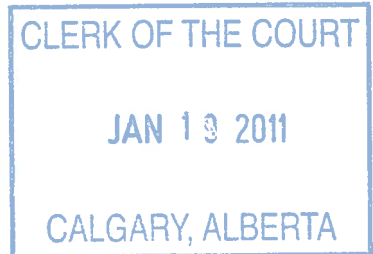




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COURT FILE NUMBER: 1001-03215

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: **TWELFTH REPORT OF THE COURT APPOINTED RECEIVER OF PERERA SHAWNEE LTD. AND PERERA DEVELOPMENT CORPORATION, DATED JANUARY 18, 2011**

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TABLE OF CONTENTS:

INTRODUCTION	1
NOTICE TO READER.....	3
PURPOSE OF REPORT.....	3
UPDATE ON THE PROJECT	4
ACTIVITIES OF THE RECEIVER.....	5
RECEIPTS AND DISBURSEMENTS	5
MARKETING STRATEGY – BACKGROUND INFORMATION	6
MARKETING EFFORTS FOR THE PROJECT	9
RECENT OFFERS	15
DISTRIBUTION OF SALE PROCEEDS	15
CONCLUSION.....	18

SCHEDULE 1 Statement of Receipts and Disbursements for the period March 3, 2010 to January 4, 2011

APPENDIX 1 Letter from CBRE dated January 14, 2011

APPENDIX 2 Letter from NORR Architects Planners dated January 17, 2011

APPENDIX 3 CondoSource Credentials

APPENDIX 4 CondoSource Interim Agreement and CondoSource Final Agreement

APPENDIX 5 CBRE Proposal and Credentials

APPENDIX 6 CBRE Teaser Sales Brochure

APPENDIX 7 CBRE Interim Agreement and CBRE Final Agreement

APPENDIX 8 Issued Receiver’s Certificates

APPENDIX 9 Loan Advances (prepared by First Calgary)

INTRODUCTION

1. On March 3, 2010, 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**") (the "**Receivership Order**").
2. The Receivership Order was the result of an application by First Calgary Savings & Credit Union ("**First Calgary**"), a secured creditor of Perera. 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 (the "**Project**").
3. Don L. Perera is the President of Perera ("**Mr. Perera**") and he and Shiranie M. Perera are guarantors of the loans from First Calgary (the "**Guarantors**").
4. PSL and PDC are bankrupt. Hardie & Kelly Inc. was appointed bankruptcy trustee of PSL and PDC (the "**Trustee**") pursuant to the Bankruptcy Orders granted by this Honourable Court on December 20, 2010. (The Guarantors have requested that the Receiver meet with the Trustee to discuss the assets of PSL, including various lawsuits, and that meeting is scheduled to occur later this week.)
5. The Project was planned to be completed in three separate phases ("**Phase One**", "**Phase Two**" and "**Phase Three**").

6. There are 70 units in Phase One of the Project, plus parking stalls, which are included in Condominium Plan No. 0915321 (the “**Condominium Plan**”):
- (a) 22 of the units had been sold and conveyed by PSL to persons prior to the issuance of the Receivership Order (the “**22 Units**”);
 - (b) 3 of the units (with additional parking stalls included) in Phase One (collectively, the “**Three Penthouses**”) have been sold and conveyed to persons by the Receiver pursuant to vesting orders filed on November 5, 2010 (collectively, the “**Three Vesting Orders**”);
 - (c) 36 of the units (the “**36 Units**”) are owned by PSL and were subject to purchase and sale contracts (the “**Presale Contracts**”) that PSL entered into with various purchasers (collectively, the “**Presale Purchasers**”). Closing dates for 34 of the 36 Units were set for various dates between November 15-18, 2010 and December 6-10, 2010 (collectively, the “**Closing Dates**”), however, none of these transactions closed on any of the Closing Dates. While the Receiver has entered into without prejudice discussions with some of the Presale Purchasers to set a new closing date, it is anticipated that several of these transactions will not close with the Presale Purchasers and the units will become available for sale to new purchasers. The Receiver has also entered into without prejudice discussions with one of the Presale Purchasers to terminate that purchaser’s Presale Contract; and
 - (d) 9 of the units have been listed for sale by the Receiver through CondoSource Inc. (“**CondoSource**”) (the “**Unsold Units**”).

