

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

MOTION RECORD
(RETURNABLE MAY 10, 2016)

May 4, 2016

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Exhibit "C"	Puklicz Affidavit sworn January 16, 2015 (with exhibits)
Exhibit "D"	LBC Assignment Agreement dated January 23, 2015
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Exhibit "F"	Aviva Side Letter
3.	Draft Order

TAB 1

**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

**NOTICE OF MOTION
(Returnable May 10, 2016)**

MARSHALLZEHR GROUP INC. ("MZ"), will make a motion to a Judge of the Commercial List on May 10, 2016, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an Order approving the execution and delivery of the Loan Amending Agreement by the Lien Trustee for and on behalf of 144 Park Ltd.:
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

2. On January 22, 2015, Collins Barrow Toronto Limited ("CBTL") was appointed as Trustee under the *CLA* with respect to lands and premises owned by 144 Park Ltd. ("**144 Park**") 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**") pursuant to the Order of the Honourable Mr. Justice Penny dated January 22, 2015.

3. The property was acquired by 144 Park in September 2011 for the purpose of developing and constructing a 19 storey residential condominium project containing 148 residential units and 1 guest unit (the “**144 Park Project**”).

4. There were 128 units that were the subject of agreements of purchase and sale with 144 Park (collectively, the “**Sale Agreements**”), and 20 unsold units (collectively the “**Unsold Units**”).

5. On January 22, 2015, an order (the “**Appointment Order**”) was granted by the Ontario Superior Court of Justice (the “**Court**”) appointing the Trustee as lien trustee of the Property under the *Construction Lien Act* and authorizing the Trustee, *inter alia*, to act as receiver and manager of the Property and to complete the 144 Project, including the closing of the sale of previously sold 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, for any purpose pursuant to the **Appointment Order** and “to take any steps reasonably incidental to these powers” without interference from any other person including the Applicant.

6. At the time of the Appointment Order, the Property was subject to the following mortgages:

(a) a first mortgage in favour of Laurentian Bank of Canada (“**LBC**”) on its own behalf and on behalf of National Bank of Canada (“**NBC**”), then securing the principal amount of approximately \$39 million (the “**LBC Mortgage**”) and being the fourth registered mortgage against the Property enjoying the benefit of the postponements and subordinations set out below;

(b) a second mortgage in favour of Aviva Insurance Company of Canada (“**Aviva**”), then in the principal amount of \$8,500,000 which, having been registered prior to the LBC Mortgage as the first registered mortgage against the Property, is the second ranking mortgage because it is subject to a postponement and subordination in favour of the LBC Mortgage;

(c) a third mortgage in favour of MarshallZehr Group Inc. (“**MZ**”), then securing the principal amount of approximately \$3 million (the “**MZ Mortgage**”) which, having been registered subsequent to both the Aviva Mortgage and the Allen Street

Mortgage, as defined below, but prior to the LBC mortgage, as the third registered mortgage against the Property, is the third ranking mortgage because it is both subject to a postponement and subordination in favour of the LBC Mortgage and the beneficiary of a postponement and subordination of the Allen Street 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 which, as the second mortgage registered against the Property, is the fourth ranking mortgage because it is subject to postponements and subordinations in favour of both LBC and MZ.

7. Additionally, at the time of the making of the Appointment Order, there were 17 construction lien claims in the total amount of almost \$3 million which had been registered against the title to the Property (collectively, the "**Lien Claims**").

8. On January 23, 2015, immediately following the granting of the Appointment Order, MZ entered into an agreement with LBC to acquire all of the debt and security associated with the LBC Mortgage (the "**LBC Debt and Security**") to which assignment 144 and the various guarantors of the LBC Mortgage consented and agreed (the "**LBC Assignment Agreement**").

9. Since the LBC Assignment Agreement was entered into, the sale of 121 condominium units has been completed by the Trustee and the Trustee has distributed \$27,660,000 to LBC, such that the amount now owing under the LBC Mortgage has been reduced to \$13,378,329.16, estimated as at May *, 2016. A total of 27 of the remaining condominium units still remain to be sold, of which 5 units are currently subject to uncompleted agreements of purchase and sale.

