fee that Lawson included in their calculations.
92. The total amount of the high range of the Technical Audit Costs within Group 4 is \$141,500 and is comprised of items that, in the Receiver's view, are the result of general wear and tear on the building and ongoing maintenance and inspections and are therefore a cost of the Condominium Corporation.
93. The total amount of the high range of the Technical Audit Costs within Group 5 is \$550,000 and is comprised of items that, in the Receiver's view, may not be required or,

in the case of deficiencies, may be covered by the ANHWP or may be the responsibility of the Condominium Corporation.

94. The City granted Occupancy Permits for the residential units in Phase I as well as the common areas within in Phase I, and it is generally understood that these Occupancy Permits would have only been granted following a review of the Project by the City.

ALBERTA NEW HOME WARRANTY PROGRAM

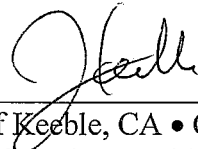
95. Early in the Receivership Proceedings, the ANHWP informed the Receiver that they were ceasing their offering of warranty coverage on the units within the Highbury.
96. By Order dated November 4, 2010, the Court approved an agreement between the Receiver and ANHWP dated October 28, 2010 (the “**ANHWP Agreement**”), a copy of which was attached to the Confidential Eighth Report of the Receiver dated November 3, 2010, which provides for certain warranty coverage. Since that time, the Receiver has sold Phase I units and ANHWP has provided the corresponding warranty coverage. The Receiver has withheld the agreed amount of \$5,000/unit for each Phase I unit sold after the date of the Receivership Order, and this amount is maintained in a separate bank account controlled by the Receiver. On the closing of each unit sale since the Receivership Proceedings, an ANHWP representative has attended the unit walkthrough with the purchaser, realtor and the Receiver’s representative, and any identified deficiencies have been documented and subsequently addressed by the Receiver. The Receiver also continues to repair items within the units as required within the one-year period following possession, in accordance with the ANHWP Agreement.

97. On July 26, 2013 the Receiver met with representatives of ANHWP to tour the property and to update them on developments with respect to ongoing Phase I unit sales and the anticipated development of the site. During this meeting, the ANHWP requested information about the common property, and requested copies of the C-Schedules that are prepared by the architects and engineers as evidence of the date of substantial completion. The Receiver sought these schedules from NORR Architects, and upon receipt, provided these documents directly to ANHWP. The Receiver understands that ANHWP was made aware of some of the Technical Audit Findings by the Property Manager. On September 5, 2013 the Receiver was provided with a Common Property Warranty Certificate which provides a date of substantial completion of December 9, 2010 and an expiry date of builder's common property first year workmanship and material warranty of December 8, 2011. A copy of the Common Property Warranty Certificate is attached as **Schedule "11"**.
98. Based on the dates reflected on the certificate shown in Schedule 11, the builder's common property first year workmanship and material warranty expired on December 8, 2011, but ANHWP continues to be responsible for five year structural integrity warranty of the Highbury until December 8, 2015.

CONCLUSION

99. The Receiver respectfully submits this report in response to the Technical Audit Application being made by the Condominium Corporation.

DELOITTE RESTRUCTURING INC.,
In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity

Per: 

Jeff Keeble, CA • CIRP, CBV
Senior Vice President

SCHEDULE "1"



CONDOMINIUM FIRST

MANAGEMENT SERVICES LTD.

www.condominiumfirst.com

March 20, 2013

Perera (CO Deloitte and Touche Inc)
Mr. Stefan DuChene
700, 850 - 2 Street SW
Calgary, Alberta
T2P 0R8

Dear Stefan;

Re: Outstanding Deficiencies Highbury Tower I CC 0915321

As you are aware the Board of Directors has commissioned a technical audit to identify outstanding construction deficiencies left by the former developer of 10 Shawnee Hill and Shawnee Gate. The Board hired Lawson Projects to complete on-site inspections and review construction drawings, engineering reports and mechanical reports to determine what work has to be done to complete Tower 1 (or Phase 1) construction and building deficiencies in order to comply with original site plans and local building codes. Lawson Projects has estimated the cost of this work to be \$1.26 Million (excluding the cost of amenities).

As this \$1.26 Million cost is a direct result of completing or repairing construction deficiencies that should have been resolved prior to occupancy, the Board expects that the Receiver and First Calgary pay this \$1.26 million to Condominium Corporation No. 0915321 in order to facilitate the required construction and repairs.

As the identified work is critical to the comfort of current residents and integrity of the building structure, time is of the essence and the Board requests that these funds be issued within 30 days of this letter so that work may begin. Delays in starting this work could result in escalated construction costs and additional remedial costs.

The Board understands that this is a significant amount of money, however, if these construction issues are not addressed both the market value and structural/mechanical integrity of occupied and unsold units will be negatively impacted. In addition, resolution of these issues will make the sale of the remaining Towers (2 and 3) more attractive. As such, timely resolution of this matter will be mutually beneficial to all parties: the Board; the Receiver/First Calgary; potential Tower 1 unit purchasers; Tower 2/3 purchasers and current Owners.

The Board trusts that you will agree that the cost/benefit of this proposal is favourable to the Receiver and First Calgary. As the Board has a duty of responsibility to protect the interests of all Owners, it is prepared to seek legal counsel to pursue this issue if your response is not favourable.

Yours truly,
FOR THE BOARD OF DIRECTORS
HIGBURY TOWER

Condominium First Management Services Ltd.
Cynthia Macfarlane
Community Manager

(403)299-1810
cynthia.macfarlane@condominiumfirst.com

CM/mb
CC: Board of Directors

SCHEDULE "2"

April 10, 2013

Via Email

Cynthia Macfarlane
Condominium First Management Services Ltd.
Suite 810, Atrium 1, 839 – 5th Avenue S.W.
Calgary, AB T2P 3C8

Dear Ms. Macfarlane:

Re: Technical Audit of Highbury Tower, Phase I

As you are aware, Deloitte & Touche Inc. (the “**Receiver**”) was appointed by the Court of Queen’s Bench of Alberta as receiver and manager of all the current and future assets, undertakings and properties of Perera Shawnee Ltd. and Perera Development Corporation (collectively, “**Perera**”) on March 3, 2010. Perera is a condominium developer and owns assets that include units in Phase I of the Highbury.

We confirm receipt of your letter dated March 20, 2013 (the “**March 20th Letter**”) regarding a technical audit (the “**Audit**”) commissioned by the Board of Directors that identifies outstanding construction and deficiencies for Phase I of the Highbury. The March 20th Letter advises that the estimated cost of remedying all of the alleged deficiencies identified in the Audit is \$1,260,000 and that the Board of Directors expects the Receiver and First Calgary to pay this amount.

The March 20th Letter does not identify or detail the alleged deficiencies outlined in the Audit and there are no reasons provided as to why you claim that the Receiver and First Calgary are responsible to pay for them. Please provide the Receiver with a copy of the Audit and the reasons as to why the Receiver and First Calgary are responsible to pay for the alleged deficiencies. Can you also provide the Receiver with a copy of the previously requested most recent financial statements for the condo corporation. With receipt of this information, the Receiver can more appropriately respond to the March 20th Letter.

