

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**FACTUM OF THE TRUSTEE**

(motion for Advice and Directions)  
(returnable October 16, 2015)

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton** (LSUC #21592F)  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos** (LSUC #51399S)  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
Email: samr@chaitons.com

**Lawyers for the Trustee**

**TO: THE SERVICE LIST**

**SERVICE LIST**  
(as of October 13, 2015)

<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b> Tel: (416) 218-1129 Fax: (416) 218-1849 E-mail: harvey@chaitons.com</p> <p><b>Sam Rappos</b> Tel: (416) 218-1137 Fax: (416) 218-1837 Email: samr@chaitons.com</p> <p><b>Lawyers for the Trustee</b></p>	<p><b>COLLINS BARROW TORONTO LIMITED</b> 11 King St. West, Suite 700, Box 27 Toronto, ON M5H 4C7</p> <p><b>Bryan Tannenbaum and</b> Tel: (416) 238-5055 Fax: (416) 480-2646 Email: btannenbaum@collinsbarrow.com</p> <p><b>Arif Dhanani</b> Tel: (647) 725-0183 Fax: (416) 480-2646 Email: andhanani@collinsbarrow.com</p> <p><b>Trustee</b></p>
<p><b>THORNTON GROUT FINNIGAN LLP</b> Ste. 3200, 100 Wellington St. W. PO Box 329, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>Grant Moffat / Asim Iqbal</b> Tel: (416) 304-0599 / (416) 304-0595 Fax: (416) 304-1313 Email: gmoffat@tgf.ca / aiqbal@tgf.ca</p> <p><b>Lawyers for Laurentian Bank of Canada</b></p>	<p><b>ROSENSTEIN LAW</b> 6 Adelaide Street East, Suite 1000 Toronto, ON M5C 1H6</p> <p><b>Jonathan Rosenstein</b> Tel: (416) 639-2123 Fax: (647) 827-0424 Email: jrosenstein@rosensteinlaw.ca</p> <p><b>Lawyers for Aviva Insurance Company of Canada</b></p>
<p><b>AFFLECK GREENE MCMURTRY LLP</b> 365 Bay Street, Suite 200 Toronto, ON M5H 2V1</p> <p><b>Kyle Peterson / Michael Binetti</b> Tel: (416) 360-0327 / 360-0777 Fax: (416) 360-5960 Email: kpeterson@agmlawyers.com / mbinetti@agmlawyers.com</p> <p><b>Lawyers for MarshallZehr Group Inc.</b></p>	<p><b>BROWN BEATTIE O'DONOVAN LLP</b> 1600 – 380 Wellington Street London, ON N6A 5B5</p> <p><b>James Fisher</b> Tel: (519) 964-3163 Fax: (519) 679-6350 Email: jfisher@bbo.on.ca</p> <p><b>Lawyers for Allen Street Holdings Inc.</b></p>
<p><b>A. CONTE PROFESSIONAL CORPORATION</b> 242 Applewood Crescent, Unit 12, 2<sup>nd</sup> Floor Concord, ON L4K 4E5</p> <p><b>Antonio Conte</b> Tel: (416) 947-0208 Fax: (866) 543-3165</p>	<p><b>PALLET VALO LLP</b> 77 City Centre Drive, West Tower, Suite 300 Mississauga, ON L5B 1M5</p> <p><b>Anna Esposito</b> Tel: (905) 273-3022 x 260 Fax: (905) 273-6920</p>

<p>Email: a.conte@contelaw.ca</p> <p><b>Lawyers for Global Fire Protection Ltd.</b></p>	<p>Email: aesposito@pallettvalo.com</p> <p><b>Lawyers for Adlers Main Tile &amp; Carpet Co. Ltd. and 694643 Ontario Limited</b></p>
<p><b>KOSKIE MINSKY LLP</b> 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3</p> <p><b>Jeffrey Long</b> Tel: (416) 595-2125 Fax: (416) 204-2892 Email: jlong@kmlaw.ca</p> <p><b>Lawyers for J &amp; I Gaweda Construction Limited</b></p>	<p><b>PETKER &amp; ASSOCIATES</b> 295 Weber St. N. Waterloo, ON N2J 3H8</p> <p><b>Jarvis Postnikoff</b> Tel: (519) 886-1204 Fax: (519) 886-5674 Email: jarvis@petkerlaw.com</p> <p><b>Lawyer for Bast Home Comfort Inc.</b></p>
<p><b>PARENTE, BOREAN LLP</b> 3883 Highway 7, Suite 207 Woodbridge, ON L4L 6C1</p> <p><b>Gerard Borean</b> Tel: (905) 850-6066 Fax: (905) 850-6069 Email: gborean@parenteborean.com</p> <p><b>Lawyers for Frendel Kitchens Limited</b></p>	<p><b>CHODOLA REYNOLDS BINDER</b> 720 Walker Road Windsor, ON N8Y 2N3</p> <p><b>Robert Reynolds</b> Tel: (519) 254-6433 Fax: (519) 254-7990 Email: reynolds@crblaw.ca</p> <p><b>Lawyers for T.I.C. Contracting Ltd.</b></p>
<p><b>BARRY S. GREENBERG</b> 7626A Yonge Street Thornhill, ON L4J 1V9 Tel: (905) 886-9535 Ext. 27 Fax: (905) 886-9540 Email: bsgreenberg@rogers.com</p> <p><b>Lawyers for Weston Flooring Limited</b></p>	<p><b>CLARKS LLP</b> 1200 Canada Building , 374 Ouellette Avenue Windsor, ON N9A 1A8</p> <p><b>John Clark</b> Tel: (519) 254-4990 Fax: (519) 254-2294 Email: jtclark@clarkslaw.com</p> <p><b>Lawyers for Sam Tortoloa Enterprises Inc.</b></p>
<p><b>DOOLEY LUCENTI</b> 10 Checkley Street Barrie, ON L4N 1W1</p> <p><b>Eric Gionet</b> Tel: (705) 792-7963 Fax: (705) 792-7964 Email: egionet@dllaw.ca</p> <p><b>Lawyers for CRS Contractors Rental Supply General Partner Inc.</b></p>	<p><b>BISCEGLIA &amp; ASSOCIATES</b> 200-7941 Jane St. Concord, ON L4K 4L6</p> <p><b>Emillio Bisceglia</b> Tel: (905) 695-3100 Fax: (905) 695-5201 Email: ebisceglia@lawtoronto.com</p> <p><b>Lawyers for Hammerschlag &amp; Joffe Inc.</b></p>

