

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any part of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### LIMITATION ON THE TRUSTEE'S LIABILITY

19. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Trustee by any applicable legislation.

### ACCOUNTS

20. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Trustee, counsel to the Trustee and counsel to the Applicant shall be entitled to and are hereby granted a charge (the "**Administration Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a first charge on the Property in priority to all any and all existing and future security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, encumbrances, claims of secured creditors (whether contractual, statutory or otherwise), executions, or charges, whether or not they have attached or been perfected, registered or filed (collectively, the "**Claims**") in favour of any Person.

21. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. **THIS COURT ORDERS** that the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee, its counsel, or counsel to the Applicant, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **BORROWING POWERS**

23. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Claims in favour of any Person, but subordinate in priority to the Administration Charge.

24. **THIS COURT ORDERS** that neither the Trustee's Borrowings Charge nor any other security granted by the Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. **THIS COURT ORDERS** that the Trustee is at liberty and authorized to issue certificates substantially in the form of **Schedule "C"** attached hereto (the "**Trustee's Certificates**") for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Trustee's Certificates.

#### **RETENTION OF LAWYERS**

27. **THIS COURT ORDERS** that the Trustee may retain solicitors to represent and advise the Trustee in connection with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order. Such solicitors may include Chaitons LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Trustee shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may exist.

#### **SERVICE AND NOTICE**

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.collinsbarrow.com/en/toronto-ontario/144-park>.

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

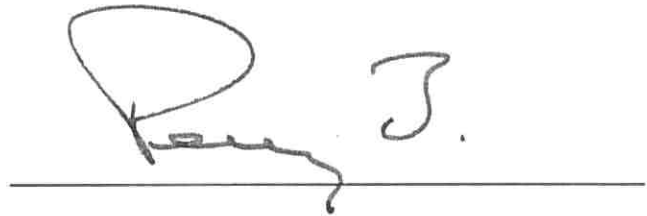
30. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**GENERAL**

31. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as receiver or trustee in bankruptcy of the Applicant.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENCL. COURT OF QUEEN'S BENCH  
OF  
LEWIS & CLARK BUILDING

JAN 23 2015



**SCHEDULE "A"**

PIN 22417-0135 (LT)  
LRO # 58

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, Being Part 1 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

PIN 22417-0134 (LT)  
LRO # 58

Property Description: Lots 2 & 3, Part of Lots 1, 4, 5, & 6 Plan 186, Being Part 2 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

## SCHEDULE "B"

Task	Notes	Timing to Completion
Registration of Waterloo North Hydro Easement	Requires postponements from lenders and priority over lien claimants	
Update of Condominium Plan and Schedule A to the Declaration	Requires registration of the easement	Few days after registration of easement
Submit Declaration and Condominium Plan for Pre-approval	Requires update of plan and schedule A	
LRO to complete pre-approval review		LRO has 10 business days to complete their review
Update Declaration and Condominium Plan based on LRO comments		Few days after completion of LRO pre-approval review
Obtain signed consents (schedule "B" to Declaration) from lenders		
Publish notice of intent to register condominium		Must be published not less than 5 days and not more than 15 days before Condo Plan is submitted to City for signing
Declarant to sign Condominium Plan and submit to City to sign		5 days after notice of intention is published
Declarant to sign Declaration and submit Declaration with registration fee to LRO		Upon completion of update
Satisfy all Region/City conditions		
Registration of Region of Waterloo Development Agreement (re noise)	Requires postponements from lenders and priority over lien claimants	



<b>Task</b>	<b>Notes</b>	<b>Timing to Completion</b>
Registration of City of Waterloo Warning Agreement	Requires postponements from lenders and priority over lien claimants	
Submit as built architectural and as built structural plans to LRO		
Registration	Notice of final closing to be sent to purchasers lawyers day after registration	Couple of days after LRO receives all the following: final plan, declaration, architectural plans and structural plans.
Release of new PINs by LRO		10 business days after registration
Delivery of closing documents and statement of adjustments	Purchaser's lenders require statement of adjustment to finalize mortgage financing	Approximately 5 business days after PINs are released
Final Closing		Approximately 20 business days (30 calendar days) from date of registration.

