

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**

FIFTH REPORT OF THE TRUSTEE

October 13, 2015

INTRODUCTION AND PURPOSE OF THE FIFTH 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) (the “**CLA**”) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144**”) 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**”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.

2. The purpose of this Fifth Report of the Trustee (the “**Fifth Report**”) is to:
 - (a) report to the Court on the Trustee’s activities since July 30, 2015, being the date of the Trustee’s Third Report to the Court (the “**Third Report**”), a copy of which (without appendices) is attached hereto and marked as **Appendix “B”**;

 - (b) request that the Court grant an Order (or Orders):
 - (i) approving a sale-leaseback transaction entered into by the Trustee, for and on behalf of 144, and 81 Capital Inc. (“**81 Capital**”) with respect to the heating, ventilation and air conditioning system (“**HVAC System**”) that has been installed at the 144 Park Project (as defined below), authorizing, *nunc pro tunc*, the execution by the Trustee of all documents related to the transaction, and vesting in 81 Capital the right, title and interest of 144 in the HVAC System free and clear of any and all claims and encumbrances;

- (ii) authorizing the Trustee to make distributions to construction lien claimants of holdback amounts in the aggregate amount of \$932,948.74 pursuant to section 78(2) of the *CLA*, with the source of such funds being the net sale proceeds of the Property totaling approximately \$5.4 million currently being held by the Trustee in an interest bearing account pursuant to an order of the Court dated August 5, 2015 (the “**August 5th Order**”);
- (iii) authorizing the Trustee to make an interim distribution of up to \$6 million of the net sale proceeds of the Property (other than funds being held by the Trustee pursuant to the August 5th Order) to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and
- (iv) approving the fees and disbursements of the Trustee, and its insolvency law counsel Chaitons LLP (“**Chaitons**”), as set out in the Fifth Report and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

3. In preparing this Fifth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144, discussions with management and employees of 144 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 Fifth Report may refer to, or is based on, the Information. As the Information has been provided by 144 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.

TRUSTEE'S ACTIVITIES SINCE THE THIRD REPORT

4. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the Third Report:
 - (a) attending numerous calls with Chaitons and Harris Sheaffer LLP (“**Harris Sheaffer**”) regarding the Trustee’s motion on parking reallocation and potential termination of agreements of purchase and sale (“**APS**”);
 - (b) arranging for the interim distribution of \$14 million to LBC pursuant to the August 5th Order, a copy of which is attached hereto as **Appendix “C**”;
 - (c) attending to discussions and emails with First Service Residential of Ontario regarding status certificates to be executed by members of the condominium corporation board of directors;¹
 - (d) arranging for a meeting room in Waterloo, Ontario and attending a “town hall” meeting on August 17, 2015 with residents of the Property who had agreed to purchase two parking units with their residential units to discuss parking shortage issues;

¹ Three of the Trustee’s partners and staff agreed to act as board members prior to turnover of the condominium corporation to resident owners on September 28, 2015. As a result of resident owners being elected to the board, the Trustee’s partners and staff have resigned as members of the board effective September 28, 2015.

- (e) reviewing and approving documents related to the condominium corporation turnover meeting, arranging for a meeting room in Waterloo, Ontario, and attending the condominium corporation turnover meeting on September 28, 2015;
- (f) reviewing emails from various residents of the Property regarding potential alternate parking solutions, considering the practicality of implementing the solutions including drafting and releasing correspondence to owners that have closed their sale transactions to determine if they are willing to sell or lease their parking spots and contacting the City of Waterloo regarding the ability to have outdoor parking on Park Street;
- (g) reviewing the books and records of 144 with Harris Sheaffer to ascertain the total deposits and upgrade monies paid by purchasers who agreed to purchase two parking units with their residential unit in the event that termination of their APS is required;
- (h) attending to all matters necessary to close the sale of condominium units, including reviewing final closing statements of adjustments, reviewing and executing Trustee's Certificates, discussing various matters with Harris Sheaffer and calculating net proceeds of sale and harmonized sales tax and property tax reserves;
- (i) doing all things necessary to continue rectifying in-suite and common area deficiencies, including approving quotes for services and materials, discussing specific issues with on-site personnel and facilitating payments, as appropriate, to trades and consultants;

- (j) reviewing, amending and discussing with legal counsel documentation related to listing agreements for unsold units at the Property, discussing changes with Mint Realty and executing amended listing agreements for the unsold units;
- (k) discussing with and providing instructions to Harris Sheaffer regarding termination of the APS for unit 1009, where the purchaser was unable to close the transaction;
- (l) reviewing documentation relating to the HVAC system sale and leaseback with 81 Capital, including discussions with Chaitons and Harris Sheaffer regarding required amendments to documents, sending amended documents to 81 Capital and attending a conference call with 81 Capital and Aviva Insurance Company of Canada (“Aviva”);
- (m) attending to emails and calls with the City of Waterloo regarding completion and installation of public art, including obtaining direction on and completing an application for a building permit to install the public art;
- (n) providing copies of emails and documentation to litigation counsel for Northbridge Insurance in relation to flooding incident in March 2015 and potential recoveries from HVAC installer, heat pump manufacturer and heat pump parts supplier;
- (o) reviewing and discussing with Chaitons the application filed in Kitchener Court by purchaser of units 1407 and 1408 for termination of APSs and return of deposit

and other monies, including transfer of proceeding to the Commercial List in Toronto;

- (p) attending to numerous calls and emails with mortgagees, including LBC, National Bank of Canada and MarshallZehr Group Inc. (“**MarshallZehr**”);
- (q) drafting materials for the Fourth Report to the Court dated September 25, 2015 and reviewing, amending and discussing same with Chaitons;
- (r) reviewing and responding to questions posed by certain purchasers in connection with the Trustee’s Fourth Report;
- (s) drafting materials for this Fifth Report and reviewing, amending and discussing same with Chaitons; and
- (t) doing all things necessary with respect to the Trustee’s mandate under the Appointment Order and the *CLA*.

HVAC AND 81 CAPITAL

5. As has been previously reported to the Court, an HVAC System was installed at the residential condominium tower located on the Property (the “**144 Park Project**”) by Nelco Mechanical Limited.
6. On February 26, 2014, prior to the Trustee’s appointment, 144 and 81 Capital entered into a Builder Agreement, pursuant to which 144 agreed to sell, and 81 Capital agreed to buy, the HVAC System and related property for a purchase price of \$1.6 million. A copy of the Builder Agreement is attached hereto and marked as **Appendix “D”**.