Yours truly,

DELOITTE & TOUCHE INC.

In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity



Jeff Keeble, CA-CIRP, CBV
Senior Vice President

SCHEDULE "3"



Report and Budget Estimate for Highbury Phase 1 Repair Deficiencies & Complete Construction

Lawson Projects was retained to review the design/construction documents along with listed deficiencies as well as conduct a representative on-site review. Lawson Projects obtained as much information as was available from Condominium First, the original building consultants and talked to the maintenance contractors for the building to ascertain the existing condition of Highbury Phase 1.

Once the information had been gathered and evaluated a budget estimate cost for the repairs for all noted deficiencies and cost to complete Phase 1 was prepared. (See Appendix A)

Phase 1 consists of 71 dwellings, of which 24 are un-occupied. Lawson Projects were informed by Cynthia MacFarlane of Condominium First that the un-finished units will be completed as they are sold and not to be included in the unit completion costs. The budget estimate costs for completing these, does not form part of this report or budget estimate.

Lawson Projects reviewed the Deloitte and Touché web site which contained a substantial amount of information on proceedings and actions against Perera Shawnee Ltd (Developer, of Highbury Phase 1), which have been registered against the property title. These liens should be removed prior to, or at the same time as the project is sold, if that was to happen based on the information available, there are building liens against Perera Shawnee on the Title, in the region of \$4,000,000 plus/minus. Also noted there is a Mortgage listed on the title for the total project in the amount of \$65,000,000; we do not know how much of this mortgage amount was forwarded to Perera Shawnee Ltd by the bank. (See Appendix B)

Lawson Projects met with Cynthia MacFarlane of Condominium First at Highbury, she informed us of the following: - Maintenance companies have been retained for the maintenance and upkeep of the building equipment and systems.

Deficiency list for the common areas were not available at the time of this report, but Lawson Projects received deficiency items from a few individual units, through Condominium First.

We have prepared below an executive summary of our findings:-

Anchors for the swing stage need to be certified to confirm that they meet the specification, prior to the swing stage being used.

Budget Estimate to engage testing company to carry out certification, between \$2,000.00 & \$3,000.00

Elevator lobby main light fixtures were reported to overheat and will need to be investigated. The lobby main fixtures can be retro fitted with an LED lamp which will assist with operational costs. The fixtures are controlled by motion sensors and were working at the time of Robertson and Associates Engineering (Electrical Consultant) last report.

Budget Estimate to retro fit fixtures \$20,000.00

Security Cameras were in the original specification and were not installed. After speaking with the current security control company Fahrenheit 451, they advised that approximately 10-12 cameras will be required.

Budget Estimate cost to provide & install cameras \$35,000.00

Fahrenheit 451 also advised that security should be added to the elevator by means of key fob or card recognition.

Budget Estimate cost to provide & install security access system \$15,000.00

It is recommended that a complete review of the sprinkler system (Including un-finished units) be carried out by a qualified engineer. It was noted that a number of sprinkler heads still had caps and clips rendering them inoperable. Many escutcheon plates were also missing.

Budget Estimate cost to review sprinkler system \$3,000.00, plus a Budget of \$4,000.00 to carry out repairs.

Once the above has been carried out it is recommended that a re-verification of the sprinkler system be carried.

Budget Estimate cost for re-verification of sprinkler system \$5,000.00.

We have allowed for re-verification of the system in the budget estimate. A re-verification of the Fire Alarm system should be carried out by the Engineer of Record to confirm the system is operating as designed and meets code.

Budget Estimate cost to carry out re-verification \$5,000.00

An alternative access on the top floor to the refrigerant storage and equipment area will need to be constructed.

Budget Estimate cost to construct alternative access \$3,500.00

There are also general repairs required to the walls of the storage & equipment area.

Budget Estimate cost to carry out general repairs between \$2,500.00 & \$1,500.00

Entrance to the parkade is temporary and at this time the use of the intended entrance cannot be used until such time as phases 2 and 3 construction is complete. Costs have been allowed within the budget estimate to close off the temporary entrance and to complete the landscaped area with pathways as per the original design.

Budget Estimate cost to close off temporary entrance \$45,000.00

Budget Estimate cost to complete side walks & landscaping (\$7,000 + \$10,000) \$17,000.00

Remove & repair the front entrance steps at the main entrance to the building.

Budget Estimate cost to remove & reconstruct front entrance steps \$10,000.00

Supply & Install temporary or permanent fence at rear entrance, due to possible safety issue.

Budget Estimate cost to install temporary/permanent fence \$8,000.00

Lawson has also allowed for the Irrigation System to be installed, which appears not to have been completed at the time of the original construction.

Budget Estimate to install Irrigation System \$15,000.00

The rear entrance of the building remains in a construction area, which will not change until phase 2 & 3 construction is complete. Phase 1 construction will then be completed which includes the roofing over the bike storage, brickwork, waterproofing, drainage and landscaping which has been allowed for within the attached budget estimate.

Budget Estimate to complete rear entrance soffit \$5,000.00

Budget Estimate to complete brickwork at the rear \$20,000.00

Budget Estimate to complete stucco repairs \$2,500.00

Budget Estimate to complete roof repairs \$9,500.00

Repairs to the Glass Canopy, angle flashings are required.

Budget Estimate to carry out Glass Canopy repairs \$4,500.00

Large gaps under the interior entrance doors to a number of units needs to be reviewed and to be corrected.

Budget Estimate to carry out entrance door repairs \$12,500.00

During the walk through it was noted that a number of areas and equipment required minor repairs to be carried out, an allowance has been carried in the budget estimate.

Budget Estimate allowance has been included in the amount of \$50,000.00

All main mechanical equipment systems are running. A maintenance deficiency list has been produced by the maintenance contractor (see attached). The attached list should be reviewed by the Mechanical Engineer, and priorities set. An allowance for this work has been made in the Budget Estimate.

Budget Estimate to carry out maintenance deficiencies in the range of \$20,000.00 to \$25,000.00

It is not known if the fan coil units in the unfinished suites are operational, nor if domestic hot water is available, as previously stated no allowance for any work on this item has been included in our budget estimate.

Williams Engineering submitted a report on the building envelope as this Scope of Work appeared to be the most problematic area of construction. Williams Engineering's summary report has been attached (See Appendix C) and contains review and comments on the following:-

- a) Foundation Waterproofing – An allowance has been included in the Budget Estimate and it is recommended to carry an amount in reserve for ongoing maintenance of the parkade.

Williams Engineering is suggesting that an allowance be carried in operating costs each year to carry out any necessary repairs to the parkade. \$10,000.00 has been allowed in the Budget Estimate.

- b) Windows

As per the report provided by Williams Engineering a Budget Estimate allowance has been carried in the amount in the range of \$100,000.00 to \$150,000.00. These amounts are based on having to repair between 40 to 70% of the windows, but this cannot be confirmed until destructive testing has been carried out and a detail has been provided by Williams Engineering.

