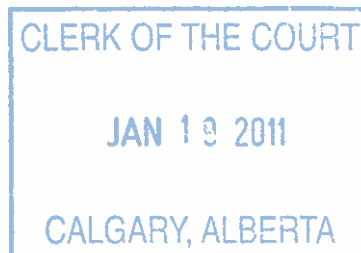


Form 27  
[Rule 6.3]

Clerk's stamp:



COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION  
LTD.

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

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

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

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

**(Re: Approval of CondoSource Agreement and CBRE Agreement)**

**OSLER, HOSKIN & HARCOURT LLP**

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

**APPLICATION BY DELOITTE & TOUCHE INC.**

**(Re: Approval of CondoSource Agreement and CBRE Agreement)**

**NOTICE TO THE RESPONDENTS**

This application is made against you. You are a Respondent.  
You have the right to state your side of this matter before the judge.

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

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

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

**REMEDY CLAIMED OR SOUGHT:**

1. An order that the time for service of this Application (the “**Application**”) is abridged if necessary, that this Application is properly returnable on January 24, 2011, that service of this Application and the Twelfth Report of the Receiver, dated January 18, 2011 (the “**Twelfth Receiver’s Report**”) on the persons listed in Schedule “**B**” to this Application (collectively, the “**Service List**”) is good and sufficient, and that no persons other than those on the Service List are entitled to notice of this Application;
2. an order, substantially in the form attached hereto as Schedule “**A**”:
  - (a) approving an agreement between CondoSource Inc. (“**CondoSource**”) and the Receiver dated January 11, 2011 respecting the marketing of units in Phase One (as hereinafter defined) (the “**CondoSource Agreement**”), a copy of which is attached as Appendix “**4**” to the Twelfth Receiver’s Report;
  - (b) approving an agreement between CB Richard Ellis Limited (“**CBRE**”) and the Receiver dated December 26, 2010 respecting the en bloc marketing of units in Phase One together with Phase Two and Phase Three (as those terms are hereinafter defined) (the “**CBRE Agreement**”), a copy of which is attached as Appendix “**5**” to the Twelfth Receiver’s Report; and

3. such further and other relief that the Receiver may seek and this Honourable Court may deem just.

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

#### *General*

4. On March 3, 2010, the Receiver was appointed as receiver and manager of the Debtor pursuant to an order issued by the Honourable Madam Justice A. Kent of the Court of Queen's Bench of Alberta (the "**Receivership Order**").
5. At the time that the Receivership Order was issued, PSL was in the process of constructing a condominium development in southwest Calgary known as the "**Highbury**" (the "**Project**"). The Project was planned to be completed in three separate phases ("**Phase One**", "**Phase Two**" and "**Phase Three**").
6. There are a total of 70 units (plus parking stalls) in Phase One of the Project, which are included in Condominium Plan 0915321:
  - (a) 22 of the units were sold and conveyed by PSL to persons prior to the issuance of the Receivership Order;
  - (b) 3 of the units (including parking stalls) have been sold and conveyed to persons by the Receiver;
  - (c) 36 of the units (the "**36 Units**") are currently owned by PSL and are subject to purchase and sale contracts that PSL entered into with various purchasers (collectively, the "**Presale Purchasers**"). Closing dates were set for various dates between November 15-18, 2010 and December 6-10, 2010, however none of the transactions closed on any of those dates. The Receiver has entered into without prejudice discussions with some of the Presale Purchasers to complete the presale contracts. It is anticipated that several of these transactions will not close with the Presale Purchasers and the units will become available for sale to new purchasers; and
  - (d) 9 of the units have been listed for sale by the Receiver for some time through CondoSource (the "**Unsold Units**").

7. The Receiver intends to sell the Unsold Units and any of the 36 Units as they become available for sale.
8. Phase Two and Phase Three are under construction. The Receiver intends to complete construction of both Phase Two and Phase Three to the P1 level and to sell the same as a package or together with any available Phase One units on an en bloc basis. CBRE has previously been retained in this regard.

*CondoSource Agreement & CBRE Agreement*

9. The Receiver has entered into new agreements with each of CondoSource and CBRE (the CondoSource Agreement and the CBRE Agreement, respectively) to, among other things:
  - (a) provide for a fair, reasonable and coordinated commission structure in the event that a purchaser of Phase Two and Phase Three also purchases any available Phase One units on an en bloc basis;
  - (b) clarify the compensation payable to either CondoSource or CBRE in the event that First Calgary Savings & Credit Union Ltd. or its nominee successfully makes a credit bid for any or all of the available Phase One units, Phase Two, Phase Three or successfully exercises its right to foreclose on or take title to any or all of the available Phase One units and Phase Two and Phase Three; and
  - (c) allow the Receiver to continue to market the Project in a manner that maximizes options for a potential buyer(s) and maximizes realizations.
10. Don L. Perera and Shiranie M. Perera have questioned the manner in which the Receiver is and intends to continue marketing the Project. The CondoSource Agreement and the CBRE Agreement are each subject to and conditional upon an order of this Honourable Court approving the respective agreement and each is effective only upon and not before such Court approval being obtained.
11. Approval of the CondoSource Agreement and the CBRE Agreement will allow for the continued marketing of the units in Phase One and of Phase Two and Phase Three in a manner that is commercially reasonable.