**SCHEDULE "C"**

**TRUSTEE CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the trustee (the "Trustee") of the Property appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 22<sup>nd</sup> day of January, 2015 (the "Order") made in an application having Court file number \_\_-CL-\_\_\_\_\_, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Trustee is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the Claims (as defined in the Order) of any other person, but subject to the priority of the charges set out in the Order, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Trustee to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Trustee does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**COLLINS BARROW TORONTO LIMITED,**  
solely in its capacity as Trustee of the Property,  
and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

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**  
(appointment of a trustee)

**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

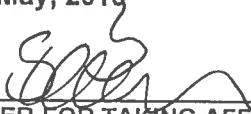
**Stephen Schwartz (LSUC #25980A)**  
Tel: (416) 218-1132  
Fax: (416) 218-1832  
Email: stephen@chaitons.com

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

**Lawyers for the Applicant, 144 Park Ltd.**

# EXHIBIT “B”

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



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A COMMISSIONER FOR TAKING AFFIDAVITS

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

THE HONOURABLE MR. ) WEDNESDAY, THE 5<sup>th</sup> DAY  
)  
JUSTICE NEWBOULD ) OF AUGUST, 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**

**THIS MOTION** made by Collins Barrow Toronto Limited (“CBTL”), 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 (the “**Property**”) 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 READING** the Third Report of the Trustee dated July 30, 2015 (the “**Third Report**”) and the Appendices thereto, including the Second Report of the Trustee dated June 23, 2015 (the “**Second Report**”), the Affidavit of Maya Poliak sworn July 30, 2015 (the “**Poliak**”

Affidavit”), the Affidavit of Bryan Tannenbaum sworn July 30, 2015 (the “**Tannenbaum Affidavit**”) and the Affidavit of Ari Katz sworn July 29, 2015 (the “**Katz Affidavit**”), and on hearing the submissions of counsel for the Trustee and other counsel listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn July 31, 2015, filed,

### **SERVICE**

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

### **APPROVAL OF FORM OF VESTING ORDER**

2. **THIS COURT ORDERS** that the form of vesting order attached hereto as **Schedule “A”** be and is hereby approved for use by the Trustee in completing the sale transactions with respect to the remaining 33 Sold Units (as such term is defined in the Third Report).

3. **THIS COURT ORDERS** that Chaitons LLP (“**Chaitons**”), counsel to the Trustee, is hereby authorized to insert into each draft vesting order the following information:

- (a) the name(s) of the purchaser(s) or their nominees in the first preamble paragraph of each draft vesting order and in Schedule “A” to each draft vesting order (the Trustee’s Certificate); and
- (b) the legal description of the applicable Purchased Assets on Schedule “B” to each draft vesting order.



4. **THIS COURT ORDERS** that, upon completion of a draft vesting order by Chaitons with respect to each of the remaining 33 Sold Units in accordance with paragraph 2 hereof (a “Completed Vesting Order”), a representative of Chaitons shall present each Completed Vesting Order to the Registrar of the Ontario Superior Court of Justice (Commercial List), along with a certificate signed by the Trustee confirming the name(s) of the purchaser(s) and the legal description of the property contained in the Completed Vesting Order. The Registrar is authorized, empowered and directed to sign, issue and enter each Completed Vesting Order as presented to it by Chaitons.

#### **APPROVAL OF SECOND REPORT AND ACTIVITIES**

5. **THIS COURT ORDERS** that the Second Report, and the conduct and activities of the Trustee as set out in the Second Report, be and are hereby approved.

#### **SEALING**

6. **THIS COURT ORDERS** that Confidential Appendix 1 to the Third Report is hereby sealed and shall not form part of the public record pending further order of the Court.