10. On August 5, 2015, the Court granted an order (the "**Approval and Interim Distribution Order**"), which, among other things, authorized the Trustee to retain and engage Mint Realty Inc. Brokerage to market any of the previously unsold units. The Trustee was further authorized to sell, convey or transfer the previously unsold units or any part or parts thereof without Court approval if: (i) the purchase price of the sale transaction is at least 95% of the listing price for the residential unit; or (ii) the Trustee has obtained the written consent of the first mortgagee of the Property, otherwise with approval of the Court.

11. On January 11, 2016, following the distribution by the Trustee of \$305,237.54 on account of deficiencies in the holdbacks in respect of certain Lien Claims, a process to resolve the priority of Lien Claims over advances under the LBC Mortgage was concluded by order of the Court (the "**Claims Resolution Order**") establishing the priority over the Lien Claims of all amounts advanced under the LBC Mortgage.

12. No issue has ever been raised as to the priority of amounts secured under the Aviva Mortgage or the MZ Mortgage over the Lien Claims.

13. Pursuant to Section 1.01 of the LBC Assignment Agreement, the completion of the assignment by LBC to, and assumption by MZ of, the LBC Debt and Security was to be completed on the 45th day following the distribution by the Trustee of the proceeds of sale of 110 condominium units of the 144 Project (the "**Closing Date**"). The proceeds of sale of 110 units were distributed by the Trustee on or about February 3, 2016 and, as a result, the Closing Date was initially March 18, 2016.

14. Subsequently, the Closing Date under the LBC Assignment Agreement has been extended by a series of agreements between LBC and MZ to including the most recent agreement extending the Closing Date.

15. The Trustee projects that the amount remaining to be realized from the sale of the remaining condominium units in the 144 Project will result in net proceeds to the estate of 144 in the range of from \$11.5 million to \$12.5 million (the "**Projected Net Proceeds**").

16. While the Projected Net Proceeds may be close to sufficient to repay outstanding amounts owing under the LBC Mortgage, they will not, on any scenario, be sufficient to enable the repayment amounts due under the subordinate mortgages, or to the unsecured claimants other than lien claimants with rights under the Reserve Fund held by the Lien Trustee.

Loan Amending Agreement

17. Notwithstanding the foregoing, LBC and MZ have agreed to proceed with the completion of the LBC Assignment Agreement, subject to the prior approval of the Court, on the basis that:

- (a) following the assignment of the LBC Debt and Security to MZ, MZ would become the administrator of same;

- (b) LBC would participate in the assignment of the LBC Debt and Security to MZ by acquiring a first tranche participation in same in the amount in accordance with the participation agreement between LBC and MZ , herein called the "Mortgage Co-Lending and Servicing Agreement, together with the related Form of Acceptance forming part thereof, all to be dated on or about the Closing Date;
- (c) the terms of the LBC Mortgage would be amended to extend the term of same by up to 24 months including extensions and the interest rate payable under the second tranche of the LBC Debt and Security as assigned by LBC to MZ, would be increased from 5.0% to 14.4% as set out in the facility amending agreement (the "**Loan Amending Agreement**").

18. In consideration of its consent to MZ and the Trustee entering into the Loan Amending Agreement, Aviva will become the beneficiary of certain additional cash collateral security or a letter of credit to be provided by MZ to ensure Aviva is not prejudiced thereby.

19. LBC and Aviva consent to the Loan Amending Agreement being entered into by the Trustee and have no objection to the Trustee doing so.

20. Given the virtual certainty that MZ will not recover in full under the MZ Mortgage, MZ is the only party to these proceedings that is, or may be, prejudiced by the Trustee entering into the Loan Amending Agreement on behalf of 144.

21. The entering into by MZ and the Trustee, on behalf of 144, of the Loan Amending Agreement will enable the successful realization and liquidation process in respect of the 144 Project, as commenced by the Appointment Order, to continue through to its completion in an orderly and prudent manner subject to the continuing supervision of the Court and with no prejudice to any party but MZ.

RELIEF SOUGHT:

22. MZ seeks the approval of the Loan Amending Agreement by this Honourable Court, and also the further specific authorization for the Trustee to execute and deliver the Loan Amending Agreement and all other or ancillary documents required for the Closing thereof, on terms and conditions as may be acceptable to the parties thereto.