7. To facilitate the potential closing of various Presale Contracts, this Honourable Court granted numerous Vesting Orders, as amended (collectively, and together with the Three Vesting Orders, the “**Vesting Orders**”).
8. After closing Presale Contracts with those Presale Purchasers willing to do so, the Receiver intends to sell the balance of the 36 Units that become available for sale as well as the Unsold Units (collectively, the “**Unsold Phase One Units**”).

NOTICE TO READER

9. This report constitutes the Twelfth Report of the Court Appointed Receiver (the “**Twelfth Receiver’s Report**” or this “**Report**”).

PURPOSE OF REPORT

10. The purpose of this Report is the following:
 - (a) to update the Court on the activities undertaken during the receivership;
 - (b) to seek the Court’s approval of the sales and marketing agreement of the Unsold Phase One Units between the Receiver and CondoSource;
 - (c) to seek the Court’s approval of the sales and marketing agreement of Phases Two and Three and any included en bloc sale of the Unsold Phase One Units between the Receiver and CB Richard Ellis Limited (“**CBRE**”); and
 - (d) to seek the Court’s approval of the distribution process for the proceeds of the sale of assets of PSL.

UPDATE ON THE PROJECT

11. Phase One of the Project is substantially complete. Construction on the interior fittings is complete for all units and Certificates of Occupancy have been obtained for all but one unit, which is currently being used as a sales centre.
12. The planned construction of the parkade for Phases Two and Three is nearly complete, with one final concrete pour being required once the weather improves, which may occur in the very short term. This will complete the parkade for Phases Two and Three to the P1 parkade level.
13. The remediation of the “Brick Issue”, as fully described in the Third Report of the Court Appointed Receiver dated October 7, 2010, was completed in mid-December 2010.
14. An agreement with The Alberta New Home Warranty Program (“ANHWP”) was finalized in October 2010 which provides for ANHWP coverage for each unit within Phase One of the Project (the “ANHWP Agreement”) and was approved by the Court by the Order of Madam Justice Kent, granted November 4, 2010. The terms of the ANHWP Agreement are confidential. The ANHWP Agreement is included in the Confidential Ninth Report of the Receiver, dated November 4, 2010, which was filed under seal pursuant to the Order of Madam Justice Kent, granted on November 4, 2010.
15. The Receiver is continuing to work with representatives of the City of Calgary (the “City”) to address its concerns about the retaining wall to the West of the Project as well as the landscaping that was done on City property by PSL, which the City says was done without permission. The extent of additional costs that may need to be incurred in order to address these concerns is currently unknown.

ACTIVITIES OF THE RECEIVER

16. As has been reported previously, the Receiver has attempted to close the Presale Contracts, with limited success but efforts are continuing. One of these units was a penthouse that was the subject of a termination agreement entered into between the Receiver and Debra Seymour dated October 30, 2010 and which was approved by the Order of Madam Justice Kent granted November 4, 2010. That penthouse was subsequently sold by the Receiver to a new purchaser.
17. During the past few months, the Receiver finalized the sale of two other penthouses. The Receiver has also recently agreed with one of the Presale Purchasers to amend the Presale Contract with respect to one of the townhouse units, which sale is due to close on January 31, 2011. When this transaction closes, a total of 26 units in Phase One will have been sold and titles will have been transferred. This will leave 44 units unsold in Phase One. Additionally, the Receiver is in ongoing discussions with five Presale Purchasers who are interested in closing the purchase of their respective Presale Contracts.

RECEIPTS AND DISBURSEMENTS

18. The Receiver's statement of receipts and disbursements for the period from the date of appointment until January 4, 2011 is attached as Schedule 1.
19. Receipts during that period of \$7.6 million consist of borrowings of \$5.0 million from First Calgary under Receiver's Certificates provided for in the Receivership Order. Net sale proceeds of approximately \$2.4 million have also been collected, which sum excludes the holdbacks and other payments required pursuant to the Vesting Orders.