- c) Roofing a) Scuppers on the townhouses.

- b) Large square hole through the concrete parapet on southernmost townhouse

Budget Estimate to carry out the two items above has been carried in the amount in the range of \$40,000.00 to \$50,000.00. This number cannot be confirmed until further investigation has taken place.

- d) Cladding

Other –

As per the report provided by Williams Engineering a Budget Estimate allowance has been carried in the amount in the range of \$100,000.00 to \$350,000.00. These amounts are based on having to repair between 10 to 30% of the Cladding, but this cannot be confirmed until destructive testing has been carried out and a detail has been provided by Williams Engineering.

- e) Drainage to front decks.

Budget Estimate to carry out deficiencies on the front decks is in the range of \$40,000.00 to \$50,000.00. This number cannot be confirmed until further investigation has taken place.

- f) Drainage front entrances/thresholds

Budget Estimate to carry out deficiencies on front entrances/thresholds is in the range of \$20,000.00 & \$25,000.00

Lawson Projects recommends that the next step after the Board reviews this report is to carry out destructive testing in selected areas to determine the exact extent of the required repairs.

Budget Estimate for destructive testing is in the range of \$25,000.00 & \$30,000.00

After the Board has reviewed this report it is suggested that prior to moving forward the Board should meet with Lawson Projects & Williams Engineering, who will be pleased to answer any questions and review the findings and discuss a go forward plan.

If the Board has any questions please do not hesitate to contact either Rob Holbrough or myself.

Ian McMurray, Director, Lawson Projects

SCHEDULE "4"

Appendix A

Highbury				
(Budget Estimate Cost to Complete Phase 1 & Correct Deficiencies) (Rev 130204)				
Incomplete Work Phase 1				
Cameras	\$ 35,000		\$ 35,000	
Security Access in Elevators	\$ 15,000		\$ 15,000	
Parking entrance	\$ 45,000		\$ 45,000	
Sidewalk	\$ 7,000		\$ 7,000	
Landscaping	\$ 10,000		\$ 10,000	
Fencing off rear parking entrance	\$ 8,000		\$ 8,000	
Irrigation	\$ 15,000		\$ 15,000	
Rear entrance soffit	\$ 5,000		\$ 5,000	
Brickwork on rear	\$ 20,000		\$ 20,000	
Roof at rear	\$ 9,500		\$ 9,500	
Gaps under doors	\$ 12,500		\$ 12,500	
Engineers & Consultants	\$ 11,204		\$ 7,385	
Project Manager	\$ 9,920		\$ 6,519	
		\$ 203,124		\$ 195,904
Contingency 10%		\$ 20,312		\$ 19,590
Sub Total for Incomplete Work Phase 1		\$ 223,436		\$ 215,494
Deficiency Items				
	High		Low	
Recertify Swing Stage Anchors	\$ 3,000		\$ 2,000	
Light fixtures & Retro lamps	\$ 20,000		\$ 20,000	
Sprinkler system review	\$ 3,000		\$ 3,000	
Sprinkler heads	\$ 4,000		\$ 4,000	
Sprinkler verification	\$ 5,000		\$ 5,000	
Fire alarm verification	\$ 5,000		\$ 5,000	
Top floor access to refrigerant storage and equipment	\$ 3,500		\$ 3,500	
General wall repairs in plant room	\$ 2,500		\$ 1,500	
Steps at front repairs	\$ 10,000		\$ 10,000	
Stucco repairs	\$ 2,500		\$ 2,500	
Glass canopy negative angle/flashing	\$ 4,500		\$ 4,500	
Mechanical Deficiencies	\$ 25,000		\$ 20,000	
General repairs and equipment	\$ 50,000		\$ 50,000	
Williams Engineering's Report Attached				
Foundation Waterproofing	\$ 10,000		\$ 10,000	Carry an amount in reserve fund for ongoing maintenance
Windows	\$ 150,000		\$ 100,000	
Roofing	\$ 50,000		\$ 40,000	
Cladding	\$ 350,000		\$ 100,000	
Drainage front decks	\$ 50,000		\$ 40,000	
Drainage front entrances/thresholds	\$ 25,000		\$ 20,000	
Destructive testing	\$ 30,000		\$ 25,000	Basic Scope needed to carry out detailed investigation
Engineers & Consultants	\$ 47,766		\$ 31,485	
Project Manager	\$ 42,289		\$ 27,790	
		\$ 893,055		\$ 525,275
Contingency 10%		\$ 89,305		\$ 52,526
Sub Total for Deficiency Items		\$ 982,360		\$ 577,801
TOTAL BUDGET ESTIMATE		\$ 1,205,796		\$ 793,296

SCHEDULE "5"



Deloitte & Touche Inc.
700, 850 - 2 Street SW
Calgary AB T2P 0R8
Canada

Tel: 403-503-1458
Fax: 403-718-3681
www.deloitte.ca

May 21, 2013

Condominium First Management Services Ltd.
Attn : Cynthia Macfarlane
Suite 810, 839 5 Avenue SW
Calgary, AB T2P 3C8

Dear Ms. Macfarlane:

Subject: Technical Audit of the Highbury Tower, Phase I

As you are aware, Deloitte & Touche Inc. (the “**Receiver**”) was appointed by the Court of Queen’s Bench of Alberta as receiver and manager of all the current and future assets, undertakings, and properties of Perera Shawnee Ltd. and Perera Development Corporation (collectively, “**Perera**”) on March 3, 2010. The Receiver acts at all times in its capacity as receiver and manager of Perera and not in its personal capacity. Perera is a condominium developer and owns assets that include units in Phase I of the Highbury Tower.

On May 8, 2013, the Receiver was provided a copy of the technical audit (the “**Audit**”) completed by Lawson Projects Ltd. (“**Lawson**”) with respect to Perera that was commissioned by the Board of Directors (the “**Board**”) for Condominium Corporation 0915321 (the “**Condo Corp**”). The Audit identifies purported deficiencies and outstanding construction items (the “**Issues**”) related to the common areas of Phase I of the Highbury. The Receiver takes no responsibility to remedy any of the Issues and takes no position on the merits of any of the Issues identified in the Audit at this time. As is discussed in detail below, many of the Issues are the responsibility of Condo Corp. This response is provided to aid both parties in understanding the nature of the Issues and to assist in future discussions.

The Receiver has the following comments with respect to the Issues raised in the Audit:

1. Builders liens

- **Lawson Audit** – Builder’s liens of approximately \$4,000,000 should be removed.
- **Receiver’s Response** - An Order was granted by the Court of Queen’s Bench of Alberta allowing for, among other things, the Receiver to sell individual condominium and townhome units free and clear of all encumbrances. Accordingly, when the Receiver, in its capacity as receiver and manager of Perera, and not in its personal capacity, sells a Phase I unit, a vesting order is granted which allows for the transfer of clear title to the buyer. It is not the responsibility of the Receiver to remove encumbrances or liens that were on the other units or the common property prior to the date of the receivership.

