



Clerk's stamp:

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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-SECOND REPORT OF THE COURT APPOINTED
RECEIVER AND MANAGER OF PERERA SHAWNEE LTD. AND
PERERA DEVELOPMENT CORPORATION, DATED AUGUST 13,
2013.**

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors

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SCHEDULE 1	Agreement of Purchase and Sale dated June 21, 2013 between 1204028 Alberta Ltd. and the Receiver (this agreement is not signed by the Receiver)
SCHEDULE 2	Receiver's application

INTRODUCTION

1. On March 3, 2010, Deloitte & Touche Inc., now Deloitte Restructuring 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 (including the manager suite and sales centre): 52 of which now have been sold and conveyed to purchasers.
4. "**Phase II**" and "**Phase III**" (collectively, "**Phases II and III**") of the Project were originally contemplated by PSL, the developer, 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 and parking level two 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 and are owned by Condominium Corporation No. 0915321 (the “**Condo Corporation**”).

5. The Receiver is submitting this report pursuant to the Receivership Order for advice and directions in support of its application approving the Amending Agreement (defined below) and in response to an application filed by 1204028 Alberta Ltd. (“**120**”) on August 1, 2013, in respect of Phases II and III of the Project (the “**120 Application**”). The 120 Application seeks, *inter alia*:

- (a) An Order requiring the Receiver to consider for acceptance the unsolicited offer dated June 21, 2013 made by 120 for Phases II and III of the Project (the “**120 Offer**”);
- (b) An Order requiring the Receiver, if the 120 Offer is superior to other offers received by the Receiver, to accept the 120 Offer; and
- (c) In the alternative, an Order establishing a marketing or solicitation process for Phases II and III which would allow 120 to submit the 120 Offer (or a subsequent offer) for Phases II and III.

NOTICE TO READER

6. This report constitutes the Sixty-Second Report of the Receiver (the “**Report**”).

PURPOSE OF REPORT

7. The purpose of this Report is to:

- (a) disclose to the Court the confidential and conditional purchase and sale agreement dated February 13, 2013 (the “**Statesman Agreement**”) between the Receiver and The Statesman Group of Companies Ltd. (“**Statesman**”);
- (b) disclose to the Court the unsolicited 120 Offer;
- (c) seek the Court’s approval of the Amending Agreement (defined below) that amends the Statesman Agreement; and
- (d) seek the Court’s direction to reject the unsolicited 120 Offer and not establish a further marketing or solicitation process at this time for Phases II and III.

SEALING ORDER

- 8. The Receiver recommends that an Order (the “**Sealing Order**”) be granted sealing the Confidential Sixty-Third Report of the Receiver dated August 13, 2013 (the “**Confidential Sixty-Third Report**”) and directing that it remain under seal unless otherwise ordered by this Court to preserve the confidentiality of its contents and to avoid any negative impact that could result from the dissemination of the information contained in the Confidential Sixty-Third Report. The Confidential Sixty-Third Report is provided to the Court, to First Calgary Savings & Credit Union (“**First Calgary**”), as first secured creditor of Perera, and to no other party.
- 9. The Confidential Sixty-Third Report contains sensitive commercial and/or confidential information regarding the selling prices of Phase I and Phases II and III, a comparative analysis of the Statesman Agreement (as amended) compared to the 120 Offer, a copy of the Statesman Agreement itself and a copy of the Phase I Agreement (defined below). The Statesman Agreement contains terms requiring that it be kept confidential.

Publication of this information may prejudice the marketing of the Project and may undermine the Receiver's efforts to close the agreements the Receiver has executed for the sale of Phase I and Phases II and III. The Receiver is not aware of any suitable alternative measures to protect the confidentiality of the Statesman Agreement or the other information contained in the Confidential Sixty-Third Report from being disseminated.

10. The Receiver recommends that the Sealing Order include a provision that any interested party may apply, on notice to the Receiver, to vary the terms of the sealing Order or to unseal the Confidential Sixty-Third Report of the Receiver.

MARKETING OF PHASES II AND III

11. The Receiver does not agree with the comments made in the affidavit sworn by Ronald Mathison on July 31, 2013 (the "**Mathison Affidavit**") regarding the lack of sales or solicitation process for the Project. The Receiver decided, based upon its own expertise and the expertise of its realtors, to forego holding a formal sales or solicitation process for the Project. As outlined below, the Receiver has been actively marketing Phases II and III with the assistance of professional realtors since approximately June 2010 and the Project has been appropriately marketed and extensively exposed to the market for over three years. A formal sales process would have likely resulted in low offers with extensive due diligence periods and other conditions. Mr. Mathison's own knowledge and interest in the Project is based, in part, upon the Receiver's past marketing efforts and the Project's exposure to the real estate market.
12. From June 2010 until July 18, 2011, the Receiver retained Ken Westhaver and Harvey Russell of CB Richard Ellis ("**CBRE**") to market Phases II and III. CBRE prepared a

sales brochure, which was reviewed and approved by the Receiver and subsequently used to market Phases II and III of the Project. CBRE also advertised the sale of Phases II and III of the Project in the Globe and Mail newspaper in November 2010. CBRE was subsequently retained to market Phase I, in addition to Phases II and III.

13. CBRE actively marketed the Project to developers in Calgary and across Canada. Several parties expressed interest in various phases of the Project and the Receiver considered each of the offers, letters of intent (“**LOI**”) or expressions of interest received. Each of these offers and/or LOIs were considered by the Receiver and were ultimately withdrawn or rejected for various reasons.
14. After terminating the retainer agreement with CBRE, the Receiver subsequently retained Richard Schwann from Colliers International (“**Colliers**”) in July 2011 to market Phases II and III.
15. Colliers has been actively marketing Phases II and III for over two years and, during this time, has presented the Receiver with several LOIs and/or offers to purchase Phases II and III alone or in conjunction with units in Phase I.
16. In addition to the above noted LOI’s and offers that were received directly from CBRE and Colliers, the Receiver has provided its realtors with potential interested parties and has dealt with several parties directly throughout the Receivership. While some of these parties did not pursue any further interest in the Project, they were aware that the Project was available for sale and had been for a considerable length of time.
17. The Receiver decided, based in part upon the recommendations and expertise of CBRE and Colliers, to forego conducting a closed bid auction process for Phases II and III. The

Project is very complex and development of Phases II and III involves a much greater level of risk than similar condominium projects. Further, the inter-relatedness between the three phases of the Project complicates development and increases the difficulty and risk associated with obtaining the necessary approvals from the City. The Receiver discussed the prospect of a closed bid auction process with its internal real estate experts and First Calgary who similarly agreed with the conclusions of CBRE and Colliers that such a process was not the preferred sales approach to maximize value.

18. The Project is extremely complex due to the following key issues:
 - (a) The Project is in various stages of completion which increases the risks to parties taking over the construction and finishing work already started;
 - (b) The real estate market in Calgary was over supplied with condominium units at the time of the Receivership and what was contemplated by the existing development plan for Phases II and III, along with the location and structure of the Project, necessitates changes to the development which involve significant risk and the requirement of various City approvals; and
 - (c) All three phases of the Project are currently encapsulated within the same Condo Corporation and condominium plan. Every party who has expressed a serious interest in purchasing Phases II and III has determined that the phased development plan must be terminated and Phase I must be subdivided from Phases II and III. This is a complicated and expensive process that involves extensive approvals and agreements with the various parties involved.

19. On February 13, 2013, the Receiver entered into an LOI with Statesman for it to purchase Phases II and III and subsequently entered into the Statesman Agreement. Upon entering into the Statesman Agreement and pursuant to a term of the Statesman Agreement, the Receiver suspended marketing Phases II and III, but continued to market and sell units in Phase I.