20. Disbursements during the period of approximately \$5.1 million are comprised of construction costs, payments of pre-receivership costs to critical suppliers, payroll of Perera staff, receivership and legal fees and expenses, and other costs.
21. The excess of cash receipts over disbursements at January 4, 2011 is approximately \$2.5 million, the bulk of which is proceeds from the sales of units in Phase One. The use of these proceeds is currently restricted, as discussed further in paragraphs 53 to 62 of this Report.

MARKETING STRATEGY – BACKGROUND INFORMATION

22. As disclosed in the First Report of the Receiver, dated July 30, 2010, an appraisal on the Project's value was prepared by Linnell Taylor Lipman & Associates Ltd. and delivered to the Receiver on April 16, 2010 (the "**Appraisal Report**"). The Appraisal Report is included in the Confidential Second Report of the Receiver, dated August 11, 2010 (the "**Confidential Second Report**"). The Confidential Second Report was sealed on the Court file pursuant to the Order of Justice R.G. Stevens, granted August 13, 2010. For clarity, the Appraisal Report has not been made available to CondoSource or CBRE.
23. Upon receiving and reviewing the Appraisal Report and upon discussions with experts in the marketing and sale of condominium units and developments, the Receiver determined that it was advantageous and in the best interest of the estate to primarily focus on marketing the phases of the Project in two separate packages. This was largely because any bids that would involve packaging the whole Project (Phases One, Two and Three) would likely result in offers that would be substantially discounted from the appraised value of the Phase One units detailed in the Appraisal Report because a buyer of Phase

One would likely only buy at a price low enough to allow them to realize a profit upon re-sale of the units to individual buyers.

24. This was confirmed during our discussions with CBRE, the sales agents who were retained in June, 2010 to sell Phases Two and Three. At the request of the Receiver, CBRE reiterated their position in a letter dated January 14, 2011, a copy of which is attached at Appendix 1, that a “block sale” of the Phase One units would come at a “steep discount.”
25. This “steep discount” was clearly demonstrated by a recent offer to purchase the Unsold Phase One Units at a price that was significantly less than the value described in the Appraisal Report, as further described in paragraphs 50 to 52 of this Report.
26. The Guarantors have expressed concerns over the ability to split Phase One from Phases Two and Three, given, among other things, their physical integration, and have questioned the Receiver’s approach to marketing the Project as outlined above.
27. The Receiver has spoken to NORR Architects Planners (“NORR”), the architect of record for the Project. By letter dated January 17, 2011, a copy of which is attached as Appendix 2, NORR is of the opinion that subject to review and confirmation by the City and any necessary consents by owners of Phase One, Phase One can likely be physically split from Phases Two and Three if necessary. This may be of interest to a potential buyer of Phases Two and Three. In this regard, we understand from counsel that separating (subdividing) Phase One from Phases Two and Three may require amendments to the Condominium Plan and that the *Condominium Property Act*, R.S.A. 2000, c. C-22 (the “CPA”) permits amendments to be made to the Condominium Plan in

accordance with the *Condominium Property Regulation*, Alta. Reg. 168/2000 (the “**Regulations**”) (s. 18, CPA); section 71 of the Regulations sets out the requirements that must be met for a condominium corporation to register an amendment to a condominium plan.

28. However, if Phase One cannot be separated (subdivided) from Phases Two and Three as anticipated, a buyer may wish to alter the current development plans for Phase Two and Phase Three. The Receiver refers again to the January 14, 2011 letter from CBRE, wherein CBRE notes that any party interested in Phases Two and Three would most likely be able to negotiate with the Phase One unit owners, in order to secure the necessary consents to make the desired changes to make the acquisition of Phase Two and Phase Three viable. In this regard, we understand from counsel that:

- (a) the CPA permits a developer to change a registered phased development disclosure statement with the consent of at least 2/3 of the persons, not including the developer, who are entitled under the CPA to vote (s. 35(2)); and
- (b) failing that, another option that may be available to the Receiver is the ability to apply to the Court for an order terminating the development and giving directions or a determination in respect of any matter arising out of the termination of the development (s. 37, CPA). This option is available where, among other circumstances, a developer is assigned into bankruptcy or has a receiver of its assets appointed before all phases of the development have been completed (s. 37(a), CPA).