GENERAL:

23. The Eighth Report of the Trustee dated May ●, 2016 (the "**Eighth Report**").
24. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
25. Section 68 of the *CLA*.
26. The Appointment Order and the Claims Resolution Order.
27. The inherent jurisdiction of the Court.
28. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Eighth Report and the Appendices annexed thereto; and
- (b) Affidavit of Cecil Hayes, COO of MarshallZehr Group Inc., affirmed the 4th day of May, 2016
- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

May 4, 2016

MILLER THOMSON LLP
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Toronto ON M5H 3S1, Canada

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Lawyers for MarshallZehr Group Inc.

TO: THE SERVICE LIST

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

Court File No.: CV15-10843-00CL

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

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL
LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable May 10, 2016)**

MILLER THOMSON LLP

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Lawyers for MarshallZehr Group Inc.

TAB 2

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

AFFIDAVIT OF CECIL HAYES
(Sworn May 4, 2016)

I, Cecil Hayes, of the City of Waterloo, in the Region of Waterloo, in the Province of Ontario, do hereby :

1. I am the COO of MarshallZehr Group Inc. (“**MZ**”), and, as such, I have knowledge of the matters to which I depose in this affidavit. Where statements are made on information and belief, or where, from the context, it appears that I rely upon the information provided by others, I believe such statements to be true.

2. I make this affidavit in support of a motion for Court approval of the Loan Amending Agreement and ancillary documents, as outlined within.

Background

3. This proceeding was commenced by way of an application by 144 Park Ltd (“**144**” or the “**Applicant**”) to appoint Collins Barrow Toronto Limited (the “**Trustee**”) as lien trustee of certain properties owned by 144 pursuant to Section 68(1) of the *Construction Lien Act* (Ontario) (the “**CLA**”), being a 19-story condominium development project (the “**144 Project**”) known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario (collectively, the “**Property**”) and consisting of 149 units of which 120 were then sold.

4. On January 22, 2015, an order (the “**Appointment Order**”) was granted by the Ontario Superior Court of Justice (the “**Court**”) appointing the Trustee as lien trustee of the Property and authorizing the Trustee, inter alia, to act as receiver and manager of the Property and to

complete the 144 Project including the closing of the sale of previously sold 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, for any purpose pursuant to the **Appointment Order** and “to take any steps reasonably incidental to these powers” without interference from any other person including the Applicant. A copy of the Appointment Order is annexed hereto for convenience of reference as Exhibit “A”.

5. On August 5, 2015, the Court granted an order (the “**Approval and Interim Distribution Order**”), which, among other things, authorized the Trustee to retain and engage Mint Realty Inc. Brokerage to market any of the previously unsold units. The Trustee was further authorized to sell, convey or transfer the previously unsold units or any part or parts thereof without Court approval if: (i) the purchase price of the sale transaction is at least 95% of the listing price for the residential unit; or (ii) the Trustee has obtained the written consent of the first mortgagee of the Property, otherwise with approval of the Court. A copy of the Approval and Interim Distribution Order is attached hereto as Exhibit “B”.

6. On making the Application, 144 relied on the affidavit of Greg Puklicz sworn January 16, 2015 (the “**Puklicz Affidavit**”), a copy of which, inclusive of all exhibits thereto, is annexed hereto for convenience of reference as Exhibit “C”. The Puklicz Affidavit sets out all of the material facts in respect of the Applicant and the 144 Project.

7. At the time of the Appointment Order, the Property was subject to the following mortgages:

- (a) a first mortgage in favour of Laurentian Bank of Canada (“**LBC**”) on its own behalf and on behalf of National Bank of Canada (“**NBC**”), then securing the principal amount of approximately \$39 million (the “**LBC Mortgage**”) and being the fourth registered mortgage against the Property enjoying the benefit of the postponements and subordinations set out below;
- (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**”) which, having been registered prior to the LBC Mortgage as the first registered mortgage against the Property, is the second ranking mortgage because it is subject to a postponement and subordination in favour of the LBC Mortgage;

- (c) a third mortgage in favour of MarshallZehr Group Inc. ("**MZ**"), then securing the principal amount of approximately \$3 million (the "**MZ Mortgage**") which, having been registered subsequent to both the Aviva Mortgage and the Allen Street Mortgage, as defined below, but prior to the LBC mortgage, as the third registered mortgage against the Property, is the third ranking mortgage because it is both subject to a postponement and subordination in favour of the LBC Mortgage and the beneficiary of a postponement and subordination of the Allen Street Mortgage; and
- (d) a fourth mortgage in favour of Allen Street Holdings Inc. ("**Allen Street Holdings**"), then securing a promissory note in the principal amount of \$3 million by way of a vendor take-back mortgage which, as the second mortgage registered against the Property, is the fourth ranking mortgage because it is subject to postponements and subordinations in favour of both LBC and MZ.