STATESMAN AGREEMENT

20. A copy of the Statesman Agreement is attached to the Confidential Sixty-Third Report as Schedule "1". The Statesman Agreement contemplates separating Phase I from Phases II and III by, *inter alia*, terminating the existing phased development plan, and amending Condominium Plan No. 0915321 (the "**Condo Plan**") so that all 10,000 unit factors in the Condo Plan are allocated amongst Phase I Units only (the "**Development Plan**"). Given the complexity and inter-relatedness of the three phases, certain agreements will need to be executed by the Receiver, the Condo Corporation, Statesman and/or the City. Several City approvals are also required, including subdivision approval to effect the separation of Phase I from Phases II and III.
21. The conditions to the Statesman Agreement (pre-amendment) are outlined in the Confidential Sixty-Third Report. The Receiver has been diligently working to have Statesman satisfy or waive conditions of the Statesman Agreement and close the Statesman Agreement. The Receiver has attended several meetings with Statesman and the City to satisfy the conditions to the Statesman Agreement, and has met with the board of directors of the Condo Corporation to discuss Statesman's plans for Phases II and III. Statesman has incurred significant costs to date and has held numerous meetings

regarding Phases II and III, as outlined in a summary prepared by Statesman that is attached as Schedule 3 to the Confidential Sixty-Third Report.

22. In the view of the Receiver, Statesman has been acting in good faith and with due diligence to address and satisfy the various conditions in the Statesman Agreement.

THE AMENDING AGREEMENT

23. On August 12, 2013, the Receiver entered into an amending agreement with Statesman, subject to approval of the Court (the “**Amending Agreement**”).

24. The Amending Agreement significantly reduces the uncertainty of closing the Statesman Agreement. This provides more assurance to the Receiver that the Statesman Agreement will close on a timely basis. A copy of the Amending Agreement is attached to the Confidential Sixty-Third Report as Schedule “2”.

25. First Calgary, as first secured creditor of Perera, had no objection to the sale contemplated in the Statesman Agreement (pre-amendments) and has no objection now to the sale contemplated in the Statesman Agreement (as amended).

120 OFFER

26. On June 21, 2013, the Receiver received the unsolicited 120 Offer for the purchase of Phases II and III. A copy of the 120 Offer is attached to the Mathison Affidavit and a copy is attached as **Schedule “1”** to this Report. Since the Receiver is a party to the Statesman Agreement, the Receiver was not in a position to accept the 120 Offer or negotiate with the offeror, but instead continued to work towards the closing of the Statesman Agreement.

27. The purchase price in the 120 Offer is \$4.1 million and includes a closing date of 30 days after the Receiver obtains an approval and vesting order from Court, or such other date as may be agreed to in writing, not to extend beyond December 31, 2013. There are no other significant or unusual conditions in the 120 Offer.
28. The Receiver has prepared a comparative analysis (the “**Comparative Analysis**”) of the 120 Offer and the Statesman Agreement (as amended). The Receiver’s Comparative Analysis is found in the Confidential Sixty-Third Report.

PHASE I

29. In May of 2013, the Receiver received a LOI from JAT Investment Corp. (“**JAT**”) for the en-bloc purchase of most of all of the unsold residential units, parking stalls and storage units in Phase I (the “**JAT Phase I Offer**”). The Receiver negotiated with JAT and JAT submitted subsequent offers in June and July 2013, but the Receiver and JAT never came to an agreement on terms. The Receiver has never reached an agreement with JAT for the en-bloc sale of units in Phase I.
30. On August 2, 2013, the Receiver accepted Statesman’s en-bloc offer to purchase all remaining units in Phase I (the “**Phase I Agreement**”), subject to Court approval. The Phase I Agreement is attached to the Confidential Sixty-Third Report as Schedule “5” and is better than any offer submitted by JAT.
31. The closing of the Phase I Agreement is linked to the Statesman Agreement. A condition of the Phase I Agreement is that, on the closing date of the Phase I Agreement, the Statesman Agreement is in full force and effect, and there shall exist no impediment to the closing of the Statesman Agreement, other than the terms of the Statesman

Agreement itself. The other terms of the Phase I Agreement are outlined in the Confidential Sixty-Third Report.

32. The purchase price for the remaining units in Phase I (as set out in the Statesman Phase I Agreement) is, in the opinion of the Receiver, commercially reasonable and is in the best interests of the estate. This sale eliminates significant carrying costs for the units and the professional fees associated with continuing to manage, market and sell these units individually.
33. First Calgary, as first secured creditor of Perera, has no objection to the sale contemplated in the Phase I Agreement.

OPTIONS AVAILABLE

34. The Receiver has identified the following options available to the Court:
 - (a) Approve the Amending Agreement, direct the Receiver to reject the 120 Offer and not hold a further marketing or solicitation process at this time for Phases II and III;
 - (b) Not approve the Amending Agreement or otherwise continue with the Statesman Agreement, and negotiate an agreement with 120 on substantially the same financial terms as those contained in the 120 Offer; or
 - (c) Not approve the Amending Agreement or otherwise continue with the Statesman Agreement, reject the 120 Offer and instead establish a further marketing or solicitation process for Phases II and III and permit Statesman, 120, and any other interested party to submit a bid for Phases II and III.

RECOMMENDATIONS

35. The Receiver has prepared the Comparative Analysis of the benefits and risks associated with the Statesman Agreement (if the Amending Agreement is approved) as compared to the 120 Offer. A copy of the Comparative Analysis is found in the Confidential Sixty-Third Report.
36. Based upon the Comparative Analysis and the reasons provided in the Confidential Sixty-Third Report, the Receiver recommends that this Honourable Court:
 - (a) approve the Amending Agreement; and
 - (b) direct the Receiver to reject the 120 Offer and not establish further marketing or solicitation process for Phases II and III at this time.
37. If the Amending Agreement is approved by this Honourable Court and the Receiver is directed to reject the 120 Offer, the Receiver may sell all units in the entire Project to Statesman within the next few months. In the event that the Receiver is directed to accept the 120 Offer or hold a further marketing or solicitation process, the Phase I Agreement will terminate.

CONCLUSION

38. The Receiver respectfully requests that the Court grant the relief set out in the Application by Deloitte Restructuring Inc., attached as **Schedule “2”** to this Report

DELOITTE RESTRUCTURING INC.,

In its capacity as Court Appointed 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"

THIS IS EXHIBIT " 1 " referred to in the Affidavit of

AGREEMENT OF PURCHASE AND SALE Ronald Mathisen

Sworn before me this 31 day of July 2013

This Agreement made this 21st day of June, 2013 between:

Shannon

DELOITTE & TOUCHE INC.
in its capacity as the Court appointed interim receiver and receiver and manager of the property, assets and undertaking of
PERERA SHAWNEE LTD. AND PERERA DEVELOPMENT CORPORATION
and not in its personal or corporate capacity and without personal liability

(the "Vendor")

And
1204028 ALBERTA LTD.
a body corporate to be incorporated pursuant to the laws of Alberta

(collectively the "Purchaser")

Shannon
Shannon Bobbie Neuman
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires: January 2, 2016
Appointee No: 0715210

Recitals:

1. The Company is the registered owner of the Lands;
2. The Vendor has agreed to sell the Lands to the Purchaser and the Purchaser has agreed to purchase the Lands from the Vendor, at the Closing Date, for the Purchase Price, and subject to all of the terms and conditions set forth herein;

Now, therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement:

- (a) "Affiliate" has the meaning prescribed by section 1(1) of the *Business Corporations Act* (Alberta);
- (b) "Agreement" means this agreement of purchase and sale, including the recitals hereto and all schedules attached hereto, as the same may be amended, supplemented, revised or restated from time to time;

