

**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**

EIGHTH REPORT OF THE TRUSTEE

May 6, 2016

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INTRODUCTION AND PURPOSE OF REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”). The Appointment Order authorized the Trustee, among other things, to complete the sale of units and to execute, issue, sign and endorse documents of whatever nature in respect of the Property, whether in the Trustee’s name or in the name and on behalf of the Applicant. A copy of the Appointment Order is attached as Exhibit A to the affidavit of Cecil Hayes sworn May 4, 2016 (the “**Hayes Affidavit**”).
2. On January 23, 2015, following the granting of the Appointment Order, MarshallZehr Group Inc. (“**MZ**”), the third mortgagee of the Property, entered into an agreement with Laurentian Bank of Canada (“**LBC**”) to acquire all of the debt and security associated with LBC’s first ranking mortgage over the Property (the “**LBC Mortgage**”), which assignment (the “**LBC Assignment Agreement**”) was agreed to by 144 Park. The LBC Assignment Agreement was to be effective 45 days after the Trustee distributed the net proceeds from the sale of 110 units, which was done in or about February 2016. A copy of the LBC Assignment Agreement is attached to the Hayes Affidavit as Exhibit D.
3. The Trustee understands that after a number of extensions to the LBC Assignment Agreement, LBC and MZ now wish to proceed with completion of the assignment. As part of the LBC Assignment Agreement, MZ and LBC wish to amend the terms of the LBC Mortgage through the execution by the Trustee, on behalf of 144 Park, of a facility amending agreement (the “**Loan Amending Agreement**”).

Purpose of Report

4. This Eighth Report of the Trustee (the “**Eighth Report**”) has been prepared in connection with a motion by MZ to obtain an Order authorizing and directing the Trustee to execute the Loan Amending Agreement on behalf of 144 Park.

TERMS OF REFERENCE

5. In preparing this Eighth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park, discussions with management and employees of 144 Park and other companies within the MADY group of companies, and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Eighth Report may refer to, or is based on, the Information. As the Information has been provided by 144 Park, or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

BACKGROUND

6. As has been previously reported to the Court, the Property was acquired by 144 Park in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 148 residential units and 1 guest unit.
7. As of the date of the Trustee’s appointment, 144 Park had entered into agreements of purchase and sale (“**Sale Agreements**”) with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers.

8. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of the Honourable Mr. Justice McEwen dated April 29, 2015.
9. As a result, there were 128 units that were the subject of Sale Agreements with 144 Park, and twenty (20) unsold units.
10. Pursuant to the Order of Justice Newbould dated August 5, 2015, the Trustee was authorized to engage Mint Realty Inc. Brokerage ("**Mint Realty**") to market any or all of the 20 unsold units (the "**Unsold Units**").
11. Pursuant to the Order of the Honourable Madam Justice Mesbur dated December 3, 2015, the Trustee was authorized to engage Mint Realty to market any units where the Sale Agreements had been terminated by the Trustee due to purchaser defaults or on consent of the parties.

SECURED LENDERS

12. At the outset of the Trustee's appointment, the Property was subject to the mortgages set out below:
 - a) a first mortgage in favour of LBC on its own behalf and on behalf of National Bank of Canada, then securing the principal amount of approximately \$39 million (the "**LBC Mortgage**");
 - b) a second mortgage in favour of Aviva Insurance Company of Canada ("**Aviva**"), then in the principal amount of \$8,500,000 (the "**Aviva Charge**");
 - c) a third mortgage in favour of MZ, then securing the principal amount of approximately \$3 million (the "**MZ Mortgage**"); and

- d) a fourth mortgage in favour of Allen Street Holdings Inc., then securing a promissory note in the principal amount of \$3 million by way of a vendor take-back mortgage.
13. At the time of the Trustee's appointment, there were 17 construction lien claims in the total amount of approximately \$3 million which had been registered against the Property (collectively, the "**Lien Claims**").