8. Additionally, at the time of the making of the Appointment Order, there were 17 construction lien claims in the total amount of almost \$3 million which had been registered against the title to the Property (collectively, the "**Lien Claims**").

9. All of the details as to the registered mortgages in respect of the Property and the liabilities they secure are set out in paragraphs 13 to 30 (inclusive) of the Puklicz Affidavit. An overview of the Lien Claims is set out in paragraphs 46 to 48 (inclusive) of the Puklicz Affidavit.

LBC Assignment Agreement

10. On January 23, 2015, immediately following the granting of the Appointment Order, MZ entered into an agreement with LBC to acquire all of the debt and security associated with the LBC Mortgage (the "**LBC Debt and Security**") to which assignment 144 and the various guarantors of the LBC Mortgage consented and agreed (the "**LBC Assignment Agreement**"). A copy of the LBC Assignment Agreement is annexed hereto as Exhibit "**D**".

11. On January 11, 2016, following the distribution by the Trustee of \$305,237.54 on account of deficiencies in the holdbacks in respect of certain Lien Claims, a process to resolve the priority of Lien Claims over advances under the LBC Mortgage was concluded by order of the Court (the "**Claims Resolution Order**") establishing the priority over the Lien Claims of all amounts advanced under the LBC Mortgage.

12. No issue has ever been raised as to the priority of amounts secured under the Aviva Mortgage or the MZ Mortgage over the Lien Claims.

13. Pursuant to Section 1.01 of the LBC Assignment Agreement, the completion of the assignment by LBC to, and assumption by MZ of, the LBC Debt and Security was to be completed on the 45th day following the distribution by the Trustee of the proceeds of sale of 110 condominium units of the 144 Project (the "**Closing Date**"). The proceeds of sale of 110 units were distributed by the Trustee on or about February 3, 2016 and, as a result, the Closing Date was initially March 18, 2016.

14. Subsequently, the Closing Date under the LBC Assignment Agreement has been extended by a series of agreements between LBC and MZ to including the most recent agreement extending the Closing Date to May 12, 2016.

Status of Distributions

15. Since the LBC Assignment Agreement was entered into, the sale of 121 condominium units has been completed by the Trustee and the Trustee has distributed \$27,660,000 to LBC, such that the amount now owing under the LBC Mortgage has been reduced to \$13,378,329.16, estimated as at May 1, 2016. A total of 27 of the remaining condominium units still remain to be sold, of which 5 units are currently subject to uncompleted agreements of purchase and sale.

16. The Trustee projects that the amount remaining to be realized from the sale of the remaining condominium units in the 144 Project will result in net proceeds to the estate of 144 in the range from \$11.5 million to \$12.5 million (the "**Projected Net Proceeds**").

17. While the Projected Net Proceeds may be close to sufficient to repay outstanding amounts owing under the LBC Mortgage, they will not, on any scenario, be sufficient to enable the repayment amounts due under the subordinate mortgages, or to the unsecured claimants other than lien claimants with rights under the Reserve Fund held by the Lien Trustee.