- (c) "Applicable Law" means any statute, law, ordinance, rule, regulation, regulatory policy, by-law (zoning or otherwise), order, judgment, decree, treaty, guidelines or administrative requirements having the force of law or other requirement having the force of law or restriction of any kind whatever, including, but without limiting the generality of the foregoing, Environmental Laws;
- (d) "Approval and Vesting Order" means an order of the Court approving this Agreement and vesting the Lands in the name of the Purchaser (or to whomever the Purchaser may direct in accordance with the provisions of this Agreement) on Closing free and clear of all Encumbrances other than the Permitted Encumbrances, in form and substance satisfactory to the Purchaser and Vendor, acting reasonably, such order to be substantially in the form of the order attached hereto as Schedule "D";
- (e) "Approval and Vesting Order Condition" has the meaning set forth in section 7.3 hereof;
- (f) "Buildings" means the existing buildings located on and forming a part of the Lands as of the date hereof and including, in the case of each Building, all building systems and infrastructure and all fixtures, fittings, improvements and appurtenances thereto.
- (g) "Business Day" means any day in the Province of Alberta that is not a Saturday, Sunday or a statutory holiday;
- (h) "Closing" means the successful completion of the transaction of purchase and sale for the Lands contemplated by this Agreement;
- (i) "Closing Date" means that date which is the thirtieth (30th) day following the date on which the Vendor gives written notice to the Purchaser that it has obtained the Approval and Vesting Order and the Approval and Vesting Order is registerable, or such other date as the Vendor and Purchaser may agree in writing not to extend beyond December 31, 2013;
- (j) "Closing Time" means 2:00 PM (Alberta time) on the Closing Date or such other time as may be determined by the Vendor in its sole discretion;
- (k) "Company" means PERERA SHAWNEE LTD.;
- (l) "Court" means the Court of Queen's Bench of Alberta;
- (m) "Default Rate of Interest" means the Prime Interest Rate plus an additional (3%);
- (n) "Deposit" shall have the meaning set out in Section 2.2 hereof;
- (o) "Encumbrance" means any security interest, lien, charge, pledge, encumbrance, mortgage, title retention agreement, easement, encroachment, right-of-way,

restrictive covenant, licence, lease, agreement or any other claim of any nature or kind, whether financial or otherwise;

- (p) "ETA" has the meaning set out in section 2.6 hereof;
- (q) "Environment" means the environment or natural environment as defined in any Environmental Law, and includes, without limitation, air, surface water, ground water, land surface, soil, subsurface strata, a sewer system and the environment in the workplace;
- (r) "Environmental Laws" means all Laws relating in full or in part to the protection or preservation of the Environment, product liability and employee and public health and safety and includes, without limitation, those Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, labelling, advertising, sale, display, transportation, treatment, release, discharge and/or disposal of Hazardous Substances, including without limitation, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33, the *Transportation of Dangerous Goods Act, 1992*, c.34, the *Environmental Protection and Enhancement Act (Alberta)* and any regulation, order, guideline or policy made pursuant to any of such statutes or in respect of any of such statutes;
- (s) "Execution Date" means the date this Agreement has been signed by all of the parties hereto accepting the terms and conditions of this Agreement;
- (t) "Governmental Authorities" means all governments and government officials whether federal, provincial or municipal and all other regulatory authorities that have jurisdiction over the Lands, Environment proximate to the Lands, and Hazardous Substances at or about the Lands;
- (u) "GST" means goods and services tax payable pursuant to the *Excise Tax Act (Canada)*;
- (v) "Hazardous Substances" means any substance or constituent thereof, sound, vibration, ray, heat, odour, radiation, energy, which is or is deemed to be, alone or in any combination, a pollutant, contaminant, source of pollution or contamination, waste of any nature, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous good including as defined, judicially interpreted or identified in any Environmental Law;
- (w) "Improvements" means the Buildings and all fixtures and appurtenances thereof and all other fixed improvements constructed on the Lands or any part or parts thereof;
- (x) "Information" has the meaning set out in section 4.2 hereof;
- (y) "Land Titles Office" means the land titles office for Alberta established pursuant to the *Land Titles Act (Alberta)*;

- (z) "Lands" means the Phase II Lands, the Phase III Lands and all Improvements thereon;
- (aa) "Municipality" shall mean The City of Calgary, a municipal corporation established pursuant to the laws of the Province of Alberta;
- (bb) "Permitted Encumbrances" means those Encumbrances listed on Schedule "B";
- (cc) "Phase I Units" shall have the meaning set out in Schedule "A";
- (dd) "Phase II Lands" shall have the meaning set out in Schedule "A";
- (ee) "Phase III Lands" shall have the meaning set out in Schedule "A";
- (ff) "Place of Closing" means the offices of the Vendor's Solicitors or at such other place as the Vendor and Purchaser may agree in writing;
- (gg) "Prime Interest Rate" means, for any day, that variable rate of interest per annum equal to the reference rate of interest for the determination of interest rates that the main branch in Calgary, Alberta of the Royal Bank of Canada will charge to customers of varying degrees of creditworthiness in Canada for Canadian dollar demand loans in Canada and designated as its prime rate of interest;
- (hh) "Previous Purchaser" means a person who has purchased a condominium unit in the Project;
- (ii) "Project" means the residential condominium development in Calgary, Alberta registered as Condominium Plan 0915321;
- (jj) "Purchase Price" has the meaning set forth in section 2.1 hereof;
- (kk) "Purchaser's Conditions" means all of the conditions for the benefit of the Purchaser set forth in section 7.2 hereof;
- (ll) "Purchaser's Solicitors" means Bennett Jones LLP (Attn: Wayne Whitlock);
- (mm) "Receivership Order" means the Amended and Restated Receivership Order dated January 31, 2011, in action number 1001-03215 of the Court of Queen's Bench of Alberta;
- (nn) "Statement" shall have the meaning set out in section 2.8 hereof;
- (oo) "Vendor" means DELOITTE & TOUCHE INC., in its capacity as a Court appointed interim receiver and receiver and manager of the property, assets and undertaking of the Company, but not in its personal, corporate or any other capacity, and without personal liability;
- (pp) "Vendor's Solicitors" means Osler, Hoskin & Harcourt LLP (Attn: Olivia Colic).

1.2 Definition of Vendor and Purchaser

Unless the contrary intention appears, the words, "Vendor" and "Purchaser" wherever they appear in this Agreement shall mean respectively "Vendor, its successors and permitted assigns" and "Purchaser, its successors and permitted assigns".

1.3 Grammar

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

1.4 Headings

The headings of any article, section or part thereof are inserted for the purposes of convenience only and do not form a part of this Agreement.

1.5 Schedules

The following schedules are attached hereto and form a part of this Agreement:

Schedule "A" - Legal Description of the Lands

Schedule "B" - Permitted Encumbrances

Schedule "C" - Intentionally deleted

Schedule "D" - Approval and Vesting Order

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE AND CLOSING

2.1 Purchase Price

The Vendor hereby agrees to sell the Lands to the Purchaser and the Purchaser hereby agrees to purchase the Lands from the Vendor, as at the Closing Date, at and for the Purchase Price and on and subject to all of the terms and conditions set forth herein. The purchase price (the "Purchase Price") for the Lands, exclusive of GST and subject to adjustments as provided herein, shall be the sum of FOUR MILLION DOLLARS ONE HUNDRED THOUSAND (\$4,100,000.00).