Lien Claims and Priority Resolution Process

14. Pursuant to the Court Order (re Construction Lien Claims Process) dated April 23, 2015, the Trustee was authorized and directed to implement and administer a construction lien claims process (the "**Construction Lien Claims Process**").
15. Pursuant to the Construction Lien Claims Process, registered Lien Claims against the Property totaled approximately \$4.3 million. In order to commence making distributions to the mortgagees from realizations, the Trustee proposed to holdback \$5.4 million (the "**Lien Claim Reserve**") pending further Order of the Court, which amounts represented approximately 125% of the total face amount of the Lien Claims.
16. By the end of September 2015, the Trustee satisfied itself with regard to certain of the Lien Claims submitted to it and sought an Order of the Court authorizing it to pay \$932,949 of holdback funds (the "**First Holdback Payment**") to certain lien claimants from the Lien Claim Reserve as it had been determined that the holdback amounts claimed by lien claimants ranked in priority to LBC as first mortgagee of the Property. On October 16, 2015, the Court granted an Order authorizing the Trustee to pay the First Holdback Payment.
17. As the Construction Lien Claims Process continued, the Trustee satisfied itself with certain further Lien Claims submitted to it and sought an Order of the Court that it grant an Order authorizing it to pay \$305,238 of holdback funds (the "**Second Holdback Payment**") to certain lien claimants from the Lien Claim Reserve. On December 3,

2015, the Court granted an Order authorizing the Trustee to pay the Second Holdback Payment.

18. Certain lien claimants asserted that the Lien Claims, in their entirety, may rank in priority to the LBC Mortgage. In order to address this issue, the Trustee sought an Order from the Court to establish a process whereby lien claimants could assert a priority claim to the LBC Mortgage, if they believed that the information to be provided by LBC and the Trustee warranted same.
19. Pursuant to the Order (Priority Resolution Process) of Justice Mesbur dated January 11, 2016 (the “**Priority Resolution Process Order**”), the Court approved a process to determine the priority of claims of the construction lien claimants and Laurentian Bank of Canada to the remaining funds being held by the Trustee. A copy of the Priority Resolution Process Order is attached hereto as **Appendix “A”**.
20. Pursuant to paragraph 1(a) (ii) of the Priority Resolution Process Order, the Trustee was required to serve a report that:
 - a) provided a statement of receipts and disbursements as at the date of the report that included, among other things, the amount of proceeds held by the Trustee; and
 - b) an estimate of the realizable net sale proceeds from the sale and closing of the remaining unsold residential condominium units, parking units and locker units.
21. A copy of the Trustee’s report dated January 13, 2016 is attached hereto as **Appendix “B”**.
22. Any lien claimant wishing to assert a priority claim over the LBC Mortgage beyond the basic holdback amount was required to assert such priority claim and provide supporting documentation by January 29, 2016 (the “**Bar Date**”). No lien claimants submitted documentation to the Trustee asserting a priority claim over the LBC Mortgage by the

Bar Date. Although there has been no formal claims process established by the Court to do so, no lien claimants have asserted priority claims over the Aviva Mortgage or the MZ Mortgage.

23. The Trustee continues to hold \$208,072 in the Lien Claim Reserve. This amount relates to claims for holdback by three lien claimants. The Trustee is continuing to discuss the claims for holdback of two lien claimants with their legal counsel and while the third lien claim has been agreed to, the Trustee has yet to obtain authorization from the Court to pay the third lien claimant. All other lien claimants have been paid their holdback amounts and the Trustee has not been contacted by any other parties claiming or asserting liens over the Property that have not yet been addressed.