#### **DISTRIBUTION TO LAURENTIAN BANK OF CANADA**

7. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to make an interim distribution of \$14 million to Laurentian Bank of Canada.

#### **TRUSTEE TO RETAIN \$5.4 MILLION**

8. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to retain \$5.4 million in an interest bearing account in respect of lien claims pending further order of the Court.

## APPROVAL OF FEES AND DISBURSEMENTS

9. **THIS COURT ORDERS** that the fees and disbursements of CBTL and the Trustee for the period November 18, 2014 to June 30, 2015, as described in the Third Report and the Tannenbaum Affidavit, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of counsel to 144 Park Ltd. ("144") and the Trustee, Chaitons, for the period December 15, 2014 to June 30, 2015, as described in the Third Report and the Poliak Affidavit, are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of counsel to 144 and the Trustee, Harris Sheaffer LLP, for the period January 2, 2015 to July 24, 2015, as described in the Third Report and the Katz Affidavit, are hereby approved.

## UNSOLD UNITS

12. **THIS COURT ORDERS** that the Trustee is authorized to retain and engage Mint Realty Inc. Brokerage to market any of the Unsold Units (as defined in the Third Report) on the terms of the Mint Realty Proposal (as defined in the Third Report).

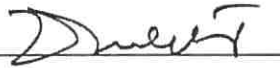
13. **THIS COURT ORDERS** that the Trustee is authorized to sell, convey or transfer the Unsold Units or any part of parts thereof without approval of the Court if:

- (a) the purchase price of the sale transaction is at least 95% of the listing price for the residential unit; or
- (b) the Trustee has obtained the written consent of the first mortgagee of the Property,

otherwise with approval of the Court.

**NELCO**

14. **THIS COURT ORDERS** that Nelco Mechanical Limited (“**Nelco**”) is hereby directed to deliver to the Trustee, within 3 business days of the date of this Order, all manuals, documents, records and information of any kind related to the heating, ventilation and air conditioning system installed by Nelco at the Property.

  
\_\_\_\_\_

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



AUG 0 5 2015

SCHEDULE "A"

Court File No. CV15-10843-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 5<sup>TH</sup> DAY  
)  
JUSTICE ) OF AUGUST, 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

VESTING ORDER

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") for an order vesting in \_\_\_\_\_ (the "Purchaser") the right, title and interest of 144 Park Ltd. (the "Debtor") in and to the property described in Schedule "B" hereto (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Trustee dated July 30, 2015 (the "Third Report") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee:

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of 144's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, certificates of action, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated January 22, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kitchener (Waterloo) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Assets identified in

Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the Purchased all of the Claims listed in Schedule "C" hereto.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the sale of the Purchased Assets is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

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Schedule "A" – Form of Trustee's Certificate

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

TRUSTEE'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice dated January 22, 2015, Collins Barrow Toronto Limited was appointed as 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.

B. Pursuant to an Order of the Court dated August 5, 2015 (the "Vesting Order"), the Court provided for the vesting in \_\_\_\_\_ (the "Purchaser") of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; and (ii) the transaction has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Vesting Order.



**THE TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Trustee has received the purchase price for the Purchased Assets; and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_

Name:

Title:

**Schedule "B" – Purchased Assets**

**Schedule "C" – Claims to be deleted and expunged from title to Purchased Assets**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR611290	May 2, 2011	Notice	\$2	Allen Street Holdings Inc.	Allen Street Holdings Inc., 2184038 Ontario Inc., 144 Park Ltd., COB GP Inc.
WR639367	September 1, 2011	Transfer	\$2,200,000	144 Park Ltd.	Allen Street Holdings Inc.
WR639368	September 1, 2011	Charge	\$8,500,000	144 Park Ltd.	Aviva Insurance Company of Canada
WR639369	September 1, 2011	Charge	\$3,000,000	144 Park Ltd.	Allen Street Holdings Inc.
WR660381	December 13, 2011	Charge	\$2,887,696	144 Park Ltd.	MarshallZehr Group Inc.
WR690395	May 25, 2012	Charge	\$40,000,000	144 Park Ltd.	Laurentian Bank of Canada
WR690396	May 25, 2012	No Assgn Rent Gen		144 Park Ltd.	Laurentian Bank of Canada
WR690416	May 25, 2012	Postponement		Allen Street Holdings Inc.	Laurentian Bank of Canada
WR690422	May 25, 2012	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
WR690423	May 25, 2012	Postponement		MarshallZehr Group Inc.	Laurentian Bank of Canada
WR759234	June 13, 2013	APL Absolute Title		144 Park Ltd.	
WR847447	October 24, 2014	Construction Lien	\$301,592	Global Fire Protection Ltd.	
WR849030	October 31, 2014	Construction Lien	\$88,883	694643 Ontario Limited cob as O'Connor Electric	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR854810	December 1, 2014	Construction Lien	\$537,286	J & I Gaweda Construction Ltd.	
WR854978	December 2, 2014	Construction Lien	\$26,889	Bast Home Comfort Inc.	
WR856621	December 10, 2014	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR856756	December 11, 2014	Construction Lien	\$328,260	Frendel Kitchens Limited	
WR857239	December 12, 2014	Construction Lien	\$436,314	T.I.C. Contracting Ltd.	
WR857322	December 15, 2014	Construction Lien	\$188,393	Global Precast Inc.	
WR857462	December 15, 2014	Construction Lien	\$110,716	2050491 Ontario Inc. o/a The Downsview Group	
WR857468	December 15, 2014	Construction Lien	\$104,009	Sam Tortola Enterprises Inc.	
WR857793	December 16, 2014	Construction Lien	\$15,870	CRS Contractors Rental Supply General Partner Inc.	
WR857850	December 16, 2014	Construction Lien	\$83,436	Adlers Main Tile & Carpet Co. Ltd.	
WR858473	December 19, 2014	Construction Lien	\$30,851	Turner Fleischer Architects Inc.	
WR858748	December 19, 2014	Construction Lien	\$46,043	Hammerschlag & Joffe Inc.	
WR858991	December 22, 2014	Construction Lien	\$345,952	Sreen Painting Ltd.	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR859188	December 23, 2014	Construction Lien	\$176,771	Weston Flooring Limited	
WR859941	December 30, 2014	Construction Lien	\$32,381	Great Pyramid Aluminum Ltd.	
WR860525	January 5, 2015	Construction Lien	\$139,287	Adlers Main Tile & Carpet Co. Ltd.	
WR860757	January 6, 2015	Certificate of Action		Frendel Kitchens Limited	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., D. Mady Investments Inc., MarshallZehr Group Inc., Allen Street Holdings Ltd., Aviva Insurance Company of Canada, Laurentian Bank of Canada
WR861891	January 13, 2015	Certificate of Action		Bast Home Comfort Inc.	
WR862054	January 14, 2015	Certificate of Action		J & I Gaweda Construction Ltd.	
WR862055	January 14, 2015	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR862500	January 16, 2015	Certificate of Action		694643 Ontario Limited	
WR863268	January 21, 2015	Certificate of Action		Turner Fleischer Architects Inc.	Mady Contract Division Ltd., Mady Contract Division (2009) Ltd., Mady