2.2 Payment of Purchase Price

- (a) The Purchaser covenants and agrees to pay the Purchase Price in lawful money of Canada as follows:
 - (i) the sum of Four Hundred Ten Thousand Dollars (\$410,000.00), as a deposit (the "Deposit"), shall be paid to the Vendor's Solicitors, in trust on or before July 5, 2013, by way of wire transfer or a certified solicitor's

trust cheque or bank draft drawn on or issued by a Canadian chartered bank or trust corporation. The Deposit shall be non-refundable to the Purchaser and be releasable when all the Vendor's conditions are waived or satisfied. The Deposit shall, however, be credited on account of the Purchase Price on Closing; and

(ii) the balance of the Purchase Price shall be paid to the Vendor's Solicitors, on the Closing Date, subject to the adjustments provided for herein, by way of wire transfer or a certified solicitor's trust cheque or bank draft drawn on or issued by a Canadian chartered bank or trust corporation.

(b) If the within transaction shall not be completed for any reason other than a default by the Vendor, then the Deposit shall be retained by the Vendor but without prejudice to any rights or remedies the Vendor may have at law or under this Agreement in connection with any default of the Purchaser.

2.3 Closing Date and Closing

The Closing shall occur on the Closing Date at the Closing Time at the Place of Closing. In the event the Closing Date is on a date when the Land Titles Office is closed, the Closing Date shall take place on the next Business Day that the Land Titles Office is open. The Vendor shall deliver vacant possession of the Lands to the Purchaser on the Closing Date.

2.4 Vendor Deliveries

Within five (5) Business Days after the Execution Date, the Vendor shall provide or have provided the Purchaser with:

- (a) copies of, or access to, all plans, studies, materials and other reports, in its actual possession or control, if any, and any and all documents previously provided to the Purchaser (collectively, the "Plans and Documents") which relate to the ownership, physical state and development status of the Lands;
- (b) **Consents:** The Vendor shall have executed or shall forthwith execute any consents or authorizations as may be required to release file information regarding the Lands from the Municipality or other Governmental Authorities provided that such consents and authorizations shall not permit any inspection or investigation of the Lands or any part thereof. If for any reason the transaction contemplated herein is not completed, the Purchaser shall return the Plans and Documents and all other materials and copies thereof which it has obtained from the Vendor (or others as a result of such consents or authorizations having been given by the Vendor);

2.5 Test and Studies

At any time and from time to time after the Execution Date continuing to the Closing Date, the Purchaser and its duly authorized consultants and representatives shall be entitled to attend upon the Lands for the purpose of making inspections or conducting tests, assessments or surveys of the Lands, provided the Purchaser shall make good and restore any damage or loss.

injury or death caused by the Purchaser, its employees, agents or consultants (whether as a direct result of such inspections or assessments or otherwise howsoever) and shall indemnify and save harmless the Vendor from all such loss, damage, injury or death. Such access is granted at the Purchaser's sole risk, and the Vendor shall have no liability to the Purchaser or any of its agents, consultants, employees or representatives for any injury, claims, causes of action, costs, losses, damages or expenses arising therefrom or arising from the inadequacy, insufficiency, incompleteness, inaccuracy, unavailability or condition of the Lands. In conducting any physical inspections and environmental assessments, the Purchaser shall cause as little disturbance, damage and loss to the Lands as is possible. Intrusive testing of any part of the Lands shall only be carried out with the Vendor's prior written approval and in compliance with Applicable Laws and the Vendor's conditions and requirements, which may be imposed by the Vendor in the Vendor's absolute and sole discretion.

Without limiting any of its other rights at law, in equity or otherwise under this Agreement, the Vendor reserves the right to offset against the Deposit, the costs of repairs and restorations of the Lands required as a result of damage caused by the Purchaser's inspections or tests which has not been repaired or restored by the Purchaser.

2.6 Goods and Services Taxes/Other Taxes

The Purchaser hereby represents and warrants that it is now, or will be by no later than the Closing Date, registered in accordance with the requirements, and for the purposes, of GST in accordance with the provisions of the Excise Tax Act of Canada (the "ETA"). In addition to all other taxes payable by the Purchaser at Closing, the Purchaser agrees to pay to the Vendor all GST payable in respect of the purchase of the Lands unless the Purchaser shall deliver a statutory declaration on Closing attesting to its GST registration and attaching a copy of its up-to-date GST registration number in which case the Purchaser shall pay, subject to any credits, the GST directly to the Receiver General of Canada within the time prescribed by the ETA.

The Purchaser hereby agrees to indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with the Vendor's failure to collect and remit any GST applicable on the sale of the Lands.

In addition to the Purchase Price, the Purchaser shall pay to the Vendor on Closing, subject to the foregoing, all federal, provincial and other sales, value-added, land transfer and all other taxes whatsoever which are eligible in connection with the transactions contemplated by this Agreement, together with all duties or other charges properly payable by the Purchaser upon or in connection with the conveyance and transfer of the Lands. Provided however that, if permitted by law and if the Vendor has no obligation to pay or collect on behalf of the Purchaser, the Purchaser may pay such taxes directly to the appropriate federal, provincial or other governmental authority. The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

2.7 Adjustments

All realty taxes rates, levies and assessments including condominium fees, local improvement rates shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser.

2.8 Amenities

The parties acknowledge that Perera Shawnee Ltd. prepared a Phased Development Disclosure Statement and registered the same at the Land Titles Office as instrument number 101 157 679 (the "Statement") and the Purchaser may wish to amend the Statement, including deleting all amenities on the Lands. The Purchaser shall be entitled, at its sole expense, to take reasonable steps to contact the Previous Purchasers for the purpose of obtaining their consent to amending the Statement. If the Purchaser obtains such consent from the Previous Purchasers, then the Vendor will agree to refund to the Previous Purchasers any amenities holdback. If the Purchaser is unable to obtain the consent of the Previous Purchasers of Phase I Units to amend the Statement, then the Purchaser shall be solely responsible for the completion of the amenities in Phase II and Phase III and any amenities holdback funds held by or on behalf of the Vendor shall be paid to the Purchaser.

ARTICLE 3 TITLE

3.1 Permitted Encumbrances

The Purchaser agrees to accept title to the Lands subject to all of the Permitted Encumbrances. The Purchaser covenants and agrees to satisfy itself as to compliance by the Lands with all of the Permitted Encumbrances and the Vendor shall not be required to provide letters or certificates of compliance or any releases or partial releases of same. Title to the Lands shall be free from all Encumbrances, save and except for Permitted Encumbrances.

3.2 Expropriation

If prior to Closing the whole of the Lands or any material portion is taken by any Governmental Authorities or other authority or is required for any Governmental Authorities or other authority's use, then the following provision shall apply: (a) in the event that the expropriation is of a material portion of the Lands, the Purchaser may elect by notice given to the Vendor by ten (10) Business Days after receipt of notice of the proposed expropriation (and the Closing Date shall be extended as necessary so that such period of time may be allowed the Purchaser prior to Closing) to receive the proceeds of expropriation and complete this Agreement or terminate this Agreement provided that if at the expiry of the time period set out above the Purchaser has not made an election as aforesaid the Purchaser shall be conclusively deemed to have elected to receive the proceeds of expropriation, or adjust the Purchase Price accordingly and complete this Agreement; and (b) in the event that the expropriation is not with respect to a material portion of the Lands the Purchaser shall be required to receive the proceeds of expropriation and complete this Agreement. Any dispute between the parties as to the materiality of the portion of the Lands being expropriated shall be decided by an independent accredited architect, appointed by the Vendor.

3.3 Insurance

The Improvements on the Lands shall be and remain at the risk of the Vendor until Closing, and the Vendor shall hold all policies of insurance, if any, effected on the Lands and the proceeds thereof in trust for the parties hereto, as their interests may appear. In the event of any damage to the Improvements exceeding ONE MILLION (\$1,000,000.00) DOLLARS before Closing, the Purchaser shall have the right to elect to take an assignment of any insurance proceeds and complete the purchase or terminate this Agreement, whereupon the Purchaser shall be entitled to the return of the Deposit and all interest accrued thereon without deduction and with interest actually earned thereon (subject to the provisions of Section 2.5). In the event of any other damage, the Purchaser shall complete the Agreement and accept any insurance proceeds payable in respect of the relevant damage.