7. In connection with the Builder Agreement, 81 Capital advanced \$1.6 million to 144 and Aviva issued an Advance Payment Bond dated February 26, 2014 in the amount of \$1.6 million with respect to 144's obligations to take steps to complete the sale leaseback transaction following the registration of the condominium.
8. As has been previously reported, the condominium Declaration for the 144 Park Project was registered on May 25, 2015. The sale leaseback transaction and the requirement of 144 to enter into the agreements with respect to the HVAC System is referred to in the Declaration.
9. The lease payments for the HVAC System were contemplated by 144 and incorporated into the budget for the 144 Park Project, which was provided to all purchasers and residents.
10. The Trustee understands that, if the sale leaseback transaction that was agreed to by 144 is not completed, 81 Capital had the ability to seek recourse from Aviva and call on the \$1.6 million bond. The bond is secured by deposits currently being held in trust by Harris Sheaffer. As a result, not completing the sale leaseback transaction with 81 Capital will be to the detriment of all of 144's stakeholders as it will greatly reduce the amount of the deposits currently being held by Harris Sheaffer, which may become available for payment to stakeholders at a later date.
11. The Trustee and 81 Capital executed the following documents with respect to the sale leaseback transaction (collectively, the "81 Capital Documents"), which are collectively attached hereto and marked as **Appendix "E"**:

- (a) Bill of Sale made as of September 1, 2015;
 - (b) Confirmation dated September 1, 2015;
 - (c) Lease Agreement made as of September 1, 2015;
 - (d) Condo Assumption Agreement made as of September 1, 2015; and
 - (e) Undertaking made as of September 15, 2015.
12. 81 Capital has requested that a vesting order be obtained in connection with the sale leaseback transaction, to ensure that it acquires the HVAC System free from all claims and encumbrances.
13. The Trustee is of the view that completing the sale leaseback transaction with 81 Capital is for the benefit of all of 144's stakeholders, and is requesting that it be authorized by the Court to execute the 81 Capital Documents and complete the transaction, and that the Court grant an Order vesting the HVAC System in 81 Capital free and clear of all claims and encumbrances.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

14. Attached hereto and marked as **Appendix "F"** is a copy of a statement of receipts and disbursements prepared by the Trustee for the period from January 22 to September 25, 2015 (the "**R&D Statement**").

CONSTRUCTION LIEN CLAIMS PROCESS

15. Construction liens had been registered against the Property in a total amount of approximately \$4.3 million. Attached as **Appendix "G"** is a chart that sets out the

twenty (20) parties (collectively, the “**Construction Lien Claimants**”) that registered twenty one (21) construction liens against the Property, and the total amount of such liens.

16. Pursuant to the Order (re Construction Lien Claims Process) of Mr. Justice Wilton-Siegel dated April 23, 2015, the Trustee is to implement and administer a construction lien claims process (the “**Construction Lien Claims Process**”). A copy of the Order is attached and marked as **Appendix “H”**.
17. The Trustee has received documentation with respect to the construction liens of each of the Construction Lien Claimants.
18. Pursuant to the August 5th Order, the Trustee was authorized and directed to retain \$5.4 million from net sale proceeds of the Property in an interest bearing trust account in respect of construction lien claims pending further order of the Court. This amount represents approximately 125% of the total face value amounts of the registered construction liens.
19. The Trustee and Chaitons have reviewed the claims filed by the Construction Lien Claimants pursuant to the Construction Lien Claims Process. The Trustee has discussed the quantum of each claim with former employees of 144 to confirm whether the amounts claimed by the Construction Lien Claimants were consistent with the amounts set out in 144’s books and records.

20. Based on such review, it has been determined that each of the Construction Lien Claimants entered into a contract directly with 144, and there was no general contractor with respect to the 144 Park Project.
21. The Trustee has been advised by Chaitons that, pursuant to section 22 of the *CLA*, 144 was required to maintain a holdback for each Construction Lien Claimant of ten per cent (10%) of the price of services and materials as they were actually supplied. The Trustee understands that, as of the date of its appointment, there were no funds still being held by 144 with respect to holdback amounts.
22. The Trustee has also been advised by Chaitons that, pursuant to section 78(2) of the *CLA*, a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that 144 was required to retain under the *CLA*.
23. Based on numerous discussions and correspondence between Chaitons and counsel to Construction Lien Claimants, and a review of 144's books and records, the Trustee understands that nine (9) Construction Lien Claimants, details for which are set out in the below chart have properly perfected construction lien claims and have agreed to the quantum of the holdbacks, as determined by the Trustee:

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Global Fire Protection Ltd.	85,645.54
J & I Gaweda Construction Limited	103,632.60
T.I.C. Contracting Ltd.	292,217.30
Global Precast Inc.	115,179.62
2050491 Ontario Inc. o/a The Downsview Group	54,202.46
Weston Flooring Limited	68,639.79
Great Pyramid Aluminum Ltd.	9,410.75
DKS Stone Fabrication & Design Inc.	42,087.16

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Aluminum Window Design Installations Inc.	161,933.52
TOTAL	\$932,948.74

24. The Construction Lien Claimants set out above represent 9 of the 20 Construction Lien Claimants. The Trustee and Chaitons will continue to have discussions with remaining 11 Construction Lien Claimants in an effort to confirm whether such parties have properly perfected construction liens and the amount of holdbacks.
25. The Trustee anticipates being in a position to provide, by the end of October 2015, a recommendation to the Court regarding:
- (a) the holdback amounts to be distributed to the remaining 11 Construction Lien Claimants;
 - (b) the total amount of the claims of the Construction Lien Claimants that have been accepted by the Trustee under the Construction Lien Claims Process; and
 - (c) the priority between the mortgagees and the Construction Lien Claimants with respect to amounts other than holdback amounts.
26. The Trustee will be consulting with counsel on the service list for this proceeding regarding a motion date to be scheduled in November 2015 to deal with these matters.
27. At this time, the Trustee is proposing to distribute to the 9 Construction Lien Claimants identified in the chart set out in paragraph 23 above the holdback amounts set out in the

chart. The Trustee is seeking the authorization of the Court to make such interim distributions.