NET REALIZATIONS AND DISTRIBUTIONS TO DATE

Sold Units

24. As noted above, there were 128 units that were subject to Sale Agreements that the Trustee was authorized to take steps to close pursuant to the Appointment Order (the “**Sold Units**”).
25. As of the date of this Eighth Report, the Trustee has closed the sale of 119 of the 128 Sold Units and 2 of the Unsold Units (collectively, the “**Units**”).
26. A copy of the Trustee’s statement of receipts and disbursements as at April 30, 2016 (the “**R&D Statement**”) is attached hereto as **Appendix “C”**.
27. As set out in the R&D Statement, the sale of the 121 Units generated gross sale proceeds of approximately \$37,161,862, which includes closing proceeds of \$32,907,970, HST collected of \$3,225,582, property taxes collected of \$563,011 and upgrade revenues of \$465,299. Additional realizations from other sources total \$1,845,378 for total realizations of \$39,007,240. Total disbursements including, among other things, professional fees, repairs and maintenance, harmonized sales tax remitted to Canada

Revenue Agency, common area fees paid to Waterloo Standard Condominium Corporation 591 (the “**Condominium Corporation**”) and property taxes paid to the City of Waterloo, are \$7,584,015. Receipts in excess of disbursements as at April 30, 2016, prior to taking into account distributions made to mortgagees and lien claimants, total \$31,423,225.

28. As set out in the R&D Statement and pursuant to various Orders of the Court authorizing it to do so, the Trustee has distributed \$27,660,000 to LBC and \$1,238,186 to lien claimants. The Trustee’s book balance of cash as at April 30, 2016 totals \$2,525,039. Known accrued expenses to be paid by the Trustee total approximately \$538,000. After making these payments, the Trustee intends to distribute a further approximately \$1 million to LBC.

Estimated Net Sale Proceeds re Remaining Units

29. Based on information received from Mint Realty regarding the listing prices and salability of the remaining 27 Units, estimates of administration costs, including repairs and maintenance, property taxes and professional fees, among other things, the Trustee estimates that there will be further net realizations of approximately \$11.5 to \$12.5 million, before taking into account any required reductions to listing prices of Units, other incentives to sell Units or unforeseen additional costs. The Trustee’s estimate of further net realizations includes approximately \$2.7 million held by 144 Park’s condominium lawyers, Harris Sheaffer LLP (“**HS**”), as collateral security for Tarion Warranty Corporation’s (“**Tarion**”) warranty obligations pursuant to the *Ontario New Home Warranties Plan Act*.
30. Based on the estimated net realizations from the sale of the remaining Units, MZ will not be fully repaid under the MZ Mortgage.
31. The Trustee has rectified substantially all, if not all, in-suite deficiencies in the Property and is continuing at this time to work with the Condominium Corporation and its board of directors and Tarion to address common area deficiencies noted by the Condominium

Corporation's performance auditor. The Trustee has yet to obtain an estimate of the total cost to rectify all deficiencies, which estimate is currently being developed by the Trustee's general contractor.

LOAN AMENDING AGREEMENT

32. As stated previously herein, MZ and LBC are desirous of completing the LBC Assignment Agreement, which includes 144 Park Ltd. entering into the Loan Amending Agreement, a copy of which is attached as Exhibit E to the Hayes Affidavit.
33. A summary of the salient terms of the Loan Amending Agreement are set out below:
 - a) The aggregate indebtedness owed to LBC by 144 Park Ltd. ("**144 Park**") totals \$13,441,437 (the "**Loan**") under an existing commitment letter (the "**Existing Commitment Letter**") between 144 Park and LBC;
 - b) The Loan and underlying security, as set out under the Existing Commitment Letter have or will be assigned to MZ, pursuant to the terms of the LBC Assignment Agreement;
 - c) Certain lenders may be solicited to participate in the Loan from time to time and MZ intends to act as servicer of the Loan for these lenders;
 - d) The Loan is to be divided into two tranches. Tranche A, which will be payable to LBC, will be in the amount of approximately \$8.4 million and bear an interest rate of prime + 1.75% per annum. Tranche B, which will be payable to MZ as servicer, will be in the amount of approximately \$5 million and bear an interest rate of 14.4% per annum;
 - e) Distributions from net realizations will be made periodically by the Trustee, at its discretion. Distributions are to be made to LBC until such time as its portion of the

Loan or Tranche A is fully repaid. Thereafter, distributions will be made to MZ in respect of Tranche B;

- f) The maturity date of the Loan is May 15, 2018, which includes an initial term of 18 months and may be extended for a further 6 months; and
- g) The Loan contemplates an annual servicing fee payable of 0.0055% of the Loan.