ARTICLE 4 STATUS OF LANDS

4.1 "As-Is Where-is"

The Purchaser acknowledges and agrees that the Lands and each and every part thereof are being purchased on an "as-is where-is" basis as they exist as of the Closing Date and that from and after the Closing Date the Vendor shall have no liability or responsibility whatsoever in respect of the Lands, including but not limited to liability or responsibility arising from or in connection with any Hazardous Substances at or migrating to or from the Lands, or the environmental condition of the Lands or of any land or Environment in proximity to the Lands. The Purchaser acknowledges and agrees that information relating to the Lands which is included in this Agreement or obtained by the Purchaser from the Vendor (including, without limitation, the Plans and Documents and any information arising therefrom) has been provided solely for the convenience of the Purchaser and is not warranted to be accurate, complete or reliable and does not constitute any representation or warranty and does not form part of the terms of this Agreement.

4.2 Own Analysis

The Purchaser acknowledges and agrees that: it has entered into this Agreement on the basis that the Vendor does not warrant title to the Lands and that the Purchaser will conduct its own investigations and inspections of the Lands and all matters and things connected with or in any way related to the Lands; will satisfy itself with respect to the Lands and all matters and things connected with or in any way related to the Lands; will rely entirely upon its own investigations and inspections in entering into this Agreement and in concluding the transaction contemplated by this Agreement, notwithstanding the provision to the Purchaser (including its directors, officers, employees, Affiliates, agents, advisors and representatives) by the Vendor of any Plans and Documents, listings, reports or other documents or information (collectively "Information") relating to the Lands which are in the possession of the Vendor and any information arising therefrom.

4.3 No Representation by Vendor

The Purchaser hereby acknowledges and agrees that it has satisfied itself with respect to and acknowledges that neither the Vendor nor any party acting or purporting to act on behalf of

the Vendor has made any representation, warranty, statement or promise with respect to, or in any way related to, any matter or thing whatsoever including, without limitation:

- (a) the title, description, nature, quality, quantity, size, merchantability, fitness for any purpose, state, condition, cost, undue expenses, validity or location of all or any of the Lands or the right of the Vendor to sell or assign same, or as to the accuracy or completeness of the information provided or made available to the Purchaser;
- (b) the validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims or demands of whatsoever nature or kind affecting or in any way related to all or any of the Lands;
- (c) the state, condition, location, age, currency, obsolescence, value, usability of or any other matters arising out of or in any way connected with the Lands;
- (d) the compliance of the Lands and their use in accordance with Applicable Laws;
- (e) the environmental condition of the Lands;
- (f) the uses, present or future, made or to be made of the Lands;
- (g) the existence, nature, kind, state or scope, or identity of any Hazardous Substances on, under, about or migrating to or from the Lands;
- (h) the existence, state, nature, kind, identity, extent and effect of any administrative orders, control orders, abatement orders, compliance orders or any other orders, proceedings, directions, issued or actions taken under or pursuant to Environmental Laws or any other Applicable Law;
- (i) the existence, state, nature, kind, identity, extent and effect of any liability, responsibilities, or obligations arising from or in relation to the environmental condition of the Lands or any Applicable Law including, without limitation, any obligation with respect to any Hazardous Substances on, under, about or migrating from the Lands and any obligations to compensate any person for costs incurred in connection with or damages suffered as a result of the presence or migration of any Hazardous Substances on, under, about or from the Lands or elsewhere;
- (j) the zoning of the Lands, the planning status of the Lands, the condition, existence or location of services on or near the Lands, the use to which the Lands can be put or the fulfillment or satisfaction of any subdivision condition;
- (k) the manner in which the Company carried on its business; and
- (l) the existence and validity of any licenses, permits or authorizations from any Governmental Authority, court, regulatory authority or other person whatsoever having or purporting to have jurisdiction over the Company, the Lands, the

business carried on by the Company, or any sale, transfer, conveyance, lease, consignment, assignment, disposition or other dealings with the Lands.

4.4 Environmental Release, Indemnity and Covenant Not to Sue

The Purchaser, from and after the Closing Date, shall assume all liabilities and responsibilities, whether presently known or later discovered and regardless of the source or cause of the same, with respect to the environmental condition of the Lands, the existence of any Hazardous Substances at the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances at the Lands, or migrating to or from the Lands, and the Purchaser shall indemnify and hold the Vendor harmless with respect thereto, except for any action, suit, liability or cost arising from the negligence of the Deloitte & Touche Inc. and the Purchaser hereby agrees (a) to release the Vendor from any and all claims, whether by statute, common law, or in equity, that the Purchaser may now or in the future have in relation thereto, and (b) that it will not alone or in concert with any other person pursue any action, claim, dispute or proceeding against the Vendor in relation thereto.

ARTICLE 5 PURCHASER'S OBLIGATIONS

5.1 Compliance with Permitted Encumbrances and Applicable Laws

The Purchaser covenants and agrees:

- (a) to assume on Closing and be bound by and to comply with all provisions of the Permitted Encumbrances, at the Purchaser's sole cost and expense, and the Purchaser hereby covenants and agrees with the Vendor to discharge, perform and fulfill all terms, covenants, provisos, conditions, stipulations, obligations and liabilities of the Company under the Permitted Encumbrances, whether arising before or after the Closing, in the same manner and to the same extent as if the Purchaser had executed the same in the place and stead of the Company. The Purchaser shall indemnify and hold harmless Deloitte & Touche Inc. with respect thereto, whether or not such compliance or non-compliance occurs before, on or after Closing, except for any negligence of Deloitte & Touche Inc. If required by the provisions of any Permitted Encumbrances, or by any party to any Permitted Encumbrances, the Purchaser shall enter into an agreement directly with the other parties to such Permitted Encumbrances confirming such assumption; and
- (b) to assume on Closing, at the Purchaser's sole cost and expense, complete responsibility for compliance with all Applicable Laws which apply to the Lands and the use thereof by the Purchaser.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Purchaser's Representations and Warranties

The Purchaser hereby represents, warrants and covenants to and with the Vendor now and on Closing that:

- (a) the Purchaser is acting as a principal and not as an agent, trustee or other representative except the Purchaser does contemplate assigning this Agreement to a co-owner prior to removal of the Purchaser's Conditions;
- (b) if the Purchaser is a corporation duly incorporated and existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to make this Agreement, complete this Agreement, and perform all its obligations thereunder;
- (c) no registration, notice, consent, approval or filing under any Applicable laws, including (without limitation) the *Investment Canada Act* and the *Competition Act* (Canada), is required as a condition or result of the Purchaser entering into this Agreement, or the completion or performance of this Agreement, including the purchase of the Lands by the Purchaser hereunder; and
- (d) this Agreement, and each of the other agreements, documents and instruments to be executed by the Purchaser on or before Closing, have been or will be duly executed and delivered by the Purchaser and, will constitute valid and binding obligations of the Purchaser, enforceable in accordance with the terms hereof or thereof, as the case may be.

6.2 No Collateral Agreements

It is agreed that there is no representation, promise, warranty, collateral agreement, term or condition of any kind made by or on behalf of the Vendor affecting this Agreement or the Lands or supported hereby other than expressed herein in writing. The Purchaser acknowledges that this Agreement entirely replaces and supercedes all previous agreements and correspondence and contains all the terms, conditions, and provisions agreed upon between the parties hereto, and is not subject to any collateral or oral agreement, undertaking or representation (negligent or otherwise) of any kind.