2. Anchors for the swing stage

- **Lawson Audit** – anchors need to be certified to confirm that they meet specifications, prior to the swing stage being used. Lawson estimates that the cost to engage a testing company will be between \$2,000 to \$3,000.
- **Receiver's Response** – The Receiver is reviewing Perera's records to try and locate the initial certification. In any event, the Receiver understands that the anchors need to be certified annually, and this cost should be paid by the Condo Corp.

3. Elevator lobby main light fixtures

- **Lawson Audit** – the main light fixtures in the elevator lobby were reported to overheat and will need to be investigated. The fixtures can be retrofitted with an LED lamp which will assist with the operational costs. The fixtures are controlled by motion sensors and were working at the time of the last report of Robertson and Associates Engineering (the electrical consultant). Lawson estimates that the cost for this retrofit is \$20,000.
- **Receiver's Response** – the existing lights were installed by Perera prior to the date of the receivership and presumably in accordance with the approved plans. The condominium documents do not call for a specific type of lighting and the City of Calgary granted occupancy permits after the lights were installed. Any changes to these light fixtures will need to be paid for by the Condo Corp.

4. Security Cameras

- **Lawson Audit** – security cameras were in the original specification and were not installed. The current security control company (Fahrenheit 451) advised that approximately 10 to 12 cameras will be required. Lawson estimates that the cost for these cameras is \$35,000.
- **Receiver's Response** – Appendix A of the Plans and Specifications for Common Area notes that security cameras are to be used at the front entry only. Based on the Receiver's quote from Fahrenheit 451, the cost for a single camera and its installation is \$1,500. The Receiver will pay for the cost to install this single camera, however, any additional security cameras are the responsibility and cost of the Condo Corp.

5. Elevator key fob

- **Lawson Audit** – Fahrenheit 451 advised that security should be added to the elevator by means of key fobs or card recognition. Lawson estimates that the cost for this additional security is \$15,000.
- **Receiver's Response** – the Condo Plan does not stipulate the installation of an elevator key fob or card recognition system. Accordingly, if the Condo Corp. would like to add this security feature, it will be need done at the Condo Corp.'s own expense.

6. Complete review of the sprinkler system and re-verification

- **Lawson Audit** – it is recommended that a complete review of the sprinkler system (including unfinished units) be carried out by a qualified engineer. It was noted that a number of sprinkler heads still had caps and clips rendering them inoperable. Many escutcheon plates were also missing. Once the above has been carried out it is recommended that a re-verification of the sprinkler system be completed. Lawson estimates that the cost for this work is \$12,000.
- **Receiver's Response** – a review of the sprinkler system by Concept Electric resulted in a clean inspection certificate valid for the period from December 2011 to December 2012 (a copy of which is attached). Any subsequent annual reviews of the system are the responsibility of the Condo Corp.

7. Re-verification of the Fire Alarm system

- **Lawson Audit** - a re-verification of the fire alarm system should be carried out by the Engineer of Record to confirm that the system is operating as designed and meets code. Lawson estimates that the cost for this re-verification is \$5,000.
- **Receiver's Response** - a review of the fire alarm system was conducted by Gary Burns of the Calgary Fire Department and he indicated in the attached email dated January 3, 2012, a copy of which is attached, that "no outstanding requirements remain." Any review of the system from that date forward is the responsibility of the Condo Corp.

8. Alternative access to the top floor to the refrigerant storage and equipment area

- **Lawson Audit** – an alternative access to the top floor to the refrigerant storage and equipment area will need to be constructed. Lawson estimates that the cost for this construction is \$3,500.
- **Receiver's Response** – at the date of the receivership, the refrigerant storage and equipment area was already located in its current position. The mechanical engineer on record reviewed its location and directed the Receiver to add the existing access panel and digital readout display. The Receiver completed this recommended work and any other work will be at the cost of the Condo Corp.

9. General repairs to the storage and equipment area

- **Lawson Audit** - there are general repairs required to the walls of the storage and equipment area. Lawson estimates that the cost for this repair work is between \$1,500 and \$2,500.
- **Receiver's Response** - the cost for repairs and for general wear and tear is an ongoing cost to the Condo Corp.

10. Temporary parkade entrance

- **Lawson Audit** – the entrance to the parkade is temporary and at this time the use of the intended entrance cannot be used until such time as Phases II and III construction is complete. Costs have been allowed within the budget estimate to close off the temporary entrance and to complete the landscaped area with pathways as per the original design. Lawson estimates that the cost for closing off the temporary entrance is \$45,000 and for landscaping and sidewalks is an additional \$17,000.
- **Receiver's Response** – the Receiver needs to clarify what has been included in the estimate by Lawson.

11. Front entrance steps

- **Lawson Audit** – remove and repair the front entrance steps at the main entrance to the building. Lawson estimates that the cost for this work is \$10,000.
- **Receiver's Response** – the Phase I building, and the exterior steps, have been operational and in use for over three years, and a certain portion of the cracking on the front steps may be the result of general wear and tear. The Receiver needs to better understand what is being proposed by Lawson.

12. Temporary or permanent fence at rear entry

- **Lawson Audit** - supply and install temporary or permanent fencing at the rear entrance due to a possible safety issue. Lawson estimates that the cost for this work is \$8,000.
- **Receiver's Response** – a fence already exists at the rear entrance to the building and the City has not issued a requirement for any new fencing to be put into place.

13. Irrigation system

- **Lawson Audit** - Lawson has allowed for the irrigation system to be installed, which appears not to have been completed at the time of the original construction. Lawson estimates that the cost for this work is \$15,000.
- **Receiver's Response** – the Receiver needs to better understand what is included in this cost estimate by discussing same with Lawson and the Board.

14. Rear entrance to the Phase I building

- **Lawson Audit** - the rear entrance of the building remains a construction area which will not change until the Phase II and III construction is complete. Phase I construction will then be completed which includes the roofing over the bike storage, brickwork, waterproofing, drainage, and landscaping. Lawson estimates that \$5,000 is required to complete the rear entrance soffit, \$20,000 for the brickwork, \$2,500 for stucco repairs and \$9,500 for roof repairs.

- **Receiver's Response** – the Lawson estimate for the soffit work is higher than the Receiver's estimate and the Receiver understands that only limited brickwork, if any, is required around the permanent Phase I entrance. The Receiver also requires additional information with respect to the scope and costs estimated for the stucco and roof repairs and proposes to meet with Lawson on-site to discuss all of the above items.

15. Repairs to the glass canopies

- **Lawson Audit** – angle finishing's are required for the glass canopies. Lawson estimates the cost for these repairs at \$4,500.
- **Receiver's Position** – the Receiver has reviewed the glass canopies and understands that they were installed prior to the date of the receivership. The Receiver has obtained occupancy permits for each of the townhouses and has received no complaints or warranty claims related to these canopies. The Receiver is therefore of the opinion that no such repairs are required.