18. Notwithstanding the foregoing, LBC and MZ have agreed to proceed with the completion of the LBC Assignment Agreement, subject to the prior approval of the Court, on the basis that:

- (a) following the assignment of the LBC Debt and Security to MZ, MZ would become the administrator of same;

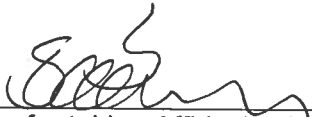
- (b) LBC would participate in the assignment of the LBC Debt and Security to MZ by acquiring a first tranche participation in same in the amount of approximately \$8,178,09 (the "**Senior Tranche**") in accordance with a participation agreement between LBC and MZ (called the "**Mortgage Co-Lending and Servicing Agreement**"), together with the related Form of Acceptance forming part thereof, all to be dated on or about the Closing Date (the "**LBC Participation Agreement**");
- (c) the terms of the LBC Mortgage would be amended to extend the term of same by up to 24 months including extensions and the interest rate payable under the second tranche of the LBC Debt and Security (the "**Junior Tranche**"), as assigned by LBC to MZ, would be increased from 5.0% to 14.4% as set out in the facility amending agreement annexed hereto as Exhibit "**E**" (the "**Loan Amending Agreement**"); and
- (d) in consideration of its consent to MZ and the Trustee entering into the Loan Amending Agreement, Aviva will become the beneficiary of certain additional cash collateral security or a letter of credit to be provided by MZ to ensure Aviva is not prejudiced thereby, as set out in the side letter between MZ and Aviva annexed hereto as Exhibit "**F**" (the "**Aviva Side Letter**").

19. It is my understanding that, as a result of the foregoing, both LBC and Aviva consent to the Loan Amending Agreement being entered into by the Trustee and have no objection to the Trustee doing so.

20. Given the virtual certainty that MZ will not recover in full the amounts owing under the MZ Mortgage, MZ is the only party to these proceedings that is, or may be, prejudiced by the Trustee entering into the Loan Amending Agreement on behalf of 144.

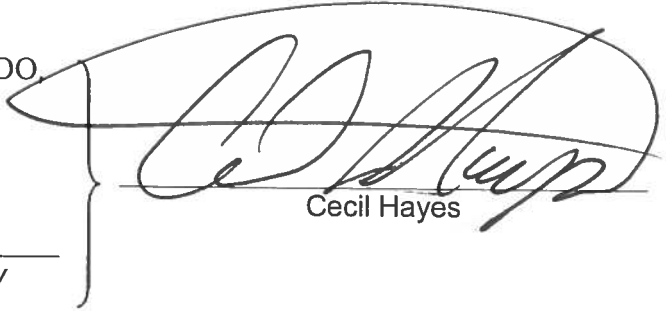
21. The entering into by MZ and the Trustee, on behalf of 144, of the Loan Amending Agreement will enable the successful realization and liquidation process in respect of the 144 Project, as commenced by the Appointment Order, to continue through to its completion in an orderly and prudent manner subject to the continuing supervision of the Court and with no prejudice to any party but MZ.

SWORNBEFORE ME at the City of WATERLOO,
this 4th day of May, 2016.



A Commissioner for taking Affidavits (or as may be)

Stephen L. Sweeney
LSUC # 242 @OC



Cecil Hayes

EXHIBIT “A”

This is Exhibit "A" referred to in the affidavit
of CECIL HAYES, SWORN BEFORE ME
this 4 day of May, 2016



A COMMISSIONER FOR TAKING AFFIDAVITS



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

THE HONOURABLE MR.

)

THURSDAY, THE 22nd DAY

)

JUSTICE PENNY

)

OF JANUARY, 2015

**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
(appointing trustee)

THIS APPLICATION made by the Applicant, 144 Park Ltd., for an Order pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") appointing Collins Barrow Toronto Limited as trustee (the "Trustee") of the Property (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Puklicz sworn January 16, 2015 (the "Puklicz Affidavit") and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for those other parties listed on the Counsel Slip, no one else appearing although

duly served as appears from the affidavit of service of Sam Rappos sworn January 20, 2015, and on reading the consent of Collins Barrow Toronto Limited to act as the Trustee,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 68(1) of the CLA, Collins Barrow Toronto Limited is hereby appointed Trustee, without security, of the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, legally described in **Schedule "A"** attached hereto, and comprised of, among other things, 149 residential condominium units (the "**Property**").