ARTICLE 7 CONDITIONS

7.1 Vendor's Conditions

The obligation of the Vendor to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor) being satisfied on or by the date specified therefor (which shall be the Closing Date unless otherwise specified) and in the event that any one of the following conditions is neither complied with nor waived by the Vendor then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to

the Purchaser's obligations under Section 2.5) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set out in Section 2.5):

- (a) on the Closing Date no person entitled by law to do so shall have redeemed the Lands;
- (b) on the Closing Date, the Approval and Vesting Order shall be in full force and effect and not stayed;
- (c) no part of the Lands shall have been removed from the control of the Vendor by any means or process;
- (d) no action or proceeding, at law or equity, shall have been commenced or threatened by any person to enjoin, restrict or prohibit the consummation of the transactions contemplated by this Agreement that has not at the Closing Time been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal;
- (e) all consents or approvals from or notifications to any lender, landlord, lessor or other third person required under the terms of any agreement, lease or instrument in connection with the consummation of the transactions contemplated hereby, shall have been duly obtained or given, as the case may be;
- (f) all consents or approvals from, orders and authorizations of, notifications to and licences from any persons (or registrations, declarations, filings or recordings with any such authorities) required in connection with the consummation of the transactions contemplated by this Agreement, the making of the Agreement, the Closing, or the performance of any of the terms and conditions thereof, in form and substance satisfactory to the Vendor and its counsel, shall have been duly obtained or given, as the case may be;
- (g) the representations and warranties of the Purchaser contained in the Agreement shall be true and correct in all material respects as at the Closing Date and with the same force and effect as if made at and of such time;
- (h) the Purchaser shall have paid to the Vendor all amounts required to be paid by it under this Agreement; and
- (i) the Purchaser shall have performed, in all material respects, its obligations and covenants under this Agreement to the extent required to be performed on or before the Closing Date.

The closing of the transaction of purchase and sale contemplated herein by the Vendor shall be deemed to be waiver by the Vendor of compliance with any condition inserted for its benefit and not satisfied on the Closing Date.

7.2 Purchaser's Conditions

The obligation of the Purchaser to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser) being satisfied on or by the date specified therefor (which shall be the Closing Date unless otherwise specified) and in the event that any one of the following conditions is neither complied with nor waived by the Purchaser then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to the Purchaser's obligations as set out in Section 2.5) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set out in Section 2.5);

- (a) on or before July 15, 2013, the Purchaser shall have confirmed that the development and building permits for the Project have not expired or been revoked;
- (b) on the Closing Date no person entitled by law to do so shall have redeemed the Lands;
- (c) on the Closing Date, the Approval and Vesting Order shall be in full force and effect and not stayed;
- (d) on the Closing Date the Vendor shall have performed, in all material respects, its obligations and covenants under this Agreement to the extent required to be performed on or before the Closing Date.

7.3 Condition Respecting Approval and Vesting Order

- (a) The obligations of the Vendor and the Purchaser to complete the transaction of purchase and sale contemplated herein shall be subject to and conditional upon the further condition (the "Approval and Vesting Order Condition") that on or before the date which is Twenty-one (21) Business Days following the date hereof, the Vendor shall have obtained the Approval and Vesting Order.
- (b) The Approval and Vesting Order Condition has been inserted for the benefit of both the Vendor and the Purchaser and may not be waived by either party.

ARTICLE 8 CLOSING ARRANGEMENTS

8.1 Vendor's Closing Documentation

On or before the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser's Solicitors the following:

- (a) a registrable copy of the Approval and Vesting Order;
- (b) a statement of adjustments;

- (c) all keys in the Vendor's actual possession;
- (d) an undertaking to readjust any errors or omissions in the statement of adjustments;
- (e) all original Plans and Documents relating to the Lands in the Vendor's actual possession and control;
- (f) an estoppel certificate for all of the Lands evidencing the payment of all condominium contributions which are the obligation of the Vendor to pay;
- (g) assignment of any assignable contractor or supplier warranties, an assignment of any assignable development and building permits for the Project and an assignment of the right to use the name Highbury on Fish Creek and any domain names or websites for the Project; and
- (h) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this Agreement as the Purchaser may reasonably require in a form and content satisfactory to the Purchaser acting reasonably.

8.2 Purchaser's Closing Documentation

On the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendor's Solicitors the following:

- (a) an undertaking by the Purchaser to readjust any errors, omissions or changes in the statement of adjustments;
- (b) certificate of the Purchaser attesting to the Purchaser's GST registration number with a copy of its GST registration number attached to such declaration;
- (c) indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's payment of GST in a reasonable form that is provided by the Vendor;
- (d) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing date, with the same effect as though made as of the Closing Date;
- (e) if required by the provision of any Permitted Encumbrances or by any party to any Permitted Encumbrances, an individual assumption agreement in a form required by such Permitted Encumbrances;
- (f) the balance due on Closing; and
- (g) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this Agreement as the Vendor may reasonably require in a form and content satisfactory to the Vendor acting reasonably.

8.3 Closing Trust Conditions

The deliveries referred in Sections 8.1 and 8.2 shall be subject to such reasonable trust conditions as may be agreed upon between the Vendor's Solicitors and the Purchaser's Solicitors or, failing such agreement as determined by arbitration by a single arbitration appointed by agreement of the Vendor and the Purchaser or by the Court of Queen's Bench of Alberta on application by either party. Notwithstanding any other provision hereof it is agreed that such trust conditions shall require that the entire cash balance due on Closing be paid to the Vendor's Solicitors in trust prior to the Purchaser proceeding to register the Approval and Vesting Order.

ARTICLE 9 MISCELLANEOUS

9.1 Tender of Monies

Any tender of documents and money hereunder may be made on the Vendor or the Vendor's Solicitors or on the Purchaser or the Purchaser's Solicitors, as the case may be, and money may be tendered by wire transfer or by bank draft or solicitor's trust cheque certified at any major Canadian chartered bank.

9.2 Non-Merger

The covenants, representations, warranties and agreements herein contained on the part of the Purchaser and Vendor shall not merge upon delivery of title to the Lands, but shall continue in full force and effect notwithstanding the delivery and registration of the Approval and Vesting Order and any such unfulfilled covenants or agreements at the time the Purchaser requests the transfer may be set out in the transfer to the Purchaser or by way of separate agreement, which the Purchaser covenants to sign if required by the Vendor.

9.3 Assignment

The Purchaser shall have the right to assign this Agreement without the consent of the Vendor to an Affiliate of the Purchaser, or a co-ownership or partnership of which the Purchaser or its Affiliate is a party (the Affiliate or Purchaser, as applicable, and all co-owners or partners hereinabove are referred to collectively as the "Assignee"), by notice to be given not less than ten (10) Business Days prior to the Closing Date. The Purchaser shall not otherwise assign its rights and/or obligations hereunder without the prior written consent of the Vendor, which consent may be unreasonably withheld in the Vendor's sole absolute and unfettered discretion. Notwithstanding any assignment pursuant to this section, the Purchaser shall not be released or relieved from any of its obligations hereunder and shall be jointly and severally liable with the Assignee hereunder; provided however that, from and after Closing, the original Purchaser shall be released from its obligations hereunder, to the extent that any permitted Assignee has executed and delivered an agreement in favour of the Vendor agreeing to be bound by all such obligations.

9.4 Joint and Several Obligations

If there is more than one Purchaser, then the covenants on the part of the Purchaser shall be and are deemed to be joint and several covenants of each Purchaser.