29. To cover off all possible options buyers may wish to pursue, the Receiver has given permission to CBRE to sell the remaining, Unsold Phase One Units as a bulk sale to any party interested in also acquiring Phases Two and Three.

MARKETING EFFORTS FOR THE PROJECT

A. Phase One

30. As a result of the decision to market and sell the individual Phase One units, the Receiver retained CondoSource to exclusively market and sell the Unsold Units, and certain of the 36 Units whose pre-sale buyers are unwilling to close. CondoSource's credentials are attached as Appendix 3.
31. During April 2010, CondoSource was given 11 units to market for sale, four of which were condominiums and seven of which were townhouses. Since that time, two of the 11 condominium units have been sold, and the Receiver sold another unit that was subject to a Presale Contract. CondoSource was given these 11 units to market as the remaining units were either the 22 Units that were sold prior to the Receivership Order or were subject to Presale Contracts.
32. During CondoSource's mandate, they requested funds in order to prepare a show suite. However, given the limited inventory that was available for sale, the show suite was put on hold until recently when more units became available to CondoSource to sell. In conjunction with the opening of the show suite, CondoSource intends to host a sales and marketing event for the Project on January 23 – 24, 2011.
33. As noted in the Third Report of the Receiver dated October 7, 2010 (the "**Third Receiver's Report**"), the closing dates for 14 of the 36 Units were initially set at the end

of August or early September 2010. However, as a result of the discovery of the Brick Issue, as defined and described in the Third Receiver's Report, the closing dates for these units were re-scheduled to mid-November 2010. Those dates have now passed and, accordingly, the Receiver has retained CondoSource to market and sell these units.

34. Given that the Receiver has provided additional units for CondoSource to market and sell, a new agreement has been put in place to outline the terms of the engagement of CondoSource. A copy of the interim listing agreement dated December 27, 2010 with CondoSource (the "**Interim CondoSource Listing Agreement**") is attached as Appendix 4. The Interim CondoSource Listing Agreement expires on January 31, 2011, subject to extension by written agreement, and provides for CondoSource to market and the sell the 23 units listed in Schedule A to the Interim CondoSource Listing Agreement.
35. While there are currently 45 units that have not been sold (the 36 Units and the Unsold Units) the Receiver is still in negotiations to close certain of the Presale Contracts and as any additional units become available for sale, it is intended that they will be given to CondoSource to market and sell in addition to the 23 units referred to in the paragraph above.
36. The Receiver and CondoSource have also entered into a listing contract on January 11, 2011 (the "**Final CondoSource Listing Agreement**") which allows CondoSource the opportunity to market and sell units until April 30, 2011. The listing prices generated and being used by CondoSource are equal to or exceed the values set out in Column "O" of Schedule 3 to the Confidential Fourth Report of the Receiver. The Final CondoSource Listing Agreement is subject to the approval of this Court which the Receiver seeks

because of the Guarantors' opposition to the Receiver's marketing approach. The Final CondoSource Listing Agreement is attached in Appendix 4 as Schedule B to the Interim CondoSource Listing Agreement.

B. Phases Two and Three

37. In order to select a sales agent for Phases Two and Three of the Project, the Receiver requested proposals from certain Calgary real estate agents and received proposals from Avison Young, CBRE, and Colliers International. After meeting on several occasions with each agent for presentations and tours of the Project, the Receiver selected CBRE as its agent to market and sell Phases Two and Three. CBRE was selected based on their expertise with distressed projects and the internal resources they had available. A copy of CBRE's initial proposal document which includes their sales credentials is attached as Appendix 5.
38. CBRE commenced planning procedures for marketing Phases Two and Three in late May 2010. The sales process was delayed when the Project's structural engineers discovered that there was significant remedial work to be completed on the Phase Two and Phase Three parkade structure. Upon the completion of the remedial work on September 15, 2010, CBRE started to work again with the Receiver and Mr. Perera, while an employee of the Receiver, to gather the necessary information to accumulate a database for potential purchasers. A teaser brochure was introduced to the development community through CBRE's marketing database, a copy of which is attached in Appendix 6.
39. During September 2010, the Receiver met with CBRE to discuss the response of the market, to date, on the desirability of the Project. At this time, CBRE indicated that an updated quantity survey report ("**QS Report**") would be extremely useful for generating

quality interest in the Project. Accordingly, the Receiver retained Altus Group to update their previous QS Report for Phases Two and Three.