DISTRIBUTION TO LBC

28. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of approximately \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank by the then three prior registered mortgagees (Allen Street Holdings Inc., Aviva and MarshallZehr), the Bank has the first ranking mortgage against the Property.
29. The Trustee obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first mortgage against the Property.
30. Pursuant to the August 5th Order, the Trustee was authorized to distribute \$14 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$14 million to the Bank.
31. The Trustee has been informed that, as of September 22, 2015, the Bank was owed \$26,418,889 in connection with the credit facilities it extended to 144.
32. As set out in the R&D Statement, the Trustee is proposing to distribute up to \$6 million to the Bank from the net sale proceeds of the Property currently being held by the Trustee (this does not include the \$5.4 million that the Trustee is holding with respect to the construction lien claims, as discussed above).

33. The Trustee is seeking the authorization of the Court to make an interim distribution to LBC up to the amount of \$6.0 million. The Trustee is of the view that the interim distribution is to the benefit of 144's stakeholders, as it reduces the indebtedness of 144 to the Bank which continues to accrue interest, and there is no prejudice to the lien claimants given the \$5.4 million that is being retained by the Trustee pending further Order of the Court.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

34. Pursuant to paragraph 20 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
35. The total fees for Trustee for the period of July 1, 2015 to August 31, 2015 were \$94,191.50, plus disbursements of \$1,256.60, plus HST of \$12,408.26, for a total of \$107,856.36. The time spent by the Trustee is more particularly described in the Affidavit of Bryan Tannenbaum sworn October 13, 2015, which is attached hereto and marked as **Appendix "I"** and contains copies of invoices that set out the services provided during this time period.
36. The total fees of Chaitons, as insolvency counsel to Trustee, for the period of June 26, 2015 to August 31, 2015, were \$71,258, plus disbursements of \$695.18, plus HST of \$9,325.60, for a total of \$81,278.78. The time spent by Chaitons is more particularly described in the Affidavit of Sam Rappos sworn October 13, 2015, which is attached

hereto and marked as **Appendix "J"** and contains, among other things, copies of invoices that set out the services provided during this period of time.

37. The Trustee is of the view that the fees and disbursements charged by Chaitons are fair and reasonable.

TRUSTEE'S REQUEST TO THE COURT

38. Based on the foregoing, the Trustee respectfully requests that the Court issue Orders:
- (a) approving the sale-leaseback transaction entered into between the Trustee and 81 Capital with respect to the HVAC System, authorizing, *nunc pro tunc*, the execution by the Trustee of the 81 Capital Documents, and vesting in 81 Capital the right, title and interest of 144 in the HVAC System free and clear of any and all claims and encumbrances;
 - (b) authorizing the Trustee to make interim distributions to the lien claimants with respect to holdback amounts as set out above;
 - (c) authorizing the Trustee to make an interim distribution of up to \$6 million to LBC; and
 - (d) approving the fees and disbursements of the Trustee and Chaitons.

All of which is respectfully submitted to this Court as of this 13th day of October, 2015.

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

Per: 

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

Title: President

I have the authority to bind the corporation

APPENDIX “A”



**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

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.

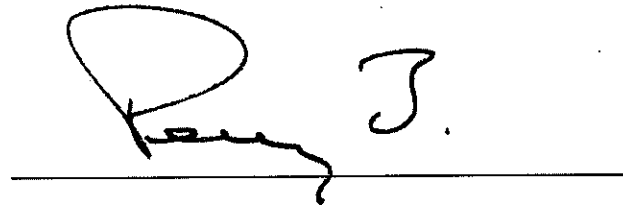
30. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof 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.



ENTREPREND AT / INSCRIT A TORONTO
ON / EN / ENREGISTRÉ
LE / DANS LE REGISTRE NO..

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	

Task	Notes	Timing to Completion
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 22nd 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)

CHATTONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

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Lawyers for the Applicant, 144 Park Ltd.

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**

THIRD REPORT OF THE TRUSTEE

July 30, 2015

INTRODUCTION AND PURPOSE OF THE THIRD 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 (“Collins Barrow”) was appointed *Construction Lien Act* (Ontario) trustee (the “Trustee”) with respect to lands and premises 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”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.

2. The purpose of the third report of the Trustee (the “Third Report”) is to:
 - (a) report to the Court on the Trustee’s activities since June 23, 2015, being the date of the Trustee’s second report to the Court (the “Second Report”), a copy of which (without appendices) is attached hereto and marked as **Appendix “B”**;

 - (b) request that the Court grant an Order(s):
 - (i) approving the Second Report and the activities and conduct of the Trustee as set out therein;

 - (ii) approving a form of vesting order to be used by the Trustee to complete the sale of the remaining 33 pre-sold residential units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons LLP (“Chaitons”) upon delivery of a Trustee certificate confirming the name(s) of the

purchaser(s) and the legal description of the property as set out in each vesting order;

- (iii) authorizing the Trustee to engage Mint Realty Inc. Brokerage (“**Mint Realty**”) to market any or all of the Unsold Units (as defined below) on the terms of the Mint Realty Proposal (as defined below), including advertising and soliciting offers in respect of the Unsold Units or any part or parts thereof;
- (iv) authorizing the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property;
- (v) approving the fees and disbursements of the Trustee, its insolvency counsel Chaitons, and its condominium counsel Harris Sheaffer LLP (“**Harris Sheaffer**”), as set out in the Third Report and the fee affidavits attached as appendices hereto;
- (vi) authorizing the Trustee to retain net sale proceeds in the amount of \$5.4 million in respect of the lien claims pending further order of the Court;
- (vii) authorizing the Trustee to make an interim distribution of \$14 million of the net sale proceeds on hand to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and

- (viii) directing Nelco Mechanical Limited (“Nelco”) to deliver to the Trustee the manuals for the heating, ventilation and air conditioning (“HVAC”) system installed by Nelco at the Property, so that such manuals may be provided by the Trustee to the residents at the turnover meeting for the condominium corporation (“WSCC 591” or the “Condominium Corporation”).