16. Gaps under the interior entrance doors

- **Lawson Audit** – there are large gaps under the interior entrance doors to a number of units that need to be reviewed and corrected. Lawson estimates the costs for these repairs at \$12,500.
- **Receiver's Position** – the Receiver has fixed any of the door gaps for the units it has sold where the owners have requested this to be done. The Receiver will continue to do this for any of the remaining unsold units, but not for all of the units. There is a low cost solution that the Receiver can discuss with the Board.

17. Minor repairs to equipment

- **Lawson Audit** - Lawson noted that a number of areas and equipment required minor repairs to be carried out and estimates the costs for these repairs at \$50,000.
- **Receiver's Response** – Lawson has not provided any details of the repairs required and, in any event, general repairs and maintenance are the responsibility of the Condo Corp.

18. Mechanical equipment systems

- **Lawson Audit** - all main mechanical equipment systems are running. A maintenance deficiency list has been produced by the maintenance contractor. The list should be reviewed by the mechanical engineer, and priorities set. Lawson estimates the cost for maintenance deficiencies at \$20,000 to \$25,000.
- **Receiver's Response** – the Condo Corp. is responsible for day to day repairs and maintenance of the building and its mechanical systems.

19. Foundation waterproofing

- **Lawson Audit** – Lawson estimates that an allowance of \$10,000 per year should be included in the annual Condo Corp. budget for ongoing maintenance of the parkade.
- **Receiver's Response** – the Condo Corp. is responsible for the ongoing maintenance of the parkade. Phase I has been occupied for over three years and the Receiver has not had any water issues in the parkade to date.

20. Windows

- **Lawson Audit** – Williams Engineering Canada (“WEC”) was retained by Lawson to provide a summary of the outstanding building envelope deficiencies from the original construction of the building and provided a report to Lawson dated December 12, 2012 (the “Williams Report”). The Williams Report indicates that the list of items “either remained unresolved or developed once the original developer left the project.” The Williams Report included an allowance in the range of \$100,000 to \$150,000 for the repair of 40% to 70% of the Phase I windows. Lawson indicates that destructive testing is required along with more details from WEC to determine the estimated costs to repair.
- **Receiver's Response** – the Receiver has responded to limited reports of windows leaking in Phase I and has completed these minor repairs. If remediation work is required, there is warranty coverage in place through Alberta New Home Warranty (“ANHW”).

21. Roofing: scuppers on the townhouses, and large square hole through the concrete parapet on southernmost townhouse

- **Lawson Audit** – the Williams Report recommends an allowance in the range of \$40,000 to \$50,000 to fix certain roofing and scupper issues for the townhouses, but Lawson indicates that further investigation is required to confirm the estimated costs to repair.
- **Receiver's Response** – the Receiver has reviewed the balconies on the Phase I townhouses and notes that there are drainage pipes / scuppers on 10 of the 12 units. The Receiver will review the other two townhouses to determine whether internal drainages exist, or are required, for those units and who would be responsible for any costs. The Receiver proposes an on-site meeting with Lawson in order to discuss the purported “large square hole” on the southernmost townhouse. If remediation work is required, there is warranty coverage in place through ANHW.

22. Cladding

- **Lawson Audit** – the Williams Report recommends an allowance in the range of \$100,000 to \$350,000 for the repair of 10% to 30% of the cladding. Lawson indicates that more details are required from Williams Engineering, along with some destructive testing, in order to determine the repairs and costs involved.
- **Receiver's Response** – The Receiver is not aware of any cladding issues that have not already been addressed. If remediation work is required, there is warranty coverage in place through ANHW.

23. Drainage to front decks

- **Lawson Audit** – the Williams Report recommends an allowance in the range of \$40,000 to \$50,000 to repair deficiencies on the front decks. Lawson indicates that further testing is required to confirm if any work is required.
- **Receiver's Response** – The Receiver has not received any reports of any front deck issues for the units and understands that no repairs are required. If remediation work is required, there is warranty coverage in place through ANHW.

24. Drainage: front entrances and thresholds

- **Lawson Audit** – the Williams Report recommends an allowance in the range of \$20,000 to \$25,000 to repair deficiencies on the front entrances and/or thresholds. Lawson does not provide any other comments on this issue.
- **Receiver's Response** – the Receiver has not received any reports of issues with the front entrances or thresholds for the units and understands that no repairs are required. If remediation work is required, there is warranty coverage in place through ANHW.

25. Destructive testing

- **Lawson Audit** – the Williams Report recommends an allowance in the range of \$25,000 to \$30,000 to conduct destructive testing. Lawson recommends that destructive testing be completed in selected areas to determine the exact extent of the required repairs.
- **Receiver's Response** – the Receiver does not understand why destructive testing is being recommended by Lawson based on the information provided in and relied upon in the Audit. The Receiver has dealt with building matters and ANHW claims as they have arisen.

The Receiver believes it would be beneficial to meet with the representatives of the Board, along with Lawson, to discuss the Audit and this response. We suggest a meeting time of 3pm on Monday, May 27, 2013 at the Highbury to allow for the opportunity to view specific items on-site as required. Please advise if this proposed meeting time works for you.

If you have any questions, please contact the undersigned at 403-503-1458 or Stefan DuChene at 403-970-4721.

Yours truly,

DELOITTE & TOUCHE INC.

In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity



Jeff Keeble, CA-CIRP, CBV
Senior Vice President

Certificate of Inspection

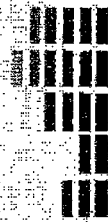
THIS CERTIFIES that the Fire Sprinkler System

Installed at: Highbury Condominiums

10 Shawnee Hill S.W. Calgary, Alberta

was tested and inspected by a certified technician as per:
NFPA 25

Valid from December 2011 *To* December 2012



URBAN FIRE PROTECTION INC.

Bill O'Brien

General Manager

DuChene, Stefan (CA - Alberta)

From: Burns, Gary <Gary.Burns@calgary.ca>
Sent: Tuesday, January 03, 2012 1:39 PM
To: DuChene, Stefan (CA - Calgary)
Cc: 'abaton@shaw.ca'
Subject: Highbury Towers - 10 Shawnee Hill SW, Calgary

Hi Stefan,

I have received the last of the documentation from Concept relating to the deficiencies that were identified for the above occupancy.

All life safety inspection and maintenance requirements relating to the AFC have now been met for the earlier identified deficiencies for the occupied building.

No outstanding requirements remain.

I thank you for your assistance and should you have any questions or concerns, please do not hesitate to call.

Gary Burns
Safety Codes Officer II – Fire
Fire Prevention Bureau
Calgary Fire Department
403-874-7796

NOTICE -

This communication is intended ONLY for the use of the person or entity named above and may contain information that is confidential or legally privileged. If you are not the intended recipient named above or a person responsible for delivering messages or communications to the intended recipient, YOU ARE HEREBY NOTIFIED that any use, distribution, or copying of this communication or any of the information contained in it is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and then destroy or delete this communication, or return it to us by mail if requested by us. The City of Calgary thanks you for your attention and co-operation.