<p><b>SIMPSONWIGLE LAW LLP</b> 1 Hunter Street East, Suite 200 Hamilton, ON L8N 3W1</p> <p><b>Derek Schmuck</b> Tel: (905) 528-8411 x 363 Fax: (905) 528-9008 Email: schmuckd@simpsonwigle.com</p> <p><b>Lawyers for Sereen Painting Ltd.</b></p>	<p><b>ECCLESTON LLP</b> Toronto Dominion Bank Tower, Ste. 4020, 66 Wellington St. W. PO Box 230, Stn. Toronto Dom. Toronto, ON M5K 1J3</p> <p><b>Ken Eccleston and Maurizio Artale</b> Tel: (416) 504-3364 / (416) 913-2043 Fax: (416) 504-2686 Email: ken@ecclestonllp.com / Maurizio@ecclestonllp.com</p> <p><b>Lawyers for Skyway Canada Limited</b></p>
<p><b>LEVINE, SHERKIN, BOUSSIDAN</b> 300-23 Lesmill Rd. North York, ON M3B 3P6</p> <p><b>Jeremy Sacks</b> Tel: (416) 224-2400 Fax: (416) 224-2408 Email: Jeremy@lsblaw.com</p> <p><b>Lawyes for Great Pyramid Aluminum Ltd.</b></p>	<p><b>HAMMOND FLESIAS</b> 3800 Steeles Ave. West, Suite 300 Woodbridge, ON L4L 4G9</p> <p><b>Richard Hammond</b> Tel: (905) 850-8550 Fax: (905) 850-9998 Email: rhammond@hammond flesias.com</p> <p><b>Lawyers for Brody Wall System Ltd.</b></p>
<p><b>MILLER THOMSON LLP</b> 60 Columbia Way, Suite 600 Markham, ON L3R 0C9</p> <p><b>Enzo Di Iorio / Riccardo Del Vecchio</b> Tel: (905) 415-6711 / (905) 415-6764 Fax: (905) 415-6777 Email: ediorio@millerthomson.com / rdelvecchio@millerthomson.com</p> <p><b>Lawyers for Global Precast Inc. and 2050491 Ontario Inc. o/a The Downsview Group</b></p>	<p><b>RUBIN &amp; CHRISTIE LLP</b> 219 Finch Avenue West - 2nd Floor Toronto, ON M2R 1M2</p> <p><b>David Rubin</b> Tel: (416) 361-0900 Fax: (416) 361-3459 Email: drubin@rubinchristie.ca</p> <p><b>Lawyers for DKS Stone Fabrication &amp; Design Inc.</b></p>
<p><b>SIMMONS DA SILVA LLP</b> Suite 200; 201 County Court Blvd Brampton, ON L6W 4L2</p> <p><b>Pathik Baxi</b> Tel: (905) 861-2822 Fax: (905) 457-5641 E-mail: pathik@sdslawfirm.com</p> <p><b>Lawyers for Clonard Group Inc.</b></p>	<p><b>CAPO, SGRO LLP</b> 400-7050 Weston Rd. Woodbridge, ON L4L 8G7</p> <p><b>Gregory Hemsworth</b> Tel: (905) 850-7000 Fax: (905) 850-7050 Email: ghemsworth@cslp.ca</p> <p><b>Lawyers for Aluminum Window Design Installations Inc.</b></p>

<p><b>GLAHOLT LLP</b> 141 Adelaide St West, Suite 800 Toronto, ON M5H 3L5</p> <p><b>Andrea Lee</b> Tel: (416) 368-8280 x 216 Fax: (416) 368-3467 Email: al@glaholt.com</p> <p><b>Lawyers for Turner Fleischer Architects Inc.</b></p>	<p><b>FARHOOD BOEHLER WINNY LLP</b> Marsland Center, 510-20 Erb Street West Waterloo, ON N2L 1T2</p> <p><b>Wayne Boehler</b> Tel: (519) 744-9949 Fax: (519) 744-7974 Email: wboehler@fblaw.ca</p> <p><b>Lawyers for Nelco Mechanical Limited</b></p>
<p><b>WILSON VUKELICH LLP</b> Valleywood Corporate Centre 60 Columbia Way, Suite 710 Markham, ON L3R 0C9</p> <p>Tel: (905) 940-8700 Fax: (905) 940-8785 Email: information@wvllp.ca</p> <p><b>Lawyers for 81 Capital Inc.</b></p>	<p><b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400, TD Centre Toronto, ON M5K 0A1</p> <p><b>Bill Deley</b> Tel: (416) 367-6834 Fax: (416) 863-4592 Email: bill.deley@dentons.com</p> <p><b>Lawyers for Atlas-Apex Roofing (Kitchener) Inc.</b></p>
<p><b>MACDONALD ASSOCIATES PC</b> 5 Wertheim Court, Suite 702 Richmond Hill, ON L4B 3H7</p> <p><b>Jason R. Allingham</b> Tel: (905) 731-6564 Fax: (905) 731-7989 Email: jallingham@maclawyers.ca</p> <p><b>Lawyers for HTS Engineering Ltd.</b></p>	<p><b>FARHOOD BOEHLER WINNY</b> Suite 510, 20 Erb Street West Waterloo, ON N2L 1T2</p> <p><b>Harley N.K. Yule</b> Tel: (519) 744-9949 ext. 27 Fax: (519) 744-7974 Email: HYule@fblaw.ca</p> <p><b>Lawyers for Re/Max Twin City Inc.</b></p>
<p><b>TORYS LLP</b> 79 Wellington St. W., 30th Floor Box 270, TD South Tower Toronto, ON M5K 1N2</p> <p><b>Adam Slavens</b> Tel: (416) 865-7333 Fax: (416) 865-7380 Email: aslavens@torys.com</p> <p><b>Lawyers for Tarion Warranty Corporation</b></p>	<p><b>DUNCAN, LINTON LLP</b> 45 Erb St. E. PO Box 457, Stn. Waterloo Waterloo, ON N2J 4B5</p> <p><b>Irwin Duncan</b> Tel: (519) 886-3340 Fax: (519) 886-8651 Email: iad@kwlaw.net</p> <p><b>Lawyers for Richard and Marilyn Magnussen, Joseph and Susan Siefried, Ryan and Laurie Cyrankiewicz, and AJ and Kerry Mueller</b></p>
<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b> Suite 3800, Royal Bank Plaza South Tower, 200 Bay Street, P.O. Box 84 Toronto, ON M5J 2Z4</p>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b> PO Box 620</p>