TERMS OF REFERENCE

3. In preparing this Third Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park Ltd. (“144”), discussions with management and employees of 144 and other companies within the MADY group of companies (“MADY Group”), and information received from third-party sources (collectively, the “Information”). Certain of the information contained in this Third Report may refer to, or is based on, the Information. As the Information has been provided by 144 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. This proceeding was commenced by way of application brought by 144, the registered owner of the Property. A complete copy of 144's Application Record, along with all other Court materials, can be found on the Trustee's website at:

<http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd>

5. 144 is part of the MADY Group, a diversified real estate development group with commercial and residential business operations across North America.
6. The Property was acquired by 144 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").
7. 144 sought the appointment of the Trustee in January 2015 as it was insolvent and was not in a position to:
- (a) take the necessary steps to have the condominium declaration finalized and registered;
 - (b) complete the sale transactions for the 129 residential units that had been pre-sold; and
 - (c) complete the marketing and sale of the unsold 19 residential units.
8. Pursuant to the Appointment Order, the Trustee was authorized and empowered to, among other things:

- (a) act as receiver and manager of the Property;
- (b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and
- (c) complete the existing agreements of purchase and sale for the pre-sold residential units and related parking units and storage units that form part of the Property.

TRUSTEE'S ACTIVITIES SINCE THE SECOND REPORT

9. The Trustee served its Second Report on the service list on June 23, 2015. As noted above, a copy of the Second Report (without appendices) is attached hereto as Appendix "B".
10. The Trustee is seeking approval of the Second Report and its activities and conduct as set out in the Second Report. To date, the Trustee has received no adverse comments on the Second Report.
11. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the Second Report:
 - (a) discussing with Harris Sheaffer the responsibilities of the directors and officers of a condominium corporation, including payment of common element fees by the Trustee, and attending at Harris Sheaffer's offices to review and sign required documents in relation to WSCC 591;
 - (b) reviewing invoices from various trades engaged by the Trustee to rectify in-suite and common element deficiencies and approve payments therefor;

- (c) attend conference calls with various stakeholders to apprise them of ongoing developments;
- (d) communicating with Tarion Warranty Corporation regarding the validity of delayed occupancy claims made by unit purchasers, reviewing supporting documentation in this regard and directing Harris Sheaffer to make adjustments to closing documents, as appropriate;
- (e) communicating with 81 Capital Inc. regarding the lease agreement to be entered into by WSCC 591 for the HVAC system installed at the Property;
- (f) doing all things necessary to complete the closings of .66 residential units, including reviewing all final statements of adjustments, providing direction to Harris Sheaffer as required, executing Trustee's Certificates and meeting with Chaitons regarding same;
- (g) communicating with residents with two parking units to request that the sale transaction be completed with only one unit with a discount to the purchase price of their residential unit and reallocating parking units to various residents in order to provide permanent parking units to those with temporary parking units and to provide for parking spaces for Unsold Units;
- (h) responding to correspondence from counsel to numerous purchasers regarding various issues raised and providing responses with respect to their information requests;

- (i) communicating with Canada Revenue Agency (“CRA”) regarding its examination of harmonized sales tax (“HST”) credits claimed by the Trustee for March and April 2015;
- (j) preparing documentation as requested by CRA for its examination of the HST credits claimed by the Trustee for May and June 2015;
- (k) communicating with MarshallZehr Group Inc. (“MarshallZehr”) regarding its account statement for funds borrowed from it (the “Trustee’s Borrowings”), reviewing the associated documentation received and repaying the Trustee’s Borrowings and paying associated facility fee;
- (l) drafting materials for the Third Report, reviewing and amending same; and
- (m) doing all things necessary to administer and operate the Property.

SALE TRANSACTIONS

12. As of the date of the appointment of the Trustee, the Property was comprised of two parcel registers, bearing PINs 22417-0134 and 22417-0135. As previously reported to the Court, the condominium declaration was registered on May 25, 2015. As a result of the registration, parcel register PIN 22417-0134 was retired and was divided into, among other things, 461 new parcel registers to represent the 148 residential units, 1 guest unit, 149 parking units, 150 storage units and 13 miscellaneous units located at the 144 Park Project. The Trustee has been advised by Harris Sheaffer that parcel register PIN 22417-0135 is land that is adjacent to, and does not form part of, the 144 Park Project.

13. With respect to the sale of residential units, as of January 22, 2015, 144 had entered into agreements of purchase and sale with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 to the purchasers.
14. 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 Justice McEwen dated April 29, 2015.
15. As a result, there were 128 units that were the subject of agreements of purchase and sale with 144 (the “**Sold Units**”) and 20 unsold units (the “**Unsold Units**”). The Sold Units were comprised of:
 - (a) five of the eight townhouse suite units located on level 1;
 - (b) 115 of the 130 apartment style units located on levels 4 through 17;
 - (c) six of the seven penthouse suite units located on level 18; and
 - (d) two of the four greater penthouse suite units located on level 19.
16. In the Second Report, the Trustee reported that the sale transactions for 95 of the 128 Sold Units were expected to close by July 9, 2015, and there remained 33 Sold Units that did not have a set date for closing.
17. The Trustee requested that the Court approve a form of vesting order to be used in connection with each of the 95 sale transactions. On June 26, 2015, Mr. Justice Newbould granted an Order approving a form of vesting order, a copy of which is attached hereto and marked as **Appendix “C”**.

18. Following the granting of the Order, the Trustee closed the sale of 66 residential units and related parking and storage units. As a result of the closing of these sale transactions, the Trustee has received sale proceeds (net of HST and property taxes to be paid) of approximately \$18,506,491.
19. By July 9, 2015, the Trustee was only able to close 66 of the 95 sale transactions, as the closing of the vast majority of the remaining 29 sale transactions were delayed as a result of issues relating to parking. Some purchasers were occupying temporary parking spaces that could not be conveyed. In addition, parking units were not allocated to Unsold Units. To close transactions and convey title to parking units and to make parking units available for sale along with Unsold Units, it was necessary for the Trustee to re-allocate parking units.
20. The re-allocation process has been completed and the Trustee intends to close the sale transactions to certain purchasers on or about August 10, 2015. The Trustee anticipates that it can close 36 additional residential units on or around August 10, 2015, with another residential unit scheduled to close on or about September 17, 2015.
21. If these transactions are finalized as anticipated, then as of September 17, 2015, the sales of 103 of the 128 pre-sold units will have been completed. The majority of the remaining 25 pre-sold units that have not closed to date are as a result of a separate parking issue, as such purchasers agreed to purchase two parking units from 144, and there are insufficient parking units in the 144 Park Project for such purchasers to each receive two parking units and to allocate a parking unit to each of the Unsold Units. The marketability of the

Unsold Units will be greatly diminished if they do not have parking units available to purchasers.