34. As stated previously herein, Aviva holds a second mortgage against the Property. In order to ensure that Aviva's position under the Aviva Charge is not prejudiced, MZ intends to pay a deposit or provide a letter of credit to Aviva in the amount of \$368,767, which represents the difference in interest payable under the Existing Commitment Letter and the Loan Amending Agreement.

35. The Trustee is advised that both Aviva and LBC have consented to the Loan Amending Agreement and that they have no objection to the Trustee executing same on behalf of 144 Park.

CONCLUSIONS AND RECOMMENDATION

36. Based on the foregoing, the Trustee does not believe any creditor of 144 Park will be prejudiced by the Loan Amending Agreement, other than MZ. Both LBC and Aviva have no objection to the Trustee executing the Loan Amending Agreement.

37. In the circumstances, the Trustee has no objection to executing the Loan Amending Agreement and is prepared to do so, subject to Court approval.

All of which is respectfully submitted to this Court as of this 6th day of May, 2016.

COLLINS BARROW TORONTO LIMITED,
in its capacity as Court-appointed Trustee of
the Property and not in its personal capacity

Per:  _____

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP
Title: President

I have the authority to bind the corporation

APPENDIX A

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

THE HONOURABLE MADAM) MONDAY, THE 11th DAY
)
JUSTICE MESSUR) OF JANUARY, 2016

**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**

**ORDER
(Priority Resolution Process)**

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction*

Lien Act, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for the Trustee and on being advised that no opposition to the terms of this Order have been received from any Lien Claimants (as defined below),

PRIORITY RESOLUTION PROCESS

1. **THIS COURT ORDERS** that the priority of the claims of the construction lien claimants (the "**Lien Claimants**") and Laurentian Bank of Canada (the "**Bank**") to the funds being held by the Trustee pursuant to the Order of Justice Newbould dated August 5, 2015 (the "**Reserve**") shall be determined pursuant to the following procedure and timetable:

(a) On or before January 13, 2016:

(i) the Bank shall serve an affidavit (the "**Bank Affidavit**") from a representative of the Bank (the "**Bank Representative**") addressing, among others, the following:

(A) whether the Bank advanced any funds to 144 Park Ltd. or its designee ("**144 Park**") after the Bank had received a written notice of lien,

(B) purpose or purposes of the advances made by the Bank to 144 Park on October 8 and 24, 2014, including statutory declarations (if

any), correspondence and other documentation in the Bank's possession, power or control in respect of such advances, and

- (C) the total amount of 144 Park's indebtedness owing to the Bank as at the date of the Bank Affidavit; and
- (ii) the Trustee shall serve a report (a "**Report on Proceeds**") that, among other things, will include the following information:
- (A) a statement of receipts and disbursements as at the date of the Report on Proceeds that includes, among other things, the amount of proceeds held by the Trustee, and
 - (B) an estimate of the realizable net sale proceeds from the sale and closing of the remaining unsold residential condominium units, parking units and locker units.
- (b) Any lien claimant claiming entitlement to part of the Reserve by asserting priority over the Bank's mortgage (a "**Disputing Lien Claimant**") for an amount in excess of the basic ten per cent (10%) holdback (the "**Basic Holdback**") shall, on or before January 29, 2016 (the "**Bar Date**"), serve a responding affidavit describing with sufficient particularity and supporting documentation, the factual and legal basis upon which the lien claimant asserts such priority over the Bank's mortgage (the "**Responding Affidavit**");
- (c) The Bank, the Disputing Lien Claimants and the Trustee will attempt to consensually resolve the Disputing Lien Claimants' claim for priority over the

Bank's mortgage for an amount in excess of the Basic Holdback, failing which, the priority dispute shall be determined by a judge presiding over the Commercial List according to the following timetable:

- (i) if necessary, cross-examinations on the Bank Affidavit and Responding Affidavits shall be completed on or before February 5, 2016;
- (ii) the Bank shall serve its factum on or before February 11, 2016;
- (iii) the Disputing Lien Claimants shall serve facta on or before February 18, 2016 at 2:00 pm;
- (iv) all motion materials, including facta, shall be filed with the Court by February 19, 2016; and
- (v) the hearing shall be heard on February 22, 2016.