<p><b>Michael Tamblyn</b> Tel: (416) 202-6705 Fax: (416) 216-3930 Email: michael.tamblyn@nortonrosefulbright.com</p> <p><b>Lawyers for Lipton's Audio Video Unlimited</b></p>	<p>33 King Street West, 6th Floor Oshawa, ON L1H 8E9</p> <p><b>Kevin J. O'Hara</b> Tel: (905) 433-6934 Fax: (905) 436-451 Email: kevin.ohara@ontario.ca</p>
<p><b>SORBARA, SCHUMACHER, MCCANN LLP</b> 31 Union St. East Waterloo, ON N2J 1B8</p> <p><b>Justin Heimpel</b> Tel: (519) 741-8010 ext. 224 Fax: (519) 576-1184 Email: jheimpel@sorbaralaw.com</p> <p><b>Lawyers for Bulldog Rebar Inc. and the City of Waterloo</b></p>	<p><b>DEPARTMENT OF JUSTICE CANADA</b> Ontario Regional Office, Tax Law Services The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p><b>Rakhee Bhandari</b> Tel: (416) 952-8563 Fax: (416) 973-0810 Email: Rakhee.Bhandari@justice.gc.ca</p> <p><b>Lawyers for Canada Revenue Agency</b></p>
<p><b>REGIONAL MUNICIPALITY OF WATERLOO</b> 150 Frederick St., 8th Floor Kitchener, ON N2G 4J3</p> <p><b>Fiona M. McCrea - Solicitor, Property</b> Tel: (519) 575-4518 Fax: (519) 575-4466 Email: fmccrea@regionofwaterloo.ca</p>	<p><b>CITY OF WATERLOO</b> Waterloo City Centre 100 Regina Street South, PO Box 337 STN Waterloo Waterloo, ON N2J 4A8</p> <p><b>Steve Ross, Director, Legal Services</b> Tel: (519) 747-8758 Fax: (519) 747-8523 Email: Steve.Ross@waterloo.ca</p>
<p><b>MADORIN, SNYDER LLP</b> 55 King Street West, P.O. Box 1234 Kitchener, ON N2G 4G9</p> <p><b>Ted Dreyer and Christopher Clemmer</b> Tel: (519) 744-4491 Fax: (519) 741-8060 Email: edreyer@kw-law.com / cclemmer@kw-law.com</p> <p><b>Lawyers for Robert Coghill</b></p>	<p><b>GOWLING LAFLEUR HENDERSON</b> 50 Queen Street North, Suite 1020, PO Box 2248 Kitchener, ON N2H 6W2</p> <p><b>Ross Earnshaw</b> Tel: (519) 575-7525 Fax: (519) 571-5025 Email: ross.earnshaw@gowlings.com</p> <p><b>Lawyers for John Allen Miller and Douglas Jamieson Miller</b></p>
<p><b>JAMES SCHMIDT</b> 305 King Street West, . unit 1108 Kitchener ON N2G 1B9</p> <p>Tel: (519) 578-2115 Fax: (519) 578 1927 Email: mr.jsschmidt@rogers.com</p>	<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> 155 Wellington Street West Toronto, ON M5V 3J7</p> <p><b>Robin Schwill</b> Tel: (416) 863-5502 Fax: (416) 863-0871 Email: rschwill@dwvpv.com</p>