SCHEDULE "6"

File No. 27488.00-F

December 12, 2012

Via e-mail rob@lawsonprojects.com

Lawson Projects Ltd.
102-7101 5 St SE
Calgary, Alberta T2H 2G2

Attention: Rob Holbrough
Project Manager

Subject: Highbury Condominiums
Building Envelope Construction Deficiency Report
Calgary, Alberta

SCOPE

Williams Engineering Canada (WEC) was retained by Lawson Projects Ltd. to provide a summary of the outstanding building envelope deficiencies from the original construction of the Highbury Condominium Complex. WEC was retained by the original developer, Perera Developments, to provide building envelope consulting and inspection services during construction. Many of the construction trades were based in Toronto. The list below outlines items that arose during the original construction that either remained unresolved or developed once the original developer left the project.

For additional clarification, WEC has included all fifty-five site inspection reports (see Appendix 'A'), produced during original construction. In the deficiencies listed below, the designation "B - #" (i.e. B-19), refers to a particular site report. Additional photos were also taken during each site visit which can be provided for additional reference.

OUTSTANDING DEFICIENCIES

Foundation Waterproofing

1. The Voltex sheets at the mechanical shaft at the southwest corner of the phase II foundation were activated and then concrete poured over top. There is no effective waterproofing in this location. There was no involvement of Cetco (Voltex manufacturer) in the foundation waterproofing installation.
2. Confirmation of the Phase II waterproofing repairs were never received. The Voltex material was loose around the form ties and often fasteners were loose. Concrete was poured so there is no way to confirm if the Voltex is properly placed between the lagging and concrete.

Windows

1. The windows are mounted proud of the exterior sheathing surface. Brackets, fastened from the rough opening into a screw track on the side of the each window unit, hold the windows in place. A heavy gauge steel angle was then fastened into the steel studs using 4 -5 small metal screws (approx 2") and the windows sit on the angle. WEC has photos showing the angle sagging (see B-09). In some locations the angle was fastened to the outside of the wall sheathing into the steel studs behind using the same screws (see B-12). WEC requested documentation from Quest indicating these angles were structurally adequate to support the brick. No confirmation was received and windows were installed in this manner throughout the project.
2. The window system was designed to be installed as a punch style window into a rough window opening. Peel and stick membrane was used to attempt a seal around the windows but as there was no part of the frame the membrane could effectively bond to, a light gauge metal angle was fastened to the exterior wall sheathing and into the screw chase of the window frame. The membrane was applied from the wall sheathing onto the angle. The angle unfortunately did not seal snugly onto the frame. Spray foam was used to seal between the frames and the rough opening. Photos to the membrane application mock-up were taken September 23, 2008 (see B-08).
3. To provide a sill membrane detail, a trough was built using metal angles and lined with peel and stick membrane. Tie-ins at the outside corners of the window system on the tower have always been suspect as a result of the extremely modified sill pan detail. The system relies on sealant at the outside corners between the window units and the back angle. (see B-14) The sill membranes had been left exposed and where often unbounded by the time brick was installed (see B-22). No confirmation of repairs to the sill membrane were ever received.
4. No proper tie-in detail was completed at the window heads from the exterior at the balconies. The joint is sealed only with sealant on the interior of the window system and left open on the exterior. During the investigation of the water leakage in units 101 and 201 in 2010, we found this condition to be typical at each balcony of the Tower.
5. The concrete slabs on most floors were so uneven that the window supplier, Quest, shimmed the sill angle prior to installing the window units (see B-14). In some locations on the upper floors, the required shimming was 1 cm or more. WEC indicated the windows should be removed and the concrete leveled to provide proper anchoring and support for the sill angle. No confirmation of the repairs being completed was received.

6. The brick angles were installed prior to completing an effective membrane tie-in at the windows heads. The clearance between the window and the brick angle made a proper membrane installation very difficult. Poorly sealed laps and tented membranes around windows and doors was common. As the contractor would not redo the work, mastic was used in an attempt to seal the discontinuities. (see B-17 & see B-19)
7. The membrane tie-in from the curbs under the windows to the tower balcony surfaces was poorly constructed in many locations. Transitions between the curbs and the balcony surface were also poorly done. All outside window corners of the tower are questionable at best, due to this detail.
8. The slab joint between the large sections of window wall were large and never flashed properly. The gap is too large for sealant.

Roofing

1. The architectural features over the townhouses, that became known as the 'doghouses', were installed and left open for over six months before the waterproofing layer was applied. Water penetration under the roofing membrane was possible as the scupper-like gap in the concrete was never waterproofed and the membrane appears to have covered it (see B-23).
2. Membrane was loosely draped over the top of the architectural doghouses over the townhouses in the attempt to keep water out without proper support. (see B-23). New membrane was applied and simply laid onto the brick (see B-34) with no tie-in to the drainage plane behind.

Cladding

1. The membrane installation was completed by Standard Masonry. Corner details and finishing around the windows was often poorly done and sealed with mastic instead of being removed and replaced with new material. Membrane tie-in problems were typical around balcony slabs and around the HSS sections used to mount the brick angles on the building (see B-19).
2. The brick was installed with residential brick ties which in most cases provided insufficient support to the brick. There was no indication a structural engineer was involved in designing or inspecting the anchor attachment. Additional anchors were added by a local masonry contractor once the project went into receivership. The additional anchors were rated for the wind loading experienced on a building of this height (see B-50).

3. The stone sills were installed after the brick was completed which may account for the uneven, and in some cases, overly large gaps between the windows and the stone sills (see B-19 & see B-20). The front patio area drains poorly due to fine sand being used under the stone. WEC cannot confirm if the drains have been blocked (see B-49).
4. On the townhouses, the insulation was not fit snugly under the windows. No confirmation of additional insulation being installed was received (see B-23).
5. Parapet-to-wall ties-ins of the membrane behind the brick cladding at the townhouse balcony parapets was poorly done. Mastic was the only method the contractor would use to seal the discontinuities.
6. The wall membrane application on the level 8 penthouse level has numerous pinholes. No confirmation of repairs, or request for re-inspection, of these deficiencies was received prior to brick installation.

Other

1. The scuppers on the townhouses are drilled through the concrete parapet wall over the windows and peel and stick is used to create the drainage plane behind. The membrane laps onto the metal angle fastened into the screw track of the window head and only mastic was used to seal the cut edges of the membrane at the scupper hole. There is no tie-in with the hot rubberized asphalt used as waterproofing on the balconies above. In some places, WEC suspects some scupper holes may have been bricked over. Leakage into units began in May 2009. Metal tubing was used as the scupper and attempts were made to seal the exterior side of the parapet with mastic in some locations. WEC cannot confirm these areas were sealed. The interior on the parapet was sealed with a liquid applied waterproofing. A water test of the scupper in August 2012 still produced leaks into the units (see B-43).
2. A large square hole was cut through the concrete parapet on the southern most townhouse balcony. Membrane was used in the attempt to seal this scupper to the waterproofing layer. A metal scupper was installed but poorly sealed (see B-35).
3. The door sills on the townhouse entrance doors tend to leak from water accumulating on the exterior patio and overflowing the trough. Insufficient drainage is the cause.