22. As previously reported to the Court, in an effort to resolve the matter, the Trustee offered to complete the sale of the residential units with one parking unit rather than two parking units and to reduce the purchase price accordingly. A number of purchasers of residential units with two parking units have accepted the Trustee's offer. The Trustee will return to Court for such relief as may be appropriate in the event that it is unable to resolve the issue with the purchasers of remaining residential units with two parking units.
23. As noted above, the Court previously approved a form of vesting order to be used for 95 of the Sold Units. It is necessary at this time to have the Court approve a form of vesting order for use in connection with the sale of the remaining 33 Sold Units and related parking and storage units.

UNSOLD UNITS

Mint Realty

24. As set out in the Second Report, the Appointment Order does not authorize or empower the Trustee to market or sell the Unsold Units.
25. The Trustee has been approached by Mint Realty, which the Trustee understands is a reputable and well known real estate brokerage in the Kitchener-Waterloo area, with a proposal to market and sell the Unsold Units. Mint Realty has indicated that their objective is to provide a complete marketing, sales and design solution for the Unsold Units, which includes, among other things, setting market prices for each type of unit, staging model suites for purchasers to attend and view, approaching potential purchasers

to negotiate transactions which will be subject to final approval by the Trustee, setting up a sales centre for purchasers to be able to select upgrades and engaging its own trades people to finish the Unsold Units.

26. In its proposal, Mint Realty has indicated that it will be seeking a sales management and listing fee, a selection and upgrade consultation fee, a staging and décor fee for model suites, and a marketing budget. A copy of Mint Realty's proposal (the "Mint Realty Proposal"), with Mint Realty's proposed fees redacted, is attached hereto as **Appendix "D"**. An unredacted copy of the Mint Realty Proposal will be provided to the Court as **Confidential Appendix "1"**. The Trustee will be requesting that the Court grant a sealing order with respect to the unredacted proposal, as the Trustee believes that it is appropriate to keep confidential Mint Realty's proposed fees so as not to prejudice Mint Realty in the market place with regard to the fees it has quoted or will quote on other similar assignments. The Trustee is of the view that Mint Realty's proposed fees are commercially reasonable.
27. The Trustee believes that utilizing Mint Realty as its agent to complete the sales of the Unsold Units is appropriate for the following reasons:
- (a) Mint Realty has significant experience in the real estate industry and specifically in the condominium market in the Kitchener-Waterloo area;
 - (b) having Mint Realty court purchasers, including showing purchasers model suites, dealing with upgrades and trades, and completing transactions, will significantly reduce the professional fees of the Trustee;

- (c) much of Mint Realty's proposed compensation is based on commissions earned on the purchase price and value of upgrades they are able to sell, which will provide Mint Realty with the incentive to maximize selling prices and upgrades, the proceeds from which will be for the benefit of 144's creditors. The Trustee believes that the proposed fees of Mint Realty are fair and reasonable; and
- (d) the Trustee has spoken to representatives from LBC and MarshallZehr, the first and second mortgagees on the Property, regarding the engagement of Mint Realty for the purposes set out herein, and both parties are in agreement with the Trustee retaining Mint Realty on the terms of the Mint Proposal.

Parking

- 28. As has previously been reported to the Court, there were no parking units in the 144 Park Project that were allocated by 144 to the Unsold Units, as 144 intended to allocate parking units to the Unsold Units in a project to be built adjacent to the 144 Park Project by another company in the MADY Group.
- 29. The Trustee, in an attempt to have parking units available to be allocated to the Unsold Units, took steps to re-allocate various existing parking units and requested that purchasers that had intended to purchase two parking units from 144 agree to close their sale transactions with only one parking unit and a reduction to the purchase price.
- 30. As a result of the Trustee's actions, there are now 9 parking units that are available to be allocated to the Unsold Units. As noted above, the Trustee continues to have discussions with purchasers with two parking units in an attempt to have them close their sale transactions with only one parking unit.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

31. Pursuant to paragraph 20 of the Appointment Order, the Trustee, its counsel, and counsel to 144 are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
32. The total fees for Collins Barrow and the Trustee for the period of November 18, 2014 to June 30, 2015 were \$287,393.10, plus disbursements of \$0, plus HST of \$37,361.11, for a total of \$324,754.21. The time spent by Collins Barrow and the Trustee is more particularly described in the Affidavit of Bryan Tannenbaum sworn July 30, 2015, which is attached hereto and marked as **Appendix "E"** and contains copies of invoices that set out the services provided during this time period.
33. The total fees of Chaitons, as insolvency counsel to 144 and the Trustee, for the period of December 15, 2014 to June 30, 2015, were \$152,914.80, plus disbursements of \$4,974.39, plus HST of \$20,353.69, for a total of \$178,242.88. The time spent by Chaitons is more particularly described in the Affidavit of Maya Poliak sworn July 30, 2015, which is attached hereto and marked as **Appendix "F"** and contains, among other things, copies of invoices that set out the services provided during this period of time.
34. The total fees of Harris Sheaffer, as condominium counsel to the Trustee, for the period of January 2, 2015 to July 24, 2015, were \$59,814.50, plus disbursements of \$2,677.49, plus HST of \$8,079.65, for a total of \$70,571.64. The time spent by Harris Sheaffer is more particularly described in the Affidavit of Ari Katz sworn July 29, 2015, which is

attached hereto and marked as **Appendix "G"** and contains, among other things, copies of invoices that set out the services provided during this period of time.

35. The Trustee is of the view that the fees and disbursements charged by Chaitons and Harris Sheaffer are fair and reasonable.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

36. Attached hereto and marked as **Appendix "H"** is a copy of a statement of receipts and disbursements prepared by the Trustee for the period from January 22 to July 24, 2015.

CONSTRUCTION LIEN CLAIMS PROCESS

37. Pursuant to the Order (re Construction Lien Claims Process) of Mr. Justice Wilton-Siegel dated April 23, 2015, the Trustee is to implement and administer a construction lien claims process. Pursuant to the terms of the Order, parties were to provide all required information to the Trustee by May 29, 2015. A copy of the Order is attached hereto and marked as **Appendix "I"**.
38. As of the date of this report, construction liens had been registered against the Property in a total amount of approximately \$4.3 million. The Trustee has been, and continues to be, in discussions with the lien claimants in connection with their claims, including with respect to matters related to holdback amounts specific to each claimant, as each party directly contracted with 144.
39. At this time, the Trustee is not in a position to provide any recommendation to the Court regarding the lien claims and their priorities vis-à-vis the mortgagees. However, the Trustee is recommending that it be authorized by the Court to retain the amount of \$5.4

million pending further Order of the Court, which amounts represents approximately 125% of the total face value amounts of the lien claims.