<p><b>Lawyer for Mirjana Radulovic and Jovan Bernard Marjanac</b></p>	<p><b>Lawyers for Certain Unit Purchasers represented by Robson Carpenter LLP</b></p>
<p><b>M.G.M. Paralegal Services</b> 19 Weber Street East Kitchener, ON N2H 1C2</p> <p><b>Nancy Gazzola</b> Tel: (226) 647-9206 Fax: (866) 300-8682 Email: mgmlegalservice@gmail.com</p> <p><b>Paralegals for Gregory Moore</b></p>	<p><b>MILLER THOMSON LLP</b> Accelerator Building 295 Hagey Blvd., Suite 300 Waterloo, ON N2L 6R5</p> <p><b>Judy A. Byrne</b> Tel: (519) 579-3660 Fax: (519) 743-2540 Email: jbyrne@millerthomson.com</p> <p><b>Lawyers for Gregory Moore</b></p>
<p><b>ERIC M. KRAUSHAAR LAW OFFICE</b> 5-620 Davenport Road Waterloo, ON N2V 2C2</p> <p><b>Eric M. Kraushaar</b> Tel: (519) 886-0088 Fax: (519) 746-1122 Email: Eric@churchill-homes.com</p> <p><b>Lawyers for Michael Herbert Robinson Williams</b></p>	<p><b>GOWLING LAFLEUR HENDERSON</b> 50 Queen Street North, Suite 1020, PO Box 2248 Kitchener, ON N2H 6W2</p> <p><b>Kenneth Hanbidge</b> Tel: (519) 569-4551 Fax: (519) 569-4051 Email: ken.hanbidge@gowlings.com</p> <p><b>Lawyers for Stephanie Lynn Pollard</b></p>
<p><b>BRYAN J. THAM</b> 127 Duke St. E. Kitchener, ON N2H 1A6 Tel: (519) 578-6476 Fax: (519) 578-6721 Email: bryan.tham@bellnet.ca</p> <p><b>Lawyer for Kam Fung Lam, and Cau Chac</b></p>	<p><b>VOLL &amp; SANTOS</b> 30 Spetz St. Kitchener, ON N2H 1K1</p> <p><b>Ana Santos</b> Tel: (519) 578-3400 Fax: (519) 578-9521 Email: asantos@vollandsantos.com</p> <p><b>Lawyer for Brian Santos</b></p>
<p><b>MADORIN, SNYDER LLP</b> 55 King Street West, P.O. Box 1234 Kitchener, ON N2G 4G9</p> <p><b>Tim McGowan</b> Tel: (519) 744-4491 Fax: (519) 741-8060 Email: tmcgowan@kw-law.com</p> <p><b>Lawyers for Elizabeth and William Wendt</b></p>	<p><b>GIESBRECHT, GRIFFIN, FUNK AND IRVINE</b> 60 College Street Kitchener, ON N2H 5A1</p> <p><b>Richard Strype</b> Tel: (519) 579-4300 x 264 Fax: (519) 579-8745 Email: rstrype@ggfilaw.com</p> <p><b>Lawyers for Joe Woodhouse</b></p>

<p><b>LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP</b> Suite 2600, 130 Adelaide Street West Toronto ON MSH 3P5</p> <p><b>Peter H. Griffin and Brian Kolenda</b> Tel: (416) 865-2921 / (416) 865-2897 Fax: (416) 865-3558 / (416) 865-9010 Email: pgriffin@litigate.com / bkolenda@litigate.com</p> <p><b>Lawyers for William Seegmiller</b></p>	<p><b>MCCARTER GRESPAN</b> 675 Riverbend Drive Kitchener, ON N2K 3S3 <b>David R. Fedy</b> Tel: (519) 571.8800 Ext. 215 Fax: (519) 742.1841 Email: dfedy@mgbwlaw.com</p> <p><b>Lawyers for William Seegmiller</b></p>
<p><b>HUSSEIN LAW OFFICE</b> 275 Lancaster Street West, 2nd Floor Kitchener, ON N2H 4V2</p> <p><b>Jessica Sipione</b> Tel: (519) 744-8585 Fax: (519) 744-8569 Email: jessica@vhlaw.ca</p> <p><b>Lawyers for Xiaoli Wang and Maochun Pan</b></p>	<p><b>WOLFE, SMITH &amp; FORSTER LLP</b> 140 St. Andrew St. W. PO Box 99, Stn. Main Fergus, ON N1M 2W7</p> <p><b>Deryk Smith</b> Tel: (519) 843-3650 Fax: (519) 843-6907 Email: smith@wolfelawfirm.com</p> <p><b>Lawyers for The Estate of Geoffrey Guy and Joann Louise Martin, Russ McEachnie and Rita McEachnie</b></p>
<p><b>CANADA REVENUE AGENCY</b> c/o Marko Bobar Tel: (416) 973-3720 Email: Marko.Bobar@cra.gc.ca</p>	<p><b>SAVARIA</b> 85 Bessemer Road London ON N6E 1P9</p> <p><b>Danielle Ryder</b> Tel: (519) 681-3311 ext 4231 Fax: (519) 681-3494 Email: danieller@savaria.com</p>
<p><b>ROBERT COGHILL</b> Email: bobcoghill@yahoo.com</p>	<p><b>OLIVER ROMANIUK</b> 182 Westwood Ave. Toronto, ON M4K 2B1 Tel: (416) 909-0521 Email: oliver.romaniuk@gmail.com</p>
<p><b>RUSSELL MCEACHNIE</b> Email: russell.mceachnie1@igprivatewealth.com</p>	<p><b>JOSEPH SIEFRIED</b> Email: krellafireplaces@hotmail.com</p>
<p><b>81 CAPITAL INC.</b> c/o Neil Cruickshank - neilc@maxium.net and John Nassar - john.nassar@81capital.com</p>	



**ONTARIO  
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(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
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**FACTUM OF THE TRUSTEE**  
(motion for Advice and Directions)  
(returnable October 16, 2015)

**PART I – NATURE OF MOTION AND OVERVIEW**

1. This factum is filed by Collins Barrow Toronto Limited, in its capacity as Court-appointed *Construction Lien Act* (Ontario) trustee (the “Trustee”) with respect to certain lands and premises owned by 144 Park Ltd. (“144”), in connection with its motion for advice and directions with respect to its ability, if necessary, to terminate agreements of purchase and sale (“APS”) due to there being insufficient parking units at the 144 Park Project (as defined below).

2. The 144 Park Project is a 19 story condominium tower that contains, *inter alia*, 148 residential units and 149 parking units. Prior to the Trustee’s appointment, 144 had entered into APSs in respect of 128 residential units that provided for 154 parking units to be transferred to the purchasers, being 5 more parking units than exist in the project. Certain purchasers agreed to

purchase two parking units with their residential unit. There were also 20 unsold units, and no parking had been allocated to these units.