9.5 Notices

Any notice, request, consent, demand, approval, acceptance, waiver or other document required or permitted to be given hereunder shall be in writing and shall be given by personal delivery thereof or written telegraphic or printed notice to:

(a) the Purchaser: 1204028 ALBERTA LTD.
c/o Bennett Jones LLP
4500, 855 - 2nd Street SW
Calgary, Alberta, T2P 4K7

Attention: W. R. Whitlock
Facsimile No.: 403-265-7219

(b) with a copy to: Bennett Jones LLP
4500, 855 - 2nd Street SW
Calgary, Alberta, T2P 4K7

Attention: W.R. Whitlock
Facsimile No.: 403-265-7219

(c) to the Vendor: DELOITTE & TOUCHE INC.
700, 850 - 2nd Street SW
Calgary, Alberta, T2P 0R8

Attention: Stefan DuChene
Facsimile No.: 403-718-3681

with a copy to: OSLER HOSKIN & HARCOURT LLP
2500, 450 - 1st Street SW
Calgary, Alberta, T2P 5H1

Attention: Olivia Colic
Facsimile No. 403-_____

Any notice, if delivered, shall be deemed to have been validly and effectively given and received on the date of personal delivery. Any notice, if sent by facsimile transmission and received before 5:00 p.m. (Alberta time) on a Business Day shall be deemed to have been validly and effectively given and received on the date of transmission and otherwise shall be deemed to have been validly and effectively given and received on the next Business Day. By giving to the other party at least three (3) Business Days notice thereof, either party may, at any time and from time to time, change its address for delivery or communication for purposes of this section.

9.6 Unenforceability of Covenants

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9.7 Time of Essence

It is expressly understood that time shall be of the essence of this Agreement.

9.8 Receivership Provisions

Notwithstanding any of the provisions contained in this Agreement, the Purchaser and Vendor acknowledge and agree that:

- (a) in the event of any inconsistency between the terms of this Agreement and the terms of this Section the terms of this Section shall prevail;
- (b) the Lands are being sold by the Vendor pursuant to the terms of the Receivership Order as amended from time to time;

- (c) this Agreement is conditional upon obtaining the Approval and Vesting Order and the Vendor covenants and agrees to diligently apply for such Approval and Vesting Order. The Vendor shall provide notice to the Purchaser of the Vendor's application to the Court for advice and directions concerning the approval of the Agreement. The Purchaser at its own expense shall co-operate with the Vendor as the Vendor may reasonably require to obtain the Approval and Vesting Order;
- (d) the Vendor acts solely in its capacity as court appointed Receiver of the Lands with no personal, corporate or other liability or obligation under or as a result of or in connection with the sale contemplated herein or the terms and conditions of this Agreement and such sale and that the Vendor, in any capacity other than its capacity as court appointed Receiver, has never been, nor is, nor ever will be the owner of, a person responsible for, or in possession, management, charge or control of, the Lands.

9.9 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall enure to the benefit of and be binding upon the parties hereto and their respective successors or permitted assigns.

9.10 No Commissions

The Vendor shall be responsible for payment of all fees or commissions to Colliers International that the Vendor has agreed in writing to pay to Colliers International in connection with the Lands and/or the transactions contemplated by this Agreement. Each of the parties represents and warrants that it has not executed any documentation or taken any other step that would make the other party responsible for real estate commissions or fees. Each party hereto agrees that if any person or entity, other than Colliers International, makes a claim for brokerage commissions or finder's fees related to this Agreement or the sale of the Lands and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party harmless from and against any and all loss, liability, cost, damage and expense (including reasonable legal fees) in connection therewith.

9.11 Acceptance

This Agreement is open for acceptance by the Vendor until July 3, 2013.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first written above.

1204028 ALBERTA LTD.

By: 

Name:

Title:

I have authority to bind the Corporation

**DELOITTE & TOUCHE INC., as Court-
appointed Receiver of PERERA SHAWNEE
LTD. AND PERERA DEVELOPMENT
CORPORATION, and not in its personal or
corporate capacity**

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation

SCHEDULE "A"

Legal Descriptions of the Lands

Phase II Lands

1. CONDOMINIUM PLAN 0915321
UNIT A
and 3660 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

Phase III Lands

2. CONDOMINIUM PLAN 0915321
UNIT B
and 3679 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

Phase I Units

SCHEDULE "B"

Permitted Encumbrances

(A) General Encumbrances

1. The reservations, limitations, provisos and conditions expressed in the grant from the Crown.
2. Liens for taxes, rates, assessments or governmental charges or levies not yet due and payable.
3. Any easement, right-of-way, watercourse, right-of-water or other unregistered interest or claim not disclosed by registered title which is acceptable to the Purchaser, in its sole and unfettered discretion on or before the Purchaser's Condition Date.
4. Zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, municipal or other governmental bodies or regulatory authorities which are acceptable to the Purchaser, in its sole and unfettered discretion on or before the Purchaser's Condition Date.
5. The rights reserved to or vested in any municipality, governmental or other public authority by statutory provisions including, without limitation, the right to acquire portions of the lands for road widening or interchange construction, and the right to complete or remedy improvements, landscaping or deficiencies in any pedestrian walkways or traffic control or monitoring which are acceptable to the Purchaser, in its sole and unfettered discretion on or before the Purchaser's Condition Date provided the orders issued under the Municipal Government Act will not be permitted encumbrances.

[NTD: TO BE DETERMINED IF THE CITY OF CALGARY ORDERS CAN BE REMOVED FROM TITLE BEFORE CLOSING]

(B) Specific Permitted Encumbrances

Registration Number	Date (D/M/Y)	Particulars
861 205 323	11/12/1986	Utility Right Of Way Grantee - The City Of Calgary. As To Portion Or Plan:8611330
871 142 214	10/08/1987	Caveat Re : See Caveat Caveator - Frances Lorraine Rehman
071 476 257	24/09/2007	Caveat

Draft

Re : Restrictive Covenant

091 088 418	02/04/2009	Utility Right Of Way Grantee - Enmax Power Corporation.
091 368 708	07/12/2009	Caveat Re : Restrictive Covenant
091 374 432	10/12/2009	Restrictive Covenant

Draft

SCHEDULE "D"
Approval and Vesting Order

Draft

SCHEDULE "2"

Clerk's stamp:

COURT FILE NUMBER: 1001-03215
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION LTD.
DEFENDANTS: PERERA SHAWNEE LTD., PERERA DEVELOPMENT CORPORATION, DON L. PERERA and SHIRANIE M. PERERA
PLAINTIFFS BY COUNTERCLAIM PERERA SHAWNEE LTD., DON L. PERERA and SHIRANIE M. PERERA
DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION LTD. and DELOITTE & TOUCHE LLP

DOCUMENT: **APPLICATION BY DELOITTE RESTRUCTURING INC.** (formerly 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 the Amending Agreement and Directions regarding the 120 Offer)

OSLER, HOSKIN & HARCOURT LLP

Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Solicitor: A. Robert Anderson, Q.C. / Michael Bokhaut
Telephone: (403) 260-7004/7023
Facsimile: (403) 260-7024
File Number: 1121689

NOTICE TO THE RESPONDENTS:

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

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

Date:	August 14, 2013
Time:	10:00 am.
Where:	Calgary Courts Centre, 601-5 th Street S.W., Calgary, Alberta
Before Whom:	The Honourable Madam Justice Romaine

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

APPLICATION BY DELOITTE RESTRUCTURING INC.

(Re: Approval of the Amending Agreement and Directions regarding the 120 Offer)

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 August 14, 2013, that service of this Application and the Sixty-Second Report of the Receiver, dated August 13, 2013 (the “**Sixty-Second Report**”) on the persons listed in Schedule “**A**” to this Application (collectively, the “**Service List**”) is good and sufficient, and that no other persons are entitled to notice of this Application.
2. An order sealing on the Court file the Confidential Sixty-Third Receiver’s Report dated August 13, 2013 (the “**Confidential Sixty-Third Report**”).
3. An order approving the Amending Agreement made effective August 12, 2013 (the “**Amending Agreement**”) that amends the purchase and sale agreement for Phases II and III (as defined below) between the Receiver and The Statesman Group of Companies Ltd. (“**Statesman**”) dated February 13, 2013 (the “**Statesman Agreement**”).
4. An order providing the advice and direction of this Honourable Court in respect of an unsolicited offer from 1204028 Alberta Ltd. (“**120**”) to purchase Phases II and III (the “**120 Offer**”).
5. Such further and other relief that the Receiver may seek and this Honourable Court may deem just.