2. **THIS COURT ORDERS** that if a Lien Claimant does not deliver a Responding Affidavit on or before the Bar Date, it shall be forever barred from asserting a claim to the Reserve in priority to the Bank's mortgage in these proceedings or any other proceedings for an amount in excess of the Basic Holdback in respect of such Lien Claimant's construction lien.

CROSS EXAMINATION OF BANK REPRESENTATIVE

3. **THIS COURT ORDERS** that any cross-examination of the Bank Representative shall be subject to the following procedure:

- (a) each Disputing Lien Claimant wishing to cross-examine the Bank Representative shall serve a Notice of Examination by email on the Bank's counsel, with a copy to the Trustee and its counsel, on or before the Bar Date;
- (b) if two (2) or more Disputing Lien Claimants serve a Notice of Examination, the Disputing Lien Claimants shall appoint one (1) representative counsel (the "Examining Counsel") to conduct the cross-examination on behalf of all of the Disputing Lien Claimants. The Disputing Lien Claimants who served a Notice of Examination shall advise the Bank and Trustee of the Examining Counsel selected as soon as practical after selection. For greater certainty, all counsel for Disputing Lien Claimants are entitled to attend the cross-examination;
- (c) the cross-examination of the Bank Representative shall be held in Toronto on a date to be agreed upon by the Bank, Trustee and Examining Counsel, but shall be held by no later than February 3, 2016; and
- (d) if no Disputing Lien Claimant serves a Notice of Examination on or before the Bar Date, no Disputing Lien Claimant shall be entitled to cross-examine the Bank Representative.

DISTRIBUTIONS OF RESERVE

4. **THIS COURT ORDERS** that, following the Bar Date and subject to paragraph 5, below, the Trustee is authorized and directed to distribute the Reserve to the Bank up to the amount of the Bank's secured mortgage indebtedness without further order of this Court.

5. **THIS COURT ORDERS** that, notwithstanding paragraph 4 above, the Trustee may not distribute any funds from the Reserve to the Bank without retaining an amount equivalent to the priority amount claimed by the Disputing Lien Claimants.



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LE / DANS LE REGISTRE NO.:

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**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

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

Proceedings commenced at Toronto

ORDER

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Lawyers for the Trustee

APPENDIX B

Court File No. CV15-10843-00CL

**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**

SEVENTH REPORT OF THE TRUSTEE

January 13, 2016

INTRODUCTION AND PURPOSE OF THE SEVENTH REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”).
2. The purpose of this Seventh Report of the Trustee (the “**Seventh Report**”) is to report to the Court in accordance with paragraph 1 of the Priority Resolution Process Order (as defined below).

TERMS OF REFERENCE

3. In preparing this Seventh Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park, discussions with management and employees of 144 Park and other companies within the MADY group of companies, and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Seventh Report may refer to, or is based on, the Information. As the Information has been provided by 144 Park, or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance

Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

Background

4. As has been previously reported to the Court, the Property was acquired by 144 Park in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 148 residential units and 1 guest unit (the “**144 Park Project**”).
5. As of the date of the Trustee’s appointment, 144 Park had entered into agreements of purchase and sale (“**Sale Agreements**”) with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers.
6. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of the Honourable Mr. Justice McEwen dated April 29, 2015.
7. As a result, there were 128 units that were the subject of Sale Agreements with 144 Park, and twenty (20) unsold units.
8. Pursuant to the Order of Justice Newbould dated August 5, 2015, the Trustee was authorized to engage Mint Realty Inc. Brokerage (“**Mint Realty**”) to market any or all of the 20 unsold units.
9. Pursuant to the Order of the Honourable Madam Justice Mesbur dated December 3, 2015, the Trustee was authorized to engage Mint Realty to market any units where the Sale

Agreements had been terminated by the Trustee due to purchaser defaults or on consent of the parties.