3. The Trustee has closed 97 of the 128 sale transactions entered into by 144, with 98 of the 149 parking units being transferred to purchasers. 29 of the 128 sale transactions have not closed to date, and 2 were terminated due to purchaser defaults.

4. If the 29 remaining sale transactions are closed by the Trustee pursuant to the terms of their APSs, it would require 42 of the 51 remaining parking units to be transferred to the purchasers, leaving only 9 parking units available in the 144 Park Project to be sold with the remaining 22 unsold units.

5. The Trustee has obtained the opinion of a qualified real estate brokerage firm that selling the unsold units with no parking will negatively impact the Trustee's ability to sell those units, and to the extent that they can be sold, their realizable value without parking will likely be over approximately \$3.7 million less than their fair market value with one parking unit.

6. The mortgagees and the construction lien claimants of the 144 Park Project are expected to suffer shortfalls on their secured claims, and selling the unsold units without parking will likely significantly increase such shortfalls.

7. The Trustee has expended significant time and resources in an attempt to find a solution for the parking situation at the 144 Park Project. Unfortunately, there appears to be no solution that is acceptable to all affected parties.

8. In the Trustee's view, balancing the interests of the various stakeholders, the most fair and equitable option in the circumstances is for the Trustee to be authorized to terminate the

APs with the purchasers that agreed to purchase two parking units, unless such purchasers are prepared to close the transactions with one parking unit, with a reduction in the purchase price by the price payable for a single parking unit.

9. By proceeding in this manner, there will be one parking unit available for each residential unit purchaser and proceeds of realization will be maximized. The prejudice faced by purchasers of two parking spots will be mitigated by purchasers who require a second parking unit having the ability to lease a temporary parking unit until other arrangements can be made, and having the ability to purchase a parking unit in an adjoining second condominium tower. In the event the Trustee is required to terminate sale agreements, any deposit monies still being held in trust will be returned to the purchasers and they will have the opportunity to make a claim to Aviva for the return of deposits that were released to 144.

10. There is no outstanding issue with respect to reallocation of parking units. In the event that the Trustee is required to close the remaining 29 sale transactions pursuant to their terms, such purchasers will have the ability to acquire the original parking units allocated to them. In the event that the Trustee has the ability to terminate the sale agreements, there will also be no issue regarding reallocation.

11. In the circumstances, the Trustee respectfully requests that it be authorized to, if necessary, terminate the APs with purchasers that agreed to purchase two parking units.

## PART II – FACTS

### The Property

12. 144 was the registered owner of lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario (the “**Property**”).

Motion Record of the Trustee, Tab 2, Fourth Report of the Trustee dated September 25, 2015 (the “**Fourth Report**”), paras. 1 and 4.

13. The Property was acquired for the purpose of developing and constructing a 19 story residential condominium tower (the “**144 Park Project**”).

Fourth Report, para. 5.

14. In 2011 and 2012, the lands immediately east of the Property and known municipally as 155 Caroline Street, Waterloo, Ontario (the “**155 Caroline Lands**”), were purchased by One 55 Mady Ltd. (“**One 55**”), a related company to 144, with the intention of developing a second residential condominium tower (the “**155 Uptown Project**”).

Fourth Report, para. 14

15. It was the intention of the MADY Group of companies (“**MADY**”), which 144 and One 55 were a part of, that the 144 Park Project and the 155 Uptown Project would have joined parking garages and would share certain facilities, as evidenced in the condominium Declaration registered for the 144 Park Project.

Fourth Report, para. 15.

Appointment of the Trustee

16. The Trustee was appointed on January 25, 2015 pursuant to the Order of Mr. Justice Penny (the “**Appointment Order**”). Pursuant to the terms of the Appointment Order:

- (a) the Trustee has been empowered and authorized to:
  - (i) act as receiver and manager of the Property;
  - (ii) preserve and protect the Property;
  - (iii) complete and register the condominium Declaration for the 144 Park Project;
  - (iv) complete the existing agreements of purchase and sale for the pre-sold condominium units;
- (b) the Trustee may apply to the Court for advice and directions in the discharge of its powers and duties under the Appointment Order.

Fourth Report, Appendix “A” – Appointment Order, paras. 3 and 31.

Registration of the Declaration

17. 144 was not in a position to register the condominium Declaration for the 144 Park Project prior to the Trustee’s appointment as a result of its insolvency and the registration of numerous construction liens. The Declaration for the 144 Park Project was ultimately registered on May 25, 2015.

Fourth Report, paras. 16-17.

18. As a result of the registration of the Declaration, the 144 Park Project is comprised of, among other things:

- (a) 148 residential units;
- (b) 149 parking units; and
- (c) 10 units that may be used as temporary parking units (collectively, the “**Temporary Parking Units**”) until the 155 Uptown Project is constructed.

Fourth Report, paras 18 and 20.

#### Sale of Residential Units

19. 144 began selling residential units for the 144 Park Project in the spring of 2009. 144 used a standard form APS for the sale transactions.

Fourth Report, para. 13 and 22.

20. Pursuant to the preamble to the APS, a purchaser is agreeing to purchase a specific residential unit, together with:

“● Parking Unit(s) and ● Locker Unit(s), all of which shall be allocated by the Vendor in its sole discretion...”

Fourth Report, para. 23 and Appendix “G” - APS

21. Pursuant to section 15 of the APS:

“The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time...”

Fourth Report, para. 24.

22. Pursuant to section 16 of the APS:

“The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement of a caution, certificate of pending litigation, Purchaser’s Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium., and further agrees not to give, register or permit to be registered any encumbrance against the Property, Unit or the Condominium...”

Fourth Report, para. 25.