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Development Corporation, 144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group Inc., Laurentian Bank of Canada
WR863291	January 21, 2015	Construction Lien	\$113,328	Brody Wall System Ltd.	
WR863296	January 21, 2015	Certificate of Action		T.I.C. Contracting Ltd.	
WR863658	January 23, 2015	Construction Lien	\$4,258	Skyway Canada Limited	
WR863814	January 23, 2015	Construction Lien	\$210,190	DKS Stone Fabrication & Design Inc.	
WR863820	January 23, 2015	APL Court Order		Ontario Superior Court of Justice (Commercial List)	Collins Barrow Toronto Limited
WR864339	January 28, 2015	Construction Lien	\$752,632	Clonard Group Inc.	
WR864365	January 28, 2015	Certificate of Action		Hammerschlag & Joffe Inc.	
WR864655	January 29, 2015	Construction Lien	\$260,447	Aluminum Window Design Installations Inc.	
WR865440	February 2, 2015	Certificate of Action		Great Pyramid Aluminum Ltd.	144 Park Ltd.
WR865713	February 4, 2015	Certificate of Action		Global Precast Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR865936	February 5, 2015	Certificate of Action		Adlers Main Tile & Carpet Co. Ltd.	
WR866373	February 9, 2015	Certificate of Action		2050491 Ontario Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group Inc., Laurentian Bank of Canada
WR867197	February 13, 2015	Certificate of Action		Weston Flooring Limited	
WR867757	February 19, 2015	Certificate of Action		Sereen Painting Ltd.	
WR868712	February 26, 2015	Certificate of Action		Sam Tortola Enterprises Inc.	
WR870655	March 11, 2015	Certificate of Action		Aluminum Window Design Installations Inc.	
WR870768	March 12, 2015	Certificate of Action		CRS Contractors Rental Supply General Partner Inc.	
WR870844	March 12, 2015	Certificate of Action		Brody Wall System Ltd.	144 Park Ltd.
WR874856	April 8, 2015	Certificate of Action		DKS Stone Fabrication & Design Inc.	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR875305	April 10, 2015	Certificate of Action		Skyway Canada Limited	



**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Purchased Assets**

**(unaffected by the Vesting Order)**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR625222	July 7, 2011	Notice	\$2	The Corporation of the City of Waterloo	Allen Street Holdings Inc.
WR655113	November 17, 2011	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR666363	January 18, 2012	Transfer Easement	\$2	144 Park Ltd.	Rogers Cable Communications Inc.
58R17836	June 13, 2013	Plan Reference			
58R18116	February 7, 2014	Plan Reference			
58R18429	November 27, 2014	Plan Reference			
WR856168	December 8, 2014	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR864508	January 29, 2015	Transfer Easement	\$2	144 Park Ltd.	Waterloo North Hydro Inc.
WR867313	February 17, 2015	Notice	\$2	The Regional Municipality of Waterloo	
WR876062	April 16, 2015	Notice	\$2	144 Park Ltd.	One 55 Mady Ltd.
WCP591	May 25, 2015	Standard Condo Plan			
WR882241	May 25, 2015	Condo Declaration		144 Park Ltd.	

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**

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

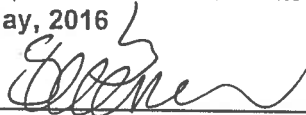
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**Lawyers for the Trustee**

# EXHIBIT “C”

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



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A COMMISSIONER FOR TAKING AFFIDAVITS

**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 GREG PUKLICZ  
(sworn January 16, 2015)**

**I, GREG PUKLICZ, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY AS FOLLOWS:**

1. I am Senior Vice President and Chief Financial Officer of MADY Development Corporation (“MADY”) and Vice President of 144 Park Ltd. (“144”). The facts set forth herein are within my personal knowledge, determined from the face of the documents attached hereto as exhibits, and from information and advice provided to me by others. Where I have relied upon such information and advice, I have identified its source and I verily believe it to be true.

**Overview**

2. 144 is the owner of a 149 unit condominium project in Waterloo, Ontario. 144 has sold 129 units to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings. 144 is insolvent. It is in default of its loan obligations to its bank and currently

owes in excess of \$39.0 million to the bank. There are approximately \$3.0 million in construction liens registered against title to the property. The closings of the units cannot occur without the construction liens being vacated. The lien claimants have no way of recovering any payment at this time. There is an additional 20 units to be sold. The units require additional work that cannot be completed by 144 without further financing. It is in the best interest of all stakeholders for a construction lien trustee to be appointed to register the Plan, complete the closing of the 129 sold units, complete and sell the 20 unsold units, and distribute the sale proceeds pursuant to Court order.