DISTRIBUTION TO LBC

40. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank by the then three prior registered mortgagees (Allen Street Holdings, Aviva Insurance Company of Canada and MarshallZehr), the Bank has the first ranking mortgage against the Property.
41. The Trustee has been informed by LBC that, as of July 16, 2015, 144's indebtedness to the Bank that is secured by the charge/mortgage is in the amount of \$40,132,278. Attached hereto and marked as **Appendix "J"** is a copy of a statement received from the Bank.
42. The Trustee has obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first mortgage against the Property.
43. As a result, the Trustee is seeking the authorization of the Court to make an interim distribution to LBC in the amount of \$14 million. The Trustee is of the view that the interim distribution is to the benefit of 144's stakeholders, as it reduces the indebtedness of 144 to the Bank which continues to accrue interest, and there is no prejudice to the lien claimants given the \$5.4 million that is to be retained by the Trustee pending further Order of the Court.

NELCO MECHANICAL LIMITED

44. Nelco Mechanical Limited (“Nelco”) supplied and installed the heating, ventilation and air conditioning (“HVAC”) system at the Property. Based on an accounts payable subledger provided by 144, Nelco is owed \$682,588 and was paid in excess of \$4.0 million by 144 for services provided. The Trustee has been advised by Chaitons that Nelco has not registered a lien claim against the Property and accordingly, Nelco is an unsecured creditor.

Transfer of Manuals

45. The Trustee has been advised by Harris Sheaffer that, in accordance with the *Condominium Act* (the “CA”), there is a requirement to turn over the Condominium Corporation to the new owners after fifty percent (50%) of the units have been transferred to the purchasers. The Trustee anticipates that on August 10, 2015, the fifty percent threshold will be met. The turnover meeting must be called within 21 days after the sale of units and must be held within 21 days thereafter. The CA requires delivery of certain information to the purchasers at or within 30 days of the turnover meeting, which includes all manuals, warranties and maintenance requirements for the common elements of the building for the safe operation of the systems in the building.
46. The Trustee has been informed by its on-site person at the 144 Park Project that she had been informed by Nelco that it intends to withhold the manuals for the HVAC system required for turnover to the Condominium Corporation in order to obtain payment from the Trustee for its arrears which, as previously stated, total \$682,588. The Trustee is requesting that the Court grant an Order directing Nelco to deliver the HVAC manuals to the Trustee for the following reasons:

- (a) non-provision of the required manuals may result in compromising the safety and security of the residents of the Property and staff working on-site;
- (b) the manuals are required for the preservation and protection of the Property;
- (c) none of the trade suppliers or lien claimants have been paid for their arrears. In certain circumstances, certain professionals such as architects, engineers and planners were paid in order to gain their cooperation to assist the Trustee with producing certificates and other documentation, which was required for registration of the Property; however, the amounts paid in these cases were not significant when compared to the amount owed to Nelco; and
- (d) payment of Nelco's arrears would prejudice the lien claimants, secured lenders and other stakeholders of 144 and constitute a preference.

47. As a result, the Trustee is requesting that the Court grant an Order requiring Nelco to deliver the HVAC manuals to the Trustee, so that the Trustee can provide the manuals to the residents at the turnover meeting for the Condominium Corporation

TRUSTEE'S REQUEST TO THE COURT

48. Based on the foregoing, the Trustee respectfully requests that the Court issue Orders:
- (a) approving the Second Report and the activities and conduct of the Trustee as set out therein;
 - (b) approving a form of vesting order to be used by the Trustee to complete the sale of the remaining 33 Sold Units and related parking units and storage units and

authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon delivery of a Trustee certificate confirming the name(s) of the purchaser(s) and the legal description of the property as set out in each vesting order;

- (c) authorizing the Trustee to engage Mint Realty to market any or all of the Unsold Units pursuant to the terms of the Mint Realty Proposal;
- (d) authorizing the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property;
- (e) approving the fees and disbursements of the Trustee, Chaitons and Harris Sheaffer;
- (f) authorizing the Trustee to retain \$5.4 million pending further order of the Court;
- (g) authorizing the Trustee to make an interim distribution of \$14 million to LBC;
and
- (h) directing Nelco to deliver to the Trustee the manuals for the HVAC system installed by Nelco at the Property, so that such manuals may be provided by the Trustee to the residents at the turnover meeting for the Condominium Corporation.

All of which is respectfully submitted to this Court as of this 30th day of July, 2015.

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”

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

THE HONOURABLE MR.) WEDNESDAY, THE 5th 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:

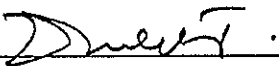
(a) the purchase price of the sale transaction is at least 95% of the listing price for the residential unit; or

(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 A 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 5TH 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.

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

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
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		Screen 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)

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
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

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
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Lawyers for the Trustee

APPENDIX “D”

BUILDER AGREEMENT

144 Park Ltd.,
Waterloo, Ontario

THIS AGREEMENT is made as of February 26th, 2014 between 144 Park Ltd. (the "Builder") and 81 Capital Inc. ("81 Capital")

BACKGROUND:

- A. The Builder is the owner and developer of the lands and premises (the "Lands") municipally known as 144 Park Street, Waterloo, Ontario and legally described as set out in the attached **Schedule A**.
- B. The Builder is developing the Lands as a residential condominium project with 149 Residential Units on nineteen (19) storeys all of which constitute the project (the "Project").
- C. The Builder is desirous of leasing certain equipment from 81 Capital pursuant to a Lease as herein referred to.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Act" means the *Condominium Act*, 1998 (Ontario), as amended.

"Agreement" means this Builder Agreement, as it may be amended, supplemented, restated or otherwise modified from time to time.

"Arm's Length" has the meaning given to it in the *Income Tax Act* (Canada).

"Assets" means the Equipment, all manuals and records relating thereto, all warranties and all proceeds thereof.

"Business Day" means any day other than a Saturday, a Sunday or a day that is a statutory holiday in Ontario.

"Closing" means the completion of the Transactions in accordance with this Agreement.

“Common Elements” has the meaning given to it in the Act.

“Condo” means such condominium or condominiums as may be established under the Act in respect of the Project.

“Condo Assumption Agreement” has the meaning given to it in Section 4.3(b) below.