23. 144 entered into APSs for the sale of 128 of the 148 residential units. 20 residential units remain unsold.<sup>1</sup>

Fourth Report, para. 26.

24. 144 agreed to convey 154 parking units to purchasers of the 128 pre-sold residential units. The purchasers include twenty five (25) purchasers who agreed to purchase two parking units for a single residential unit (collectively, the “**Two Parking Unit Purchasers**”).

Fourth Report, para. 28.

25. As there are only 149 parking units in the 144 Park Project, 144 agreed to convey 5 more parking units than exist in the project. As a result, there were insufficient parking units available for the 128 purchasers, and no parking available for purchasers of the 20 unsold units.

Fourth Report, para. 31.

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<sup>1</sup> 144 had actually entered into agreements of purchase and sale for 129 residential units. One agreement was entered into by 144 with a construction lien claimant for no cash consideration. This agreement was terminated by the Trustee in accordance with the Order of Mr. Justice McEwen dated April 30, 2015.

26. The Trustee understands that it was originally intended by MADY that parking units in the 155 Uptown Project would be available to be transferred to residents in the 144 Park Project.

Fourth Report, para. 32.

27. Between July 7, 2015 and September 24, 2015, the Trustee closed the sale of 97 of the 128 pre-sale transactions, including 98 of the 149 permanent parking units.<sup>2</sup>

Fourth Report, paras. 43 and 47

28. The Trustee was in a position to close these transactions as result of, among other things, 12 of the 25 Two Parking Unit Purchasers agreeing to relinquish one of their parking units for a reduction in the purchase price of their sale transaction by the amount of \$33,900 (inclusive of HST), which is the purchase price payable by a purchase for a parking unit.

Fourth Report, paras. 43-46.

#### Parking Situation

29. There remain 51 residential units that have yet to close or be sold, and also 51 permanent parking units in the 144 Park Project.

Fourth Report, para. 73.

30. 29 of the 128 pre-sale transactions have not closed to date. If the 29 remaining sale transactions were closed by the Trustee pursuant to the terms of their APSs, it would require 42

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<sup>2</sup> One purchaser received two parking units on closing, as his sale transaction involved the combination of two residential units into a single larger unit.



of the 51 parking units to be transferred to the purchasers, leaving only 9 parking units available in the 144 Park Project to be sold with the 22 unsold units.<sup>3</sup>

Fourth Report, paras. 49 and 74.

31. Laurentian Bank of Canada, the first mortgagee of the Property, and MarshallZehr Group Inc., the third mortgagee of the Property, oppose the Trustee completing the 29 sale transactions pursuant to the terms of their APSs and leaving only 9 parking units for the 22 unsold units.

Supplement to the Fourth Report of the Trustee dated October 13, 2015,  
Appendix "C" – Chart re Answers to Written Interrogatories, answer to q. 2

#### Need for Parking Units for the Unsold Units

32. Mint Realty Inc. Brokerage ("**Mint Realty**") has provided a report to the Trustee that sets out the estimated market value of the 20 original unsold units, with a comparison between the market value without parking units, and the market value if one parking unit was allocated to each of the 20 original unsold units.

Fourth Report, para. 59.

33. The Mint Realty report states that:

"... there is no commercial evidence to support that these Condominiums are and will be salable in the Kitchener/Waterloo market without Parking. The Kitchener/Waterloo market is conservative in nature and generally unwilling to take unnecessary risk. It should be further noted that the majority of the market values without Parking have been derived using a rental cash flow analysis and actual market values achievable on the resale market could be substantially lower. We are also of the belief that although the three Brownstone units (102, 106, 107) and two Grand Penthouse Units (1903, 1904) have been valued to reflect a

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<sup>3</sup> There were originally 20 unsold units. However, as a result of purchaser defaults in two of the pre-sold transactions, there are now 22 units to be sold by the Trustee.

reasonable discount when Parking is not included, these Condominiums are likely “not saleable” given the end user nature of the product, reduced utility and appeal among the target market and the cost to carry for an investor given the higher municipal taxes and condominium fees.”

Fourth Report, para. 60.

34. Notwithstanding its view that it will be difficult to sell the 20 unsold units without parking, Mint Realty estimated that the best case scenario would be that total market value of the 20 unsold units without parking units would be approximately \$3.78 million less than the estimated total market value of the 20 unsold units if each unsold unit received one parking unit.

Fourth Report, para. 61.

#### Parking Options

35. In an effort to resolve the parking shortage, the Trustee, *inter alia*:

- (a) held a “town hall” meeting with impacted purchasers to discuss the parking situation at the 144 Park Project;
- (b) wrote to each purchaser that had closed a sale transaction with one parking unit to confirm whether they would be interested in selling or leasing their parking unit. The Trustee only received one response from a purchaser interested in leasing her parking unit;
- (c) contacted One 55 to confirm whether temporary parking could be arranged on the 155 Caroline Lands. One 55 was not in a position to provide for such temporary parking as it is in the process of selling the 155 Caroline Lands;

- (d) has investigated the possibility of having angled parking stalls along Allen Street and was informed by the City of Waterloo that such parking stalls were not feasible; and
- (e) has proposed that the Remaining Two Parking Unit Purchasers agree to relinquish one parking unit in exchange for a reduction of \$33,900 in the purchase price and the ability of purchasers who require a second parking unit to lease a Temporary Park Unit until such time as the 155 Uptown Project is completed.

Fourth Report, paras. 34, 35, and 62-69.

36. The Trustee understands that One 55 has entered into an agreement to sell the 155 Caroline Lands to a developer that intends to construct the 155 Uptown Project. This sale transaction is scheduled to close on October 23, 2015. The Trustee has been informed by Mint Realty, which is involved with the potential sale of the 155 Caroline Lands, that it is intended there will be a number of parking units available for sale in the 155 Uptown Project once completed for purchasers of units in the 144 Park Project.