40. In mid-October 2010, Altus Group completed the QS Report of Phases Two and Three. The purpose of the QS Report was to provide interested parties with an understanding of the costs that would be incurred to complete Phases Two and Three, to their original design specification. CBRE has maintained that this QS Report, also known as a cost-to-complete report, is one of the key pieces of information that would be reviewed by a potential buyer. Since this QS Report has been available, CBRE has provided it to several interested parties.
41. During the course of the Receiver's marketing efforts, the Guarantors have been informed of the processes being taken to market and sell Phases Two and Three, along with the Unsold Phase One Units. In early November 2010, the Receiver met with Mr. Perera together with his counsel, Mr. Jeff Poole, to discuss the marketing strategy that had been employed by the Receiver.
42. As noted above, Mr. Perera disagrees with the Receiver's approach of marketing Phases Two and Three separately from the Unsold Phase One Units.
43. Throughout their sales process, CBRE has maintained that the Unsold Units were available for sale and could be combined with an offer for Phases Two and Three, as noted in their letter dated January 14, 2011 referred to earlier in this Report.
44. Based on the Appraisal Report, discussions with CBRE and NORR, the Receiver believes that continuing to focus on marketing for sale the Unsold Phase One Units, separate from the sale of Phases Two and Three, is appropriate and will benefit the overall value of

Project and the return to the creditors of PSL. However, should an offer to purchase the Unsold Phase One Units together with or separate from Phases Two and Three be received at a reasonable and fair value, the Receiver is certainly willing to consider such an offer.

45. As the original listing agreement with CBRE expired on December 25, 2010, and more marketing time is required, the Receiver entered into an interim listing agreement effective December 26, 2010 with CBRE (the “**Interim CBRE Listing Agreement**”) a copy of which is attached as Appendix 7. The Interim CBRE Listing Agreement expires on January 31, 2011, subject to extension by written agreement and provides for CBRE to market and the sell Phases Two and Three or, do so in conjunction with the en bloc sale of the Phase One units that are also currently being listed by CondoSource.
46. The Receiver and CBRE have also entered into a final listing contract on January 18, 2011 (the “**Final CBRE Listing Agreement**”) which allows CBRE the exclusive opportunity to market and sell Phases Two and Three until June 30, 2011 and the opportunity to procure an associated en bloc sale of the Unsold Phase One Units. The Final CBRE Listing Agreement is subject to the approval of this Court which the Receiver seeks because of the Guarantors’ opposition to the Receiver’s marketing approach. The Final CBRE Listing Agreement is attached in Appendix 7 as Schedule A to the Interim CBRE Listing Agreement.
47. Within the Interim CBRE Listing Agreement and the Final CBRE Agreement are various break fees. Specifically, if the Final CBRE Listing Agreement is not approved by this

Court, CBRE shall be paid a break fee of \$25,000. Furthermore, pursuant to the Final CBRE Agreement:

- (a) in the event of a credit bid or foreclosure of Phases Two and Three during the Term thereof, CBRE would be paid a break fee of \$25,000 although credit would be given to First Calgary if they, in turn, retain CBRE to market Phases Two and Three directly
- (b) in the event of a credit bid or foreclosure on Phases Two and Three together with the Unsold Phase One Units, a break fee of \$25,000 would be paid to CBRE, although credit would be given to First Calgary if CBRE is retained by First Calgary thereafter.

48. These fees are justified and reasonable as CBRE continues to devote time and resources to marketing the Project and otherwise stands to only be paid if the ultimate sale of the Project takes place.

C. Conclusion

49. The Final CBRE Agreement, in conjunction with the Final CondoSource Listing Agreement:

- (a) provide for a fair, reasonable and coordinated commission structure in the event that a purchaser of Phases Two and 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 or its nominee successfully makes a credit bid for any or all of

the available Phase One units and Phases Two and Three or successfully exercises its right to foreclose on or take title to any or all of the available Phase One units and Phases Two and 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.