GROUND FOR MAKING THIS APPLICATION:

General

6. 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 Kent of the Court of Queen’s Bench of Alberta that was amended and restated on January 31, 2011 (the “**Receivership Order**”). On December 20, 2010, PDC and PSL were adjudged bankrupt and a Bankruptcy Order was made against each by the Court, pursuant to which the Trustee was appointed trustee of the estates of PDC and PSL.

7. The Debtor is a condominium real estate developer that has assets that consist of a three phase condominium real estate project located at 30 Shawnee Hill SW, Calgary, Alberta known as the Highbury and registered as Condominium Plan 0915321 (the “**Project**”).
8. The Project was planned to be completed in three separate phases, including “**Phase I**”, which includes 71 residential units (including the manager suite and sales centre): 52 of which have been sold and conveyed to purchasers, the remainder of which are being marketed for sale. Construction on “**Phase II**” and “**Phase III**” (collectively, “**Phases II and III**”) commenced before the Receivership proceedings began but is not complete. The Receiver has completed construction on parking level one and parking level two for Phases II and III to meet the requirements of the City of Calgary, but does not intend to complete the high-rise condominium buildings planned for Phases II and III.
9. Section 3(h) of the Receivership Order grants the Receiver the right to execute documents of whatever nature in respect of the Property. Section 24 of the Receivership Order grants the Receiver the right to apply to this Honourable Court for advice and directions in the discharge of its powers and duties.

The Application

10. The Receiver is seeking an Order:
 - (a) approving the Amending Agreement; and
 - (b) directing the Receiver to reject the 120 Offer and not establish further marketing or solicitation process for Phases II and III at this time.
11. On August 1, 2013, the Receiver was served with 120’s application (the “**120 Application**”) for, *inter alia*:
 - (a) An Order requiring the Receiver to consider for acceptance the 120 Offer;
 - (b) An Order requiring the Receiver, if the 120 Offer is superior to other offers received by the Receiver, to accept the 120 Offer; and

- (c) In the alternative, an Order establishing a marketing or solicitation process for Phases II and III which would allow 120 to submit the 120 Offer (or a subsequent offer) for Phases II and III.

The Statesman Agreement, Amending Agreement and Phase I Agreement

12. Prior to entering into the Statesman Agreement, the Receiver had been actively marketing Phases II and III for sale.
13. Statesman and the Receiver entered into the Statesman Agreement for the purchase of Phases II and III which was made effective February 13, 2013 and is subject to conditions precedent. The Receiver has been working diligently with Statesman to pursue the satisfaction or waiver of the conditions precedent and to proceed to closing the Statesman Agreement.
14. On August 12, 2013, the Receiver and Statesman entered into the Amending Agreement, subject to approval of this Court.
15. The Statesman Agreement and the Amending Agreement are subject to strict confidentiality provisions; therefore the Receiver is unable to disclose particulars of the Statesman Agreement or the Amending Agreement in publicly available materials. Details of the Statesman Agreement and the Amending Agreement, including a copy of each agreement, is found in and attached to the Confidential Sixty-Third Report.
16. On August 5, 2013, the Receiver entered into a purchase contract (the “**Phase I Agreement**”) with Statesman and/or nominee for the purchase of nearly all of the remaining condominium units available for sale by the Receiver in Phase I. The Phase I Agreement contains sensitive commercial information regarding the selling prices of units in Phase I and is attached to the Confidential Sixty-Third Report.
17. The closing of the Phase I Agreement is linked to the Statesman Agreement. A condition of the Phase I Agreement is that on the closing date of the Phase I Agreement, the Statesman Agreement must be in full force and effect and there shall exist no impediment to the closing of the Statesman Agreement other than the terms of the Statesman Agreement itself.

18. In the event that this Honourable Court approves the Amending Agreement and directs the Receiver to reject the 120 Offer and not establish a marketing or solicitation process for Phases II and III at this time, the Receiver shall apply to this Honourable Court for approval of the Phase I Agreement.

The 120 Offer

19. On June 21, 2013, the Receiver received the unsolicited 120 Offer from 120 to purchase Phases II and III. Since the Receiver is a party to the Statesman Agreement, the Receiver was not in a position to accept the 120 Offer or negotiate with offeror, but instead continued to work towards the closing of the Statesman Agreement. In light of the 120 Application, the Receiver seeks this Honourable Court's advice and directions regarding the Receiver's recommended course of action.

The Receiver's Recommendation

20. The Receiver has prepared a comparative analysis (the "**Comparative Analysis**") of the benefits and risks associated with the Statesman Agreement (if the Amending Agreement is approved) as compared to the 120 Offer. A copy of the Comparative Analysis is found in the Confidential Sixty-Third Report.
21. The Receiver has identified the following options available to the Court:
 - (a) Approve the Amending Agreement, direct the Receiver to reject the 120 Offer, and not hold a further marketing or solicitation process at this time for Phases II and III;
 - (b) Not approve the Amending Agreement or otherwise continue with the Statesman Agreement, and direct the Receiver to proceed to negotiate an agreement with 120 on substantially the same financial terms as those contained in the 120 Offer; or
 - (c) Not approve the Amending Agreement or otherwise continue with the Statesman Agreement, and reject the 120 Offer and instead to direct a further marketing or solicitation process for Phases II and III and permit Statesman, 120, and any other interested party to submit a bid for Phases II and III.

22. Based on the Comparative Analysis and other contents of the Confidential Sixty-Third Report, the Receiver recommends that this Honourable Court:
- (a) approve the Amending Agreement; and
 - (b) direct the Receiver to reject the 120 Offer and not establish further marketing or solicitation process for Phases II and III at this time.

Receiver Needs Advice and Directions

23. The Receiver is precluded from accepting or negotiating the 120 Offer or establishing a further marketing or solicitation process for Phases II and III as long as the Statesman Agreement remains in force. The Receiver has identified several options available to the Court and has provided the Court with its recommendations. The Receiver respectfully requests that the Court provide its advice and direction to the Receiver to proceed as recommended or as the Court otherwise advises and directs.

MATERIAL OR EVIDENCE TO BE RELIED ON:

24. The pleadings filed herein, including without limitation:
- (a) the Receivership Order (Tab 1);
 - (b) the Sixty-Second Receiver's Report (Tab 2);
 - (c) the Confidential Sixty-Third Receiver's Reports (Tab 3);
25. Any such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

APPLICABLE RULES:

26. The *Alberta Rules of Court*, Alta. Reg. 124/2010 as amended.

APPLICABLE ACTS AND REGULATIONS:

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

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

29. Before the Honourable Madam Justice Romaine at the Calgary Courts Centre, 601-5th Street S.W., at Calgary, Alberta, on August 14, 2013, at 10:00 am or as soon thereafter as counsel may be heard, **and to be heard at the same time as the application brought by 1204028 Alberta Ltd., filed on August 1, 2013.**

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 August _____, 2013.

OSLER, HOSKIN & HARCOURT LLP

A. Robert Anderson, Q.C. / Michael Bokhaut
Counsel for the Receiver, Deloitte & Touche Inc.

TO: The Clerk of the Court

AND TO: Josef Kruger, Borden Ladner Gervais LLP, Counsel for the Plaintiff
All persons on the Service List, found at Schedule "A"

SCHEDULE A TO THE APPLICATION DATED AUGUST ● , 2013
(The Service List)