Fourth Report, para. 71. and Supplemental Report, Appendix "F" – Chart re Answers to Further Written Interrogators, answer to q. 2.

37. The Trustee's view is that, in balancing the interests of the various stakeholders, the most appropriate option in the circumstances is for the Trustee to be authorized to terminate the APSs with the Remaining Two Parking Unit Purchasers, unless such purchasers are prepared to close the transactions with one parking unit, with a reduction in the purchase price by \$33,900 for the parking unit.

Fourth Report, para. 76.

38. If the Trustee closes the sale transactions with the Remaining Two Parking Unit Purchasers with each purchaser having one parking unit, each of the 22 unsold units will have one parking unit.

Fourth Report, para. 77.

39. In addition, the Remaining Two Parking Unit Purchasers that close on the basis of one parking unit may have the opportunity to:

- (a) lease a Temporary Parking Unit until such time as the Temporary Parking Units are no longer available due to the construction of the 155 Uptown Project; and
- (b) purchase a parking unit in the 155 Uptown Project from the developer. If the 155 Uptown Project does not proceed, the Temporary Parking Units may be converted to permanent parking units by amending the Declaration to provide for this change. In this event, these parking units would be sold to interested purchasers.

Fourth Report, paras. 77-79.

40. In the event that APSs are terminated by the Trustee, with or without consent of the purchasers, the purchasers would receive any deposit monies that are still being held in trust. Additionally, the purchasers would have the ability to make a claim for any deposit monies that were released to 144 and are secured by the bond provided by Aviva Insurance Company of Canada (“Aviva”).

41. The Trustee understands that Aviva would look to recover any amounts it has to pay out to purchasers from funds being held and/or net sale proceeds on account of its mortgage over the

144 Park Project. Any upgrade monies paid directly to 144 by purchasers will not be reimbursed and will constitute an unsecured claim against 144.

Fourth Report, para. 80 and Supplemental Report, Appendix “E”, answer to q. 8.

### **PART III – ISSUE**

- (a) Should the Court authorize the Trustee to terminate the APSSs with the Remaining Two Parking Unit Purchasers, if necessary?

### **PART IV – LAW AND ARGUMENT**

#### Power of Receiver to Terminate or Disclaim an Agreement

42. The Trustee was appointed pursuant to section 68 of the *CLA*, which provides, in subparagraph (2), that, “[s]ubject to the supervision and direction of the court, a trustee appointed under subsection (1) may, (a) act as receiver and manager...”

*CLA*, s. 68(1)

43. Pursuant to paragraph 3 of the Appointment Order, the Trustee has been authorized and empowered to act as receiver and manager of the Property and to take any steps reasonably incidental to the exercise of these powers.

44. There is ample authority for the principle that a Court-appointed receiver has the ability to terminate or disclaim contracts that were entered into by the debtor prior to the receiver’s appointment. In *The 2015 Annotated Bankruptcy and Insolvency Act*, the learned authors state that:

“A court-appointed receiver is not bound by existing contracts made by the debtor”

L.W. Houlden, G.B. Morawetz & J.P. Sarra, *The 2015 Annotated Bankruptcy and Insolvency Act*, L§30, p. 1079

45. In *Bennett on Receiverships*, the author states that:

“In a court-appointed receivership, the receiver is not bound by existing contracts made by the debtor, nor is the receiver personally liable for the performance of those contracts entered into before the receivership.”

F. Bennett, *Bennett on Receiverships, 2nd Ed.*, pp. 341-342

46. The excerpt from *Bennett on Receiverships* was adopted by, *inter alia*, the Court of Queen’s Bench of Alberta in *Bank of Montreal v. Scaffold Connection Corp.*, 2002 CarswellAlta 932, the British Columbia Court of Appeal in *New Skeena Forest Products Inc. v. Kitwanga Lumber Co.*, 2005 CarswellBC 578, and the British Columbia Supreme Court in *Pope & Talbot Ltd., Re*, 2008 CarswellBC 1726. All of these cases stand for the principle that a receiver is not bound by existing contracts made by the debtor and may be authorized by a court to terminate or disclaim an agreement entered into by a debtor prior to the receiver’s appointment.

*Bank of Montreal v. Scaffold Connection Corp.*, 2002 CarswellAlta 932 (QB), paras. 1-11; *New Skeena Forest Products Inc. v. Kitwanga Lumber Co.*, 2005 CarswellBC 578 (CA), paras. 2, 7, 15-20; *Pope & Talbot Ltd., Re*, 2008 CarswellBC 1726, paras. 1-10, 14-15, 17, 21-22 and 32;

47. The APSs with the Remaining Two Parking Unit Purchasers concern the proposed sale of real property to the purchasers. In *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 CarswellOnt 10743 (“*Firm Capital*”), this Court specifically considered the ability of a court-appointed receiver to terminate pre-existing sale agreements with respect to real property.

48. In *Firm Capital*, a receiver had been appointed by the Court over an unregistered condominium project. A number of units had been pre-sold to purchasers, some of which were occupying the units. Additionally, the debtor had entered into a number of leases, and certain tenants invested significant amounts for leasehold improvements. The receiver brought a motion seeking authorization to market and sell the property and to terminate the existing sale agreements and leases.

*Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 CarswellOnt 10743 (SCJ) ("*Firm Capital*"), paras. 1-7

49. All of the sale agreements contained clauses expressly subordinating the purchasers' interests thereunder to the mortgagee. The mortgage had been registered prior to the time when the sale agreements had been entered into and was in default. Additionally, the sale agreements provided that the purchaser did not have an interest in the unit.