CONCLUSIONS

As with all our new construction projects, Williams Engineering Canada Ltd. (A.D. Williams Engineering Inc. at the time of construction) tried to work closely with the site personnel and trades in order to construct a durable building envelope. The position taken by the site personnel and trades was much more production oriented with little attention to sound building envelope detail. WEC was frustrated with this lack of attention to detail and willingness to accept poor construction detailing.

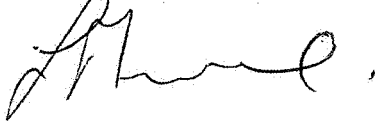
To properly repair the large number of deficiencies in the various locations, the removal of some building finishes, envelope components and/or cladding will be required. A review of both the interior and exterior of all units is recommended to confirm current conditions and whether the noted deficiencies have caused additional damage.

CLOSURE

This report has been prepared based upon the information referenced herein. It has been prepared in a manner consistent with good engineering judgement. Should new information come to light, Williams Engineering Canada Inc. requests the opportunity to review this information and our conclusions contained in this report. This report has been prepared for the exclusive use of the client, and there are no representations made by Williams Engineering Canada Inc. to any other party. Any use that a third party makes of this report, or any reliance on or decisions made based on it, are the responsibility of such third parties.

Prepared by,

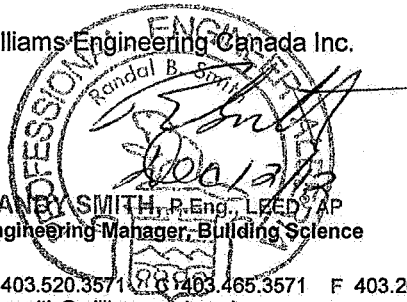
Williams Engineering Canada Inc.



LEAHA MAISONNEUVE, C.E.T.
Building Science



T 403.410.3730 C 403.999.5149 F 403.262.9075
E lmaisonneuve@williamsengineering.com

Williams Engineering Canada Inc.



RANDY SMITH, P.Eng., LEED AP
Engineering Manager, Building Science

T 403.520.3571 F 403.465.3571 F 403.262.9075
E rsmith@williamsengineering.com

PERMIT TO PRACTICE
WILLIAMS ENGINEERING CANADA INC.
Signature 
Date 
PERMIT NUMBER: P10527
The Association of Professional Engineers,
Geologists and Geophysicists of Alberta

SCHEDULE "7"

Partial Schedule C-2

Assurance of Professional Field Review and Compliance

See Subsection 2.4.3. of Division C of the Alberta Building Code

To: **The authority having jurisdiction**

Date: December 2, 2010

The City of Calgary - Planning And Building Dept.

4th Floor, 800 MacLeod Trail SE

P.O. Box 2100, Station M

Address

Calgary, Alberta

T2P 2M5

Postal Code

BP2007-10431

Permit Number

RE: **Highbury Towers**

Phase 1 (Excluding Managers Suite and Townhouse Units #1 and #2)

Name of project

620 & 640 James McKeivitt Road S.W., Calgary, Alberta

Address

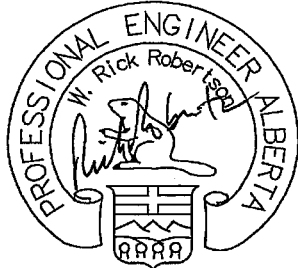
Plan 4548JK, Block E

Legal Description

- (a) I have fulfilled my obligations for *field review* as outlined in Sentence 2.4.4.1.(1) of Division C the Alberta Building Code (ABC) and as outlined in the previously submitted Schedule B-1;
- (b) I have enclosed documents supporting all approved changes to the plans and specifications prepared by me on which the *building permit* was issued for this *project*;
- (c) Those components of the *project* opposite my initials in Schedule B-2 substantially comply with
 - (i) the applicable requirements of the Alberta Building Code, and
 - (ii) the plans, specifications and other documents submitted in support of the application for the *building permit*; and
- (d) I am a *registered professional* as defined in the Alberta Building Code.

Schedule C-2- Continued

Coordinating Registered Professional



PERMIT NUMBER: P-09509

Signature

December 2, 2010
Date

Note: affix seals over signatures

I, Rick Robertson have signed on behalf of

Robertson & Associates Engineering Ltd.
Firm

Rick Robertson
Name

Unit 138, 4242-7th Street S.E.

Calgary, Alberta
Address

T2G 2Y8
Postal Code

- Note:
1. This letter must be submitted by all of the *registered professionals of record* after completion of the project to the *coordinating registered professional*.
 2. In this letter the words in italics are defined in the Alberta Building Code.
 3. This letter must be signed by the *registered professional*.
 4. The term "substantially comply" is used in *field review* because a *registered professional* does not supervise the actual construction.
 5. The *constructor* is responsible for safety of the public and workers at the *project* site.

The Alberta Building Code defines a *registered professional* to mean

- (a) a person who is registered or licensed to practice as an architect under the Architects Act, or
- (b) a person who is registered or licensed to practice as a *professional engineer* under the Engineering, Geological and Geophysical Professions Act.

SCHEDULE "8"

Certificate of Inspection

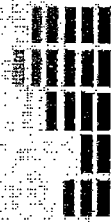
THIS CERTIFIES that the Fire Sprinkler System

Installed at: Highbury Condominiums

10 Shawnee Hill S.W. Calgary, Alberta

was tested and inspected by a certified technician as per:
NFPA 25

Valid from December 2011 *To* December 2012



URBAN FIRE PROTECTION INC.

Bill O'Brien

General Manager

SCHEDULE "9"

DuChene, Stefan (CA - Alberta)

From: Burns, Gary <Gary.Burns@calgary.ca>
Sent: Tuesday, January 03, 2012 1:39 PM
To: DuChene, Stefan (CA - Calgary)
Cc: 'abaton@shaw.ca'
Subject: Highbury Towers - 10 Shawnee Hill SW, Calgary

Hi Stefan,

I have received the last of the documentation from Concept relating to the deficiencies that were identified for the above occupancy.

All life safety inspection and maintenance requirements relating to the AFC have now been met for the earlier identified deficiencies for the occupied building.

No outstanding requirements remain.

I thank you for your assistance and should you have any questions or concerns, please do not hesitate to call.

Gary Burns
Safety Codes Officer II – Fire
Fire Prevention Bureau
Calgary Fire Department
403-874-7796

NOTICE -

This communication is intended ONLY for the use of the person or entity named above and may contain information that is confidential or legally privileged. If you are not the intended recipient named above or a person responsible for delivering messages or communications to the intended recipient, YOU ARE HEREBY NOTIFIED that any use, distribution, or copying of this communication or any of the information contained in it is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and then destroy or delete this communication, or return it to us by mail if requested by us. The City of Calgary thanks you for your attention and co-operation.