### **The MADY Group**

3. The MADY Group is a diversified real estate development group with commercial and residential business operations across North America. The MADY Group was founded over 40 years ago in Windsor, Ontario by Charles Mady. The MADY Group currently has offices in Markham and Windsor, Ontario.

4. The MADY Group builds condominiums, mixed-use developments and commercial retail developments, and has a current development portfolio of more than 1,500 condos, over 1.5 million square feet of retail projects, and several retirement communities.

5. The MADY Group also includes a construction division. In many of our projects, we provide construction management services through a related party, Mady Contract Division (2009) Ltd. (“MCDL”).

### **144 Park Project and the Property**

6. One of the MADY Group’s current condominium development projects is a 19 storey condominium project known as “144 Park Uptown Waterloo” (the “144 Park Project”). 144 is

the registered owner of the lands that comprise the 144 Park Project (the “**Property**”). Copies of the parcel registers for the two PINs that form the Property are collectively attached hereto and marked as **Exhibit “A”**.

7. 144 is a single purpose standalone entity that was incorporated to develop and construct the Property. 144 is an Ontario corporation with its registered office located in Markham, Ontario. A copy of a Corporate Profile Report for 144 is attached hereto and marked as **Exhibit “B”**.

8. In September 2011, 144 purchased the Property from Allen Street Holdings Inc. (“**Allen Street**”) pursuant to a Transfer registered on title to the Property on September 1, 2011 as Instrument No. WR639367. A copy of the Transfer is attached hereto and marked as **Exhibit “C”**.

9. The 144 Park Project is located at 142, 144 and 148 Park Street and 21 Allen Street West, which is at the intersection of Park Street and Allen Street West in the Old Westmount neighbourhood of Waterloo, Ontario.

10. The 144 Park Project is a residential condominium project with 149 total units (148 residential units and one guest suite unit), along with 150 storage units, 149 parking units, 12 miscellaneous units and one (1) roof top terrace unit.

11. The 144 Park Project has the following building amenities and features: concierge; fully outfitted Fitness Room with change rooms; Party Room equipped with caterers’ kitchen and bar and with direct access to a 4<sup>th</sup> floor terrace featuring natural gas barbeque, outdoor eco-friendly

furniture and landscaping; and a Theater Room complete with big screen television and surround sound audio system.

12. MCDL is the construction manager for the 144 Park Project.

### Mortgagees

#### Allen Street

13. As noted above, 144 purchased the Property from Allen Street on September 1, 2011. 144 financed the purchase of the Property, in part, by way of a loan in the form of vendor take-back financing from Allen Street (the "**Allen Street Loan**"). The Allen Street Loan was evidenced by a non-interest bearing promissory note in the amount of \$3,000,000, a copy of which is attached hereto and marked as **Exhibit "D"**.

14. As security for the Allen Street Loan, 144 granted a charge/mortgage in the principal amount of \$3,000,000 in favour of Allen Street, which charge/mortgage was registered on title to the Property on September 1, 2011 as Instrument No. WR639369 (the "**Allen Street Charge**"). A copy of the Allen Street Charge is attached hereto and marked as **Exhibit "E"**.

15. The Allen Street Charge is the second mortgage registered against title to the Property, after the Aviva Charge (as defined below). As discussed below, the Allen Street Charge has been postponed in favour of the Laurentian Charge (as defined below). Additionally, although no postponement has been registered on title to the Property, I understand that, pursuant to an amending agreement dated April 29, 2011, Allen Street agreed that the Allen Street Charge would be postponed in favour of, among other things, any mezzanine financing obtained by 144. Additionally, on November 14, 2014, Allen Street and MarshallZehr Group Inc. ("**MarshallZehr**") entered into a postponement and priorities agreement that provides that the