*Firm Capital*, paras. 5, 6 10 and 26

50. Justice Morawetz (as he then was) held that the mortgagee had legal priority over the interests of the purchasers. Justice Morawetz went on to note that it was necessary for the receiver to take into account equitable considerations of all stakeholders before disclaiming or terminating the contracts. The remaining question was whether there were any equities in favour of the purchasers that would justify overriding the first mortgagee's legal priority rights. The mortgagee argued that the equitable considerations with respect to the purchasers were limited, and cited that certain of the purchasers had only paid deposits that were still being held in trust. With respect to this category of purchasers, Justice Morawetz noted that:

“... it seems to me that these purchasers would be entitled to the return of their deposits held in trust if the Sale Agreements are terminated and they will not incur any significant financial losses.”

*Firm Capital*, paras. 27 and 31-38

51. Justice Morawetz concluded that the equities did not favour the purchasers, as they had the remedy to receive back their original deposits, and granted the receiver’s motion to terminate or disclaim the contracts.

*Firm Capital*, para. 38

52. In *Re Jade-Kennedy Development Corporation (“Jade-Kennedy”)*, a court appointed *Construction Lien Act* trustee brought a motion for an order authorizing it to terminate or disclaim two residential agreements of purchase and sale, which the trustee believed were completed with sale prices that were below market value. The trustee argued that a court appointed receiver was not bound by existing contracts made by the debtor.

53. The Court was satisfied that, as receiver and manager, the trustee was not bound by the existing agreements. However, the Court held that the trustee could not arbitrarily terminate them, and must terminate them in a fair and proper manner.

54. The Court reviewed Justice Morawetz’s decision in *Firm Capital*, and noted that in considering the receiver’s right to terminate the purchase agreements, it was necessary for the receiver to take into account the equitable considerations of all stakeholders. In that case, the Court was of the view that the trustee’s decision to terminate the agreements was appropriate having regard to the interests of all stakeholders.

*Re Jade-Kennedy Development Corporation*, Endorsement of Mr. Justice Pattillo dated June 4, 2015, Court File No. CV15-10882-00CL



55. The Trustee respectfully submits that the case before the Court is similar to *Firm Capital and Jade-Kennedy*. In each case, the agreements in question specifically provided that the purchasers had no interest in land and that any interest they do have is subordinated to the interest of the mortgagees.

56. In *Firm Capital and Jade-Kennedy*, the Court determined that, in balancing the equities, the equities were in favour of terminating the sale agreements. The Trustee submits that the equities in the case before the Court are also in favour of terminating the APSs with the Remaining Two Parking Unit Purchasers.

57. If the Trustee was ordered to complete the existing sale transactions, there will only be 9 parking units available to be sold with the 22 unsold units. Mint Realty has provided its opinion that it will be difficult for the Trustee to sell such units without parking units, and in the event that such sales can be completed, there would be a significant reduction in the realizable value of the units.

58. Proceeding in this manner would be very prejudicial to the mortgagees and construction lien claimants of the 144 Park Project, as it will increase their anticipated shortfall on their security.

59. If the Court authorizes the Trustee to terminate the APSs with the Remaining Two Parking Unit Purchasers, such purchasers may have an opportunity to lease a Temporary Parking Unit and purchase a parking unit in the 155 Uptown Project when it is completed.

**PART V – RELIEF REQUESTED**

60. The Trustee respectfully requests that the Court grant an order authorizing it, if necessary, to terminate or disclaim the APSs with the Remaining Two Parking Unit Purchasers.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**



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**Harvey Chaiton and Sam  
Rappos**  
CHAITONS LLP  
5000 Yonge Street,  
10th Floor  
Toronto, ON, M2N 7E9

**Lawyers for the Trustee**

## SCHEDULE "A"

### STATUTORY AUTHORITIES

#### Application for appointment of trustee

68. (1) Any person having a lien, or any other person having an interest in the premises, may apply to the court for the appointment of a trustee and the court may appoint a trustee upon such terms as to the giving of security or otherwise as the court considers appropriate.

#### Powers of trustee

(2) Subject to the supervision and direction of the court, a trustee appointed under subsection (1) may,

- (a) act as a receiver and manager and, subject to the *Planning Act* and the approval of the court, mortgage, sell or lease the premises or any part thereof;
- (b) complete or partially complete the improvement;
- (c) take appropriate steps for the preservation of the premises; and
- (d) subject to the approval of the court, take such other steps as are appropriate in the circumstances.

#### Liens a charge on amounts recovered

(3) Subject to subsection 78 (7), all liens shall be a charge upon any amount recovered by the trustee after payment of the reasonable business expenses and management costs incurred by the trustee in the exercise of any power under subsection (2). R.S.O. 1990, c. C.30, s. 68 (3).

#### Sale subject to encumbrances

(4) Any interest in the premises that is to be sold may be offered for sale subject to any mortgage, charge, interest or other encumbrance that the court directs.

**Orders for completion of sale, etc.**

(5) The court may make all orders necessary for the completion of any mortgage, lease or sale by a trustee under this section.

...

## SCHEDULE "B"

### CASE AUTHORITIES

1. *Bank of Montreal v. Scaffold Connection Corp.*, 2002 CarswellAlta 932 (QB)
2. *New Skeena Forest Products Inc. v. Kitwanga Lumber Co.*, 2005 CarswellBC 578 (CA)
3. *Pope & Talbot Ltd., Re*, 2008 CarswellBC 1726 (SC)
4. *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 CarswellOnt 10743 (SCJ)
5. *Re Jade-Kennedy Development Corporation*, Endorsement of Mr. Justice Pattillo dated June 4, 2015, Court File No. CV15-10882-00CL

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10843-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

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**FACTUM OF THE TRUSTEE**  
(re motion for Advice and Directions)  
(motion returnable October 16, 2015)

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**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos (LSUC #51399S)**  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

**Lawyers for the Trustee**