Claims Process and Priority Resolution Process

10. Pursuant to the Order (re Construction Lien Claims Process) of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015, the Trustee is to implement and administer a construction lien claims process.
11. Pursuant to the Order (Priority Resolution Process) of Justice Mesbur dated January 11, 2016 (the “**Priority Resolution Process Order**”), the Court approved a process to determine the claims of the construction lien claimants and Laurentian Bank of Canada to funds being held by the Trustee. A copy of the Priority Resolution Process Order is attached hereto as **Appendix “A”**.
12. Pursuant to paragraph 1(ii) of the Priority Resolution Process Order, the Trustee is require to serve a report that:
 - (a) provides a statement of receipts and disbursement as at the date of the report that includes, among other things, the amount of proceeds held by the Trustee; and
 - (b) an estimate of the realizable net sale proceeds from the sale and closing of the remaining unsold residential condominium units, parking units and locker units.
13. In accordance with Priority Resolution Process Order, attached hereto as **Appendix “B”** is a copy of the Trustee’s statement of receipts and disbursements for the period from January 22, 2015 to January 11, 2016 (the “**R&D Statement**”).

14. As set out in the R&D Statement, the Trustee is currently holding approximately \$5,607,858, of which approximately \$4.2 million (the “**Reserve**”) is being held in a separate account for the benefit of the parties that are to be determined to have priority to the Reserve.
15. The sale transactions that have closed to date and the Trustee’s estimate of the realizable net sale proceeds from the sale and closing of the remaining unsold residential condominium units, parking units and locker units, are set out in detail below.¹

Sold Units

16. As noted above, there were 128 units that were subject to Sale Agreements that the Trustee was authorized to take steps to close pursuant to the Appointment Order (the “**Sold Units**”).
17. As of the date of this Seventh Report, the Trustee has closed the sale of 117 of the 128 Sold Units.
18. As set out in the R&D Statement, the sale of the 117 Sold Units generated gross sale proceeds of approximately \$34,636,920. After taking into account HST (totaling approximately \$2,990,405) and property taxes (totaling approximately \$557,643) collected and to be remitted with respect to the sale transactions, the net sale proceeds generated by the sale of the 117 Sold Units is approximately \$31,088,872.

¹ All references to estimated realizable net sales proceeds in this Seventh Report are prior to costs of administration, including, among others, repairs and maintenance, maintenance fees payable to WSCC 591, professional fees, utilities, operating costs and insurance.

19. There is one Sold Unit, unit 1310, which is scheduled to close on January 15, 2016. The Trustee estimates that the net sale proceeds from the closing of this sale transaction will be approximately \$311,000.
20. There is another Sold Unit, unit 1802, where the Trustee is in the process of completing required construction of the unit that 144 Park agreed to complete prior to closing, to the point where the purchaser has agreed to close the transaction and finish the remaining construction on his own. A closing date is in the process of being finalized. The Trustee estimates that the net sale proceeds from the closing of this sale transaction will be approximately \$306,000 if the sale transaction closes in accordance with the terms of the Sale Agreement.
21. As a result, the Trustee estimates that the net sale proceeds to be realized from the sale of 119 of the 128 Sold Units is approximately \$31.7 million.

Estimated Net Sale Proceeds re Remaining Units

22. As noted above, 128 of the 148 residential units were subject to Sale Agreements. The Trustee has closed the sale of 117 of the 128 Sold Units, and the Trustee anticipates being in a position to close two additional Sold Units, units 1310 and 1802, in January 2016.
23. With respect to the remaining nine (9) Sold Units:
 - (a) the Trustee continues to be in discussions with the purchaser of unit 105/TH5 regarding completing the sale transaction; and
 - (b) there are eight (8) units where (i) the Trustee has terminated the Sale Agreements due to purchaser defaults (units 610 and 1009); (ii) the Trustee has terminated the

Sale Agreements with the consent of the purchasers (units 609, 1102, 1801 and 1902); and (iii) the purchaser has commenced an application seeking to terminate the sale transactions (units 1407 and 1408).