“Condo Corp” means such condominium corporation or corporations as may be established in respect of the Project.

“Condo Fees” means the contribution towards common expenses of the Condo by the Owners.

“Condo Lien” means the lien created under the Act in favour of the Condo Corp for unpaid contributions from the Owners towards the common expenses of the Condo.

“Condo Unit” means a residential dwelling unit, townhouse or commercial unit in the Condo.

“Declaration” has the meaning given to it in the Act.

“Default” means an event that, with the giving of notice or passage of time or both, would constitute an Event of Default.

“Description” has the meaning given to it in the Act.

“Equipment” means all boiler, heating, ventilation and air conditioning equipment listed or described in the attached Schedule E, together with all accessories and other items attached thereto or supplied therewith and all parts, additions, attachments and accessions incorporated therein or affixed thereto.

“Event of Default” is the occurrence of one or more of the following events or circumstances determined by 81 Capital, acting reasonably:

- (a) the occurrence of an Event of Default as defined in the Lease;
- (b) the Builder fails to perform or observe, in any material manner, any of its covenants or obligations contained in this Agreement;
- (c) any representation or warranty made by the Builder in this Agreement proves to be incorrect in any material respect at any time; or
- (d) there is any change in the effective or legal control of the Builder or if the Builder amalgamates with any other corporation,
- (e) failure to cause registration of the Declaration and Description of the Condo on or before June 30, 2014.

provided that 81 Capital shall have given to the Builder five (5) days' written notice of the default and it has not been remedied within such period or if capable of being cured but requiring more than such five (5) days, it has not commenced to cure the default within such five (5) days and diligently pursues to cure same thereafter.

"include" or **"including"** means to include without limitation.

"Lease" means a lease agreement, substantially in the form attached as **Schedule C**, as it may be amended, supplemented, restated, replaced or otherwise modified from time to time.

"Lease Payments" means the rent, interest, taxes, costs and other amounts payable by the lessee to the lessor under the Lease.

"Lien" means any charge, lien (statutory or otherwise), security interest, deemed trust or any other encumbrance of any kind.

"Owner" means an owner (as defined in the Act) of a Condo Unit.

"PPSA" means the *Personal Property Security Act* (Ontario).

"Proportionate Share" means, in respect of a Condo Unit, the percentage whereby the numerator is the proportionate interest in the Common Elements as set out in the Declaration for such Condo Unit and the denominator is the aggregate of the proportionate interests in the Common Elements as set out in the Declaration for all Condo Units.

"Transactions" means the Lease by 81 Capital to the Builder of the Equipment under the Lease.

1.2 General

In this Agreement, words importing the singular include the plural and *vice versa*, and words importing gender include all genders including the neuter gender. The division of this Agreement into sections and headings is for convenience only and such division and headings shall not affect the interpretation or construction of this Agreement. Any reference in this Agreement to any statute shall, unless otherwise expressly stated, be deemed to be a reference to such statute, as amended, renamed, restated or re-enacted or replaced from time to time (and includes all regulations from time to time made under such statute). This Agreement shall be governed by the laws of Ontario.

1.3 **Recitals**

The Builder represents and warrants that the first two recitals above (under the heading "Background") are true.

**ARTICLE 2
CONDITIONS OF LEASE**

2.1 **Agreement to Lease**

- (a) subject to the terms and conditions of this Agreement, 81 Capital agrees to purchase the Equipment and subsequently 81 Capital will lease to the Builder and the Builder will lease from 81 Capital the Equipment upon the terms set out herein.
- (b) the Closing shall be completed with an effective date being within the period of 10 days before the registration of the Declaration and Description of the Condo such date to be established by either party hereto on at least 10 days written notice to the other party hereto.
- (c) 81 Capital agrees to advance the full amount of the purchase price of the equipment to the Builder upon receipt from the Builder of an Advance Payment Bond in the form as set out in the attached Schedule "F" issued by Aviva Insurance Company of Canada.
- (d) 81 Capital agrees to deliver up the Advance Payment Bond to the Builder on Closing provided that the Builder has fulfilled each of the conditions precedent herein and 81 Capital has registered against the Lands a notice of its security interest in respect of the Equipment and Lease.
- (e) if registration of the Declaration and Description of the Condo is delayed beyond June 30, 2014, 81 Capital shall have the right to notify the Builder in writing that it is in default of its obligations under this Agreement and if after five (5) business days the Builder has not cured such default, 81 Capital shall notify Aviva Insurance Company of Canada to complete registration of the Declaration and Description of the Condo not later than ninety (90) days from the date of the giving of such notice to complete. In the event that the Builder or Aviva fail to finalize and effect the registration of the Declaration and Description within the ninety (90) day period stipulated herein, then the Advance Payment Bond issued by Aviva shall immediately become due and payable to 81 Capital and 81 Capital shall, upon receipt of such payment, cause the Lease and this Agreement to be assigned to Aviva.

2.2 Conditions

The obligation of 81 Capital to complete the Transactions pursuant to this Agreement shall be subject to fulfilment of each of the following conditions precedent (each of which may, in writing, be waived in whole or in part by 81 Capital at its option):

- (a) all of the representations and warranties of the Builder contained in this Agreement and the Lease shall be true and correct at the Closing in all material respects;
- (b) no Default or Event of Default shall exist at, or result from, the Closing;
- (c) 81 Capital has completed all filings and registrations that are necessary or reasonably desirable, in the opinion of 81 Capital, to preserve, perfect and protect the lease of the Equipment by 81 Capital to the Builder pursuant to the Lease;
- (d) the Builder shall have delivered to 81 Capital the following documents, in each case, in form and substance satisfactory to 81 Capital:
 - (A) an originally executed copy of the Lease, duly executed by an authorized officer of the Builder;
 - (B) a confirmation from the Builder's lawyer, or other evidence satisfactory to 81 Capital (including a statutory declaration from a senior officer or director of the Builder), confirming that (i) purchase and sale agreements with *bona fide* third party buyers for not less than eighty-five percent (85%) of the Condo Units within the Project have been duly executed and delivered and (ii) the Builder has received all deposits or down payments required by each such agreement;
 - (C) executed copies of all postponements, discharges and releases, if any, necessary to postpone, discharge or release all Liens of any person in any of the Equipment and copies of any estoppel or no-interest letters which 81 Capital shall have reasonably requested to confirm that any registration or filing against the Builder made in favour of any person that could be relied upon to perfect or protect a Lien in the Equipment is either postponed to 81 Capital's interest in same or does not and will not be relied upon for such purpose; without limiting the generality of the foregoing, a postponement agreement from the Builder's mortgagee(s) in favour of 81 Capital, substantially in the form attached as **Schedule D** (which shall include a postponement or disclaimer of interest in the Equipment and which shall be subject to reasonable amendment by party providing same, including any request for an inter-lender agreement);
 - (D) a certificate of an authorized officer of the Builder, dated the date of the Closing, certifying compliance with each of the conditions set forth in paragraphs (a) and (b) of this Section 2.2;