TRUSTEE'S POWERS

3. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to act as receiver and manager of the Property;
- (b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property,

including, without limitation, the Occupancy Funds (as defined in the Puklicz Affidavit);

- (c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;
- (d) to engage consultants, agents, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant in respect of the Property, including, without limitation, all occupancy fees, and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;
- (f) to settle, extend or compromise any indebtedness owing to the Applicant;
- (g) to execute, assign, issue 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, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Property or the Trustee, and to settle or compromise any such

proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) complete and register the condominium declaration and final Plan of Condominium 30CDM-13406, and any related documents, on title to the Property, and do whatever else is necessary in order to cause the registration of the proposed condominium thereon. For clarity, the foregoing shall include, without limitation:

- (A) finalizing all outstanding draft plan conditions, including all required documentation, to the extent applicable;

- (B) submitting the declaration and plan of condominium (i.e. the description) to the applicable approval authorities for final approval;

- (C) executing the declaration and the plan of condominium (mylar) and cause same to be registered in the appropriate Land Registry Office (the "LRO"); and

- (D) arranging for delivery of architectural and structural plans to the LRO;

- (j) Upon the registration of the condominium and creation of the resultant condominium corporation (the "Condominium Corporation"), the Trustee is authorized to operate the Condominium Corporation in accordance with and

subject to the provisions of the *Condominium Act, 1998* (Ontario) (the “**Condominium Act**”), including, without limitation:

- (A) appointing a board of directors and auditor;
- (B) opening the appropriate bank accounts;
- (C) collecting common expenses;
- (D) obtaining and maintaining the appropriate insurance;
- (E) preparing the record of unit owners required under Section 47 of the *Condominium Act* and other records as required by the Act;
- (F) ratifying and registering the proposed by-law(s) of the Condominium Corporation;
- (G) ratifying the proposed rules;
- (H) ratifying and entering into an assignment agreement of the Shared Facilities Agreement;
- (I) ratifying and entering into any necessary service and maintenance agreements as may be required; and
- (J) turning over control of the condominium at the appropriate time and in the manner as prescribed by the *Condominium Act*;

- (k) to complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking spaces that form part of the Property (collectively, the “Sold Units”);
- (l) to apply for any vesting order or other orders necessary to convey title to the Sold Units or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (o) to apply for any permits, licences, approvals, declarations, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Applicant;
and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicant, and without interference from any other Person.

4. **THIS COURT ORDERS** that the Trustee shall take all steps necessary to complete the registration of the Condominium, those steps being more particularly set out in Schedule "B" attached hereto, and to accomplish that purpose, all lien claims, mortgages and other encumbrances are hereby subordinated to any utility easements and any municipal development or warnings agreements that may be required.

5. **THIS COURT ORDERS** that the Trustee, as soon as practical following the sale of at least 65 of the Sold Units, shall bring a motion for interim distribution of the net proceeds.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

6. **THIS COURT ORDERS** that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall grant immediate and continued access to the Property to the Trustee.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE TRUSTEE

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. **THIS COURT ORDERS** that, subject to the provisions of paragraph 11, no Proceeding against or in respect of the Applicant or the Property, including without limitation any Proceeding commenced under the CLA against the Applicant or mortgagees of the Property, shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court. Any request for particulars with respect to outstanding encumbrances, including, without limitation, requests made pursuant to the CLA, shall be directed to, and responded by, the Trustee.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Applicant, the Trustee, or affecting the Property, are hereby stayed and suspended, save and except the issuance of statements of claim and registration of certificates of action by existing lien claimants, or except with the written consent of the Trustee or leave of this Court, provided that nothing in this paragraph shall (i) empower the Trustee or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, or (ii) exempt the Trustee or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.

NO INTERFERENCE WITH THE TRUSTEE

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Trustee or leave of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

13. **THIS COURT ORDERS** that, until June 30, 2015 or such other date as the Court may hereafter order, no Proceeding may be commenced or continued against any of the former or current directors, officers or management of the Applicant, and any person, including an employee or agent of the Applicant, who had effective control of the Applicant or its relevant activities, with respect to any claim against such persons that arose before the date hereof and whereby such persons are alleged under any law to be liable, including the CLA, except with the prior written consent of the Trustee or leave of this Court. The foregoing does not apply to proceedings bearing Court File No. CV-14-5608-00 commenced in Brampton, Ontario.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, equipment, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with arrangements as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including without limitation the sale(s) of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Trustee (the "Post Trusteeship Accounts") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Applicant shall remain the employees of the Applicant until such time as the Trustee, on the Applicant's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Trustee may specifically agree in writing to pay.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such