24. In addition to the 9 Sold Units referred to above, there were the 20 units that remained unsold as at the date of the Trustee's appointment.² The 20 unsold units and the 9 Sold Units are collectively referred to as the "Remaining Units".
25. The Trustee has discussed the potentially realizable net sale proceeds that could be generated for the Remaining Units with Mint Realty, who the Trustee has engaged to market and sell the Remaining Units. Based on Mint Realty's expertise in the Kitchener-Waterloo condominium market and the advice it has provided to the Trustee, and based on similar units that have already sold in the building, the Trustee estimates that the net sale proceeds that may be realized with respect to the sale of the 29 Remaining Units is approximately \$10.6 million.
26. As a result, the Trustee estimates that the net sale proceeds to be received by the Trustee with respect to the sale of all 148 residential units in the 144 Park Project is approximately \$42.3 million.

² Units 102/TH2, 106/TH6, 107/TH7, 502, 503, 702, 706, 710, 809, 810, 1110, 1203, 1306, 1503, 1506, 1607, 1707, 1807/PH7, 1903/GPH3 and 1904/GPH4.

All of which is respectfully submitted to this Court as of this 13th day of January, 2016.

COLLINS BARROW TORONTO LIMITED,
in its capacity as Court-appointed Trustee of
the Property and not in its personal capacity

Per: 

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP

Title: President

I have the authority to bind the corporation

APPENDIX C

**In the Matter of the Construction Lien Proceeding of 144 Park
Trustee's Statement of Receipts and Disbursements
For the Period January 22, 2015 to April 30, 2016**

	Cumulative to April 30, 2016
Receipts	
Closing proceeds from sale of units	\$ 32,907,970
HST collected	3,225,582
Occupancy fees paid by residents	979,896
DIP funds received	500,000
Property taxes collected from closing of units	563,011
Upgrade revenues collected	465,299
Public art cost recovery	89,147
Hydro utilities recovery	59,023
HST refunds	183,616
Transfers from Harris Sheaffer accounts	8,564
Bank interest	14,679
Sale of access fobs and other miscellaneous receipts	10,453
Total Receipts	\$ 39,007,240
 Disbursements	
Operating expenses (property manager, security, snow removal and landscaping, property cleaner, garbage disposal)	\$ 79,258
Payment of DIP Facility fee	25,000
Repayment of DIP funds	517,062
Costs paid to complete unsold units	120,000
Insurance premiums	26,703
Payment of fees and bond premium to Westmount Guarantee	40,480
Insurance deductible	50,000
Trustee's fees	
- pre-appointment consulting fees	36,737
- post-appointment fees	582,040
Legal counsel fees	540,234
Utilities	168,905
Common area maintenance fees paid to WSCC 591	426,515
Reserve fund contribution - trust funds	30,971
Amounts paid on behalf of WSCC 591 (insurance, utilities)	45,761
Repairs and maintenance	571,132
Wages	192,141
Third party consultants (engineer, surveyor, planner, architect)	183,622
HST/PST paid	328,780
HST remitted to Canada Revenue Agency	2,919,628
Property taxes paid	662,995
Advertising - Unsold Units	26,475
Registration fees paid to the City and Region of Waterloo	3,375
Courier	829
Other	5,372
Total disbursements	\$ 7,584,015
 Excess of receipts over disbursements before distributions to mortgagees and lien claimants	 \$ 31,423,225
 Distribution to mortgagees and lien claimants	
Laurentian Bank of Canada	27,660,000
Lien claim holdback paid	1,238,186
Excess of receipts over disbursements	2,525,039