- (E) evidence that the approved by-law of the Condo Corp to be passed by the Builder controlled board of directors will authorize and bind the Condo Corp to assume the Lease from the Builder, perform all covenants and obligations thereunder and execute such documentation as is required in that regard.
- (F) evidence that each applicable proposed Condo Corp Declaration contains language clearly identifying the existence of the Lease and the Equipment covered by such Lease;
- (G) signed Acknowledgement Agreements by all condo unit owners on a best efforts basis, or an acknowledgment to be inserted in the Agreement of Purchase and Sale in respect of the Condo Units;
- (H) a Letter of Credit ("LC") in the form attached as Schedule B and in the amount of \$400,000.00 to 81 Capital or its funding partners. The LC shall stand as security for the Builder's obligations as set out hereunder and shall be released to the Builder in accordance with Article 4.2(B) below;
- (I) such other approvals, certificates or documents as 81 Capital may reasonably request.

ARTICLE 3 CONDO

3.1 Fixtures

The parties agree that the Equipment shall constitute personal property until they are installed in the Condo, and upon installation shall constitute fixtures, but in no event will they constitute building materials. "Fixtures" and "building materials" have the meaning given to them for the purposes of the *Personal Property Security Act of Ontario*.

3.2 Security

- (a) 81 Capital shall be entitled to register against the Lands notice of its security interest in respect of the Equipment and Lease. 81 Capital acknowledges and agrees that its interest relates solely to the Equipment and the Lease and agrees to provide forthwith such further assurances to confirm same as may be reasonably requested from time to time in order to confirm same.
- (b) 81 Capital shall provide acknowledgements, comfort letters, inter-lender agreements and the like forthwith to Purchasers and the Builder's lenders or such other further assurance as be reasonably required to facilitate the closing of the sale transactions for the Condo Units or as may be required by the Builder's lenders.

**ARTICLE 4
DECLARATION AND DESCRIPTION**

4.1 Declaration and Description

The Declaration and Description of the Condo shall not be amended by the Builder in a way that affects the Equipment or 81 Capital's interest under this Agreement the Lease or the Condo Assumption Agreement (defined below) when entered into.

4.2 Liability of Builder

After the Condo has been registered and established:

- (A) the Condo and the Builder shall be jointly and severally liable for the liabilities of the Builder under the Lease, except that the Builder shall be automatically released (and, on request, shall be entitled to a partial release, the reasonable expenses of which shall be paid by the Builder) in respect of the Proportionate Share attributable to a particular Condo Unit of the Lease Payments (and other obligations under the Lease to the extent only that they are attributable to the Equipment in such Condo Unit) and to a partial discharge of 81 Capital's notice of security interest, if any, registered, against such Condo Unit if, after the Condo has been established:(i) the Builder has completed a sale of such Condo Unit to a purchaser at Arm's Length from the Builder; and (ii) no Default or Event of Default exists at the time the sale is completed.
- (B) 81 Capital, through its funding partner, Maxium Financial Services, shall deliver up for cancellation the LC to the Builder on the one year anniversary following the date of the first meeting of the Turn-over Board if the new Board has not cancelled the Lease Agreement with 81 Capital. Should the newly elected Board cancel or otherwise terminate or effectively terminate the lease agreement within the timelines stipulated herein, then 81 Capital shall have the right to elect to call on the LC but not before providing the Builder with reasonable written notice of same. If 81 Capital calls on the LC it will only do so after the Builder has had 10 business days to address the deficiency and only then it will assign the Lease to the Builder subject to payment by the Builder of the balance of 81 Capital's capital costs and carrying costs at the RBC prime rate plus 2% from the time of funding to assignment back to the Builder.

Builder Obligations

The Builder shall:

- (a) grant to 81 Capital a non-exclusive right of access to the Equipment in a form acceptable to the Builder and 81 Capital, acting reasonably so that 81 Capital can exercise its rights and remedies under the Lease and perform the maintenance, if any, required of 81 Capital under the Lease;

**ARTICLE 5
NOTICES**

5.1 Notices

(1) Any notice or other communication required or permitted to be given under this Agreement (a "notice") shall be in writing and shall be given by registered mail (except during an actual or threatened postal disruption), personal delivery or by fax to the applicable address set out below:

- (a) If to the Builder:

144 Park Ltd.
8791 Woodbine Avenue, Suite 100
Markham, Ontario
L3R 0P4

Attention: Mr. Greg Puklicz
Fax No.: (905) 944-0916

- (b) If to 81 Capital:

300 The East Mall,
Suite 200,
Etobicoke, Ontario
M9B 6B7

Attention: Legal Department
Fax No.: (905) 306-9985

(2) Any notice: if sent by registered mail, shall be deemed to have been given and received on the fourth Business Day after it was mailed; if delivered, shall be deemed to have been given and received on the date of delivery; and, if sent by fax, shall be deemed to have been given and received on the date of transmission unless such date is not a Business Day in which case such notice shall be deemed to have been given and received on the next following Business Day.

(3) By giving to the other party at least 10 days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section.

ARTICLE 6 GENERAL

6.1 Enurement

This Agreement is made personally with the Builder and shall not be assigned by it except with the prior written consent of 81 Capital, which will not be unreasonably withheld. 81 Capital may sell, assign or otherwise dispose of, or grant a Lien in, all or any portion of 81 Capital's right, title or interest in this Agreement or any part thereof to anyone else, without the consent of or notice to the Builder. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties and their respective permitted, as applicable, successors and assigns.

6.2 Waiver

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. The waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

6.3 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

6.4 Further Assurances

Each party to this Agreement shall do such further things and execute such further documents as may be reasonably required by the other party to more fully implement the intent of this Agreement.

6.5 Counterparts

This Agreement may be executed in any number of counterparts and may be delivered by facsimile and all of such counterparts taken together and so