RECENT OFFERS

- 50. Since the start of the Receivership, two en-bloc offers have been received.
- 51. An offer to purchase the 36 Units and the Unsold Units, along with Phases Two and Three, was submitted to the Receiver on November 8, 2010. This offer was rejected by the Receiver as it was significantly below the appraised value.
- 52. A separate offer to purchase the 36 Units and the Unsold Units was submitted to the Receiver on December 3, 2010. This offer was also rejected by the Receiver as it was also significantly below the appraised value of the 36 Units and the Unsold Units. The Receiver provided the offeror with a selling price that would have been supported by the Receiver, but has not yet received a response.

DISTRIBUTION OF SALE PROCEEDS

- 53. On November 29, 2010, the Honourable Madam Justice A. Kent granted the Amended and Restated Closing Process Order including a form of *ex parte* Vesting Order (collectively, the “**Closing Process Order**”) establishing a process for the sale and vesting of the Unsold Units and any of the 36 Units that become available for sale.

54. The Vesting Orders and Closing Process Order provide a mechanism to clear the land titles to the assets sold where the Net Proceeds (as defined therein) are held in place and instead of such assets and shall not be disbursed by the Receiver unless an Order authorizing a disbursement of such Net Proceeds is issued by this Honourable Court.
55. The Receiver currently holds Net Proceeds in the amount of \$2,373,549 from the sale of the Three Penthouses.
56. In carrying out its duties under the Receivership Order, the Receiver borrowed \$6,500,000 from First Calgary (the “**Receiver’s Borrowings**”) and issued receiver’s certificates, pursuant to the Receivership Order, to First Calgary for the Receiver’s Borrowings (the “**Issued Receiver’s Certificates**”), copies of which are attached as Appendix 8.
57. The Receiver is advised by First Calgary that the amount owing to it by Perera to January 19, 2011 is \$27,342,284.44 excluding costs.
58. Attached as Appendix 9 is a statement received by the Receiver from First Calgary showing the dates and net principal amounts advanced by First Calgary to Perera (the “**Loan Advances**”).
59. The Receiver has obtained an opinion from independent counsel that, subject to the usual qualifications and limitations, the security granted by Perera to First Calgary is valid and enforceable.
60. The Receiver has reviewed each certificate of title comprising Phase One dated March 12, 2010. Those certificates of titles state that “additional registrations may be shown on

the Condominium Additional Plan Sheet” (“CAPS”). The Receiver has also reviewed the CAPS dated November 26, 2010. In addition, the Receiver has reviewed the certificates of title to Phase Two and Phase Three dated January 6, 2011. The Receiver confirms that the First Calgary Mortgage (“**Mortgage**”) (bearing land titles instrument number 071422840) and its Assignment of Rents and Leases (“**Assignment of Rents**”) (bearing land titles instrument number 071422841) are registered ahead of and prior in time to all of the builders’ liens and certificates of lis pendens (collectively, the “**Liens**”) registered against those titles including the registrations shown on the CAPS.

61. Based on our review of the Loan Advances, as the Liens registered against the Project were registered subsequent to First Calgary’s Mortgage and Assignment of Rents and after all funds were advanced by First Calgary to Perera, the Receiver has not investigated in detail the validity of each of the Liens registered. Assuming that such security is valid and enforceable, the Receiver submits that:
 - (a) none of the Liens claimed are in priority to First Calgary’s security; and
 - (b) none of the claimants with Liens have any claim to any proceeds from the sale of Phase One units, Phase Two and Phase Three in priority to First Calgary.

62. The Receiver submits that it is reasonable and appropriate in the circumstances to establish a distribution procedure in the manner set out in the Distribution Order, and specifically to be able to begin to use the Net Proceeds to repay the Receiver’s Borrowings at this time.

CONCLUSION

63. The Receiver respectfully requests that the Court grant the relief set out in the Applications, dated January 18, 2011.

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

Per:



Victor P. Kroeger, CA • CIRP, CFE
Senior Vice President