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

12. The pleadings filed herein, including without limitation, the Confidential Second Receiver's Report dated August 11, 2010, the Confidential Fourth Receiver's Report dated October 7, 2010, the Twelfth Receiver's Report, and the Receivership Order; and
13. such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

**APPLICABLE RULES:**

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

**APPLICABLE ACTS AND REGULATIONS:**

16. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
17. *Condominium Property Act*, R.S.A. 2000, c. C-22, s. 18;
18. *Condominium Property Regulation*, Alta. Reg. 168/2000, ss. 35(2), 37, 70-71;
19. *Judicature Act*, R.S.A. 2000, c. J-2; and
20. such further and other acts and regulations as counsel for the Receiver may advise and this Honourable Court may permit.

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

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

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

**WARNING**

If you do not come to court either in person or by your lawyer, the court may give the applicant what it wants in your absence. You will be bound by any order that the court makes, or another order

might be given or other proceedings taken which the applicant is entitled to without any further notice of them to you. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant.

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

**OSLER, HOSKIN & HARCOURT LLP**



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Christa Nicholson  
Counsel for the Receiver, Deloitte & Touche Inc.

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

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

Clerk's stamp:

COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION  
LTD.

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

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

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

DOCUMENT: **ORDER**

**(Re: CondoSource Agreement and CBRE Agreement)**

**OSLER, HOSKIN & HARCOURT LLP**

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

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

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

**ORDER**

**(Re: CondoSource Agreement and CBRE Agreement)**

UPON the application, dated January 18, 2011 (the “**Application**”) of Deloitte & Touche Inc., in its capacity as Court-appointed receiver and manager of Perera Development Corporation (“**PDC**”) and Perera Shawnee Ltd. (“**PSL**”, or when reference is being made to PDC and PSL collectively, the “**Debtor**”), and not in its personal capacity (the “**Receiver**”); **AND UPON** noting the Order issued by Madam Justice A. Kent on March 3, 2010 (the “**Receivership Order**”); **AND UPON** noting the Affidavit of Service of ●, sworn January ●, 2011 (the “**Affidavit of Service**”); **AND UPON** noting the Confidential Second Receiver’s Report dated August 11, 2010; **AND UPON** noting the Confidential Fourth Receiver’s Report dated October 7, 2010; **AND UPON** reading the Twelfth Report of the Receiver, dated January 18, 2011 (the “**Twelfth Receiver’s Report**”), including: (a) the agreement entered into between the Receiver and CondoSource Inc. (“**CondoSource**”), dated January 11, 2011 respecting the marketing of units in Phase One (as that term is defined in the Application) (the “**CondoSource Agreement**”), a copy of which is attached as Appendix “4” to the Twelfth Receiver’s Report; and (b) the agreement entered into between the Receiver and CB Richard Ellis Limited (“**CBRE**”), dated January 18, 2011 respecting the marketing of units in Phase One on an en bloc basis, Phase Two and Phase Three (as those terms are defined in the Application) (the “**CBRE Agreement**”), a copy of which is attached as Appendix “5” to the Twelfth Receiver’s Report; **AND UPON** noting the Order (Re: Advice and Directions regarding Service) granted by Madam Justice A. Kent on October 29, 2010 (the “**Service Order**”); **AND UPON** hearing from counsel for the Receiver and counsel for any other persons present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

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



2. The CondoSource Agreement is commercially reasonable and is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable in relation to the CondoSource Agreement.
3. The CBRE Agreement is commercially reasonable and is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable in relation to the CBRE Agreement.
4. Service of this Order in accordance with the Service Order to the persons listed on the Service List shall constitute good and sufficient service of this Order.

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J.C.Q.B.A.

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

Clerk's stamp:

COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION LTD.

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

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

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

DOCUMENT: **SERVICE LIST**

**OSLER, HOSKIN & HARCOURT LLP**

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

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

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

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

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

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

<b>Counsel/Party</b>	<b>Email Address</b>	<b>Fax</b>	<b>Representing</b>
<b>Fraser Milner Casgrain LLP</b> Bankers Court 850 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0R8 Phone: (403) 268-6359  Corey Sandquist	corey.sandquist@fmc-law.com	(403) 268-3100	Spring Advertising Ltd.
<b>Carscallen Leitch LLP</b> 1500, 407 – 2 <sup>nd</sup> Street SW Calgary, Alberta T2P 2Y3  Michael B. Niven Phone: (403) 298-8464  Justin Sherman Phone: (403) 298-8462  Grant W.D. Cameron	mniven@cclawyers.com info@tonydesilva.com pawl05@shaw.ca vperera@shaw.ca  sherman@cclawyers.com  cameron@cclawyers.com	(403) 262-2952	Tony De Silva – 702  Pat Morris and David Morris – 501 147 Hawkmount Heights NW Calgary, Alberta T3G 3S4 (403) 246-3150  BIZ-IQ and David Caul – 146191/T2H  Nawagamuwage A.J. Perera – 201  Nissan Canada
<b>Billington Barristers</b> 600 Bow Valley Square II 205 – 5 <sup>th</sup> Avenue SW Calgary, Alberta T2P 2V7 Phone: (403) 705-3413  Richard N. Billington Q.C.	RBillington@BillingtonBarristers.com	(403) 705-3418	E. David Podborski and Gwendolyn Podborski
<b>Justice Canada</b> Suite 510, 606 – 4 <sup>th</sup> Street SW Calgary, Alberta T2P 1T1 Phone: (403) 299-3985  Jill Medhurst-Tivadar	jill.medhurst-tivadar@justice.gc.ca	(403) 299-3966	Canada Revenue Agency



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

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

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

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

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

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

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

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



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

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