SCHEDULE "10"



Deloitte Restructuring Inc.
700, 850 - 2 Street SW
Calgary AB T2P 0R8
Canada

Tel: 403-503-1458
Fax: 587-774-5398
www.deloitte.ca

September 11, 2013

BY EMAIL

Condominium Corporation No. 0915321
c/o FirstService Residential Ltd.
Cynthia Macfarlane
Suite 810, Atrium 1, 839 – 5th Avenue S.W.
Calgary, Alberta T2P 3C8

Dear Ms. Macfarlane:

Re: Technical Audit of Highbury Tower, Phase I

As you are aware, Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (the “**Receiver**”) was appointed by the Court of Queen’s Bench of Alberta as receiver and manager of all the current and future assets, undertakings and properties of Perera Shawnee Ltd. and Perera Development Corporation (collectively, “**Perera**”) on March 3, 2010. Perera is a condominium developer and owns assets that include units in Phase I of the Highbury.

We confirm receipt of the technical audit that was completed by Lawson Projects dated February 1, 2013 (the “**Technical Audit**”), and acknowledge that the Receiver has met with representatives of the Board of Directors of the Phase I Condominium Corporation (the “**Phase I Owner Representatives**”) on two occasions to discuss these findings. During our call with the Phase I Owner Representatives on September 10, 2013, the Receiver was requested to provide, in writing, confirmation of the items it acknowledges are its responsibility to complete. Accordingly, the Receiver acknowledges that the followings items identified in the Technical Audit remain unfinished, and will be completed by the Receiver at its cost:

1. Installation of two security cameras (one at the permanent Phase I entrance near the round-about, and another near the existing entrance onto Shawnee Gate) (Item 4 of Receiver’s reply to Technical Audit, dated May 21, 2013, “**Reply**”);
2. Once the development of Phases II and III is complete, removal of the temporary entrance into the P4 parkade and the associated backfilling, landscaping and sidewalk work required to open up the permanent fire escape at the north-end of the townhouse hallway (Item 10 of Reply);
3. Complete the installation of the underground irrigation system on Phase I, which includes the areas in front of the townhouses and behind the southernmost townhouses near the permanent parkade entrance (Item 13 of Reply);

4. Complete the landscaping on Phase I, which includes the areas in front of the townhouses (already mainly complete) and behind the southernmost townhouses near the permanent parkade entrance;
5. Complete the soffit and stucco work required directly outside from the permanent lobby of Phase I (Item 14 of Reply); and
6. Certification of the swing stage anchors (Item 2 of Reply).

In no way should this letter be understood to be an acknowledgement by the Receiver of any responsibility for any other items identified in the Technical Audit, apart from those detailed above.

Furthermore, and as disclosed during the informational meeting held with the Phase I owners on September 4, 2013 (the "**Owner's Meeting**"), the Receiver has entered into a conditional agreement to sell Phases II and III to the Statesman Group of Companies ("**Statesman**"). This agreement will terminate on September 20, 2013, unless the remaining conditions are satisfied or waived by Statesman. **The Receiver hereby confirms that there will be no extension to the September 20, 2013 deadline.**

As previously discussed, please take steps to consider acceptance of the two special resolutions and the one authorization that were provided to the owners prior to the Owner's Meeting. For your convenience, we are attaching the two resolutions and the authorization to this letter. Please send any signed resolutions to Stefan DuChene by email at stduchene@deloitte.ca or by fax to (403) 718-3681. The purpose of soliciting your acceptance of the resolutions and authorization is to determine the extent to which unit owners support Statesman's development plan and consent to the resolutions and authorization proposed in relation thereto.

If the Receiver does not obtain approval by the owners by 5:00 p.m. on September 16, 2013, the Receiver will be making an application for an order of the Court terminating the existing phased development and authorizing Statesman, to apply to the City for subdivision of Phases II and III from Phase I in furtherance of its proposed development plan. The Receiver will concurrently apply for an order of the Court approving the sales to Statesman of the Phases II and III Lands and the remaining unsold units in the Phase I Lands. This would allow Statesman to waive its conditions and proceed with closing its purchase from the Receiver of Phases II and III and the remaining unsold units in Phase I. This application is not intended to impact your rights and remedies as owners of Phase I units with respect to your claim related to the Technical Audit, which will be heard by the Court on October 1, 2013; however it will allow the Receiver certainty with respect to the sales to Statesman of Phases II and III and remaining unsold units in Phase I and will enable Statesman to proceed with its development plan and apply to the City of Calgary for the necessary subdivision approval, which is understood to be generally acceptable to the Phase I owners and in the Receiver's view, as an officer of the Court, is in the best interest of all involved.

Condominium Corporation No. 0915321
September 11, 2013
Page 3

If you have any questions, please contact the undersigned or Stefan DuChene at 403-267-1700.

Yours very truly,

DELOITTE RESTRUCTURING INC.

In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity



Per:

Jeff Keeble, CA-CIRP, CBV
Senior Vice President

Cc: A. Robert Anderson, Osler, Hoskin & Harcourt LLP
Terry Czechowskyj, Miles Davison LLP

SCHEDULE "11"



The Alberta
New Home
Warranty
Program

Condominium Common Property Warranty Certificate

This document is your proof of warranty protection.
Retain it with the permanent records of your home purchase.

Condominium Corporation: First Service Residential
Suite 801, 839 5th Ave SW
Calgary, Alberta
T2P 3C8

Builder: Perera Shawnee Ltd.
425 78 Avenue SW
Calgary, Alberta
T2V 5K5

R Number: 3770
Name of Project: Highbury

Term of Warranty

Date of Substantial Completion: 09/Dec/10

Expiry Date of Builder's Common Property First Year Workmanship and Material Warranty: 08/Dec/11

Project C Number: 1596
Phase Number: 001

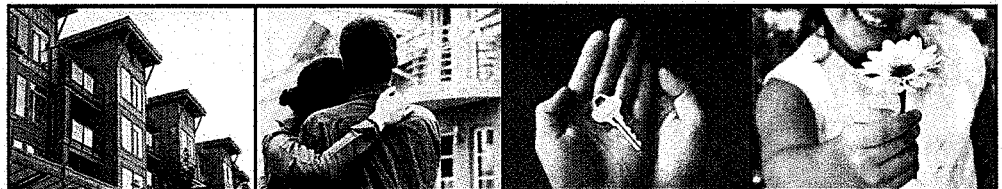
Expiry Date of 5 Year Structural Integrity Warranty: 08/Dec/15

Exclusions and Amendments:

Total Aggregate Limit for Combined Coverage for all units and Common Property in this Condominium Project is: **\$1,500,000.00**

Any errors in the information above should be immediately reported to:

The Alberta New Home Warranty Program
Attn: Client Services, Condominiums
301, 30 Springborough Blvd SW, Calgary, Alberta T3H 0N9
Toll Free #: 1-800-352-8240
Calgary: 403-253-3636



The terms and conditions of the Condominium Common Property Warranty Certificate are enclosed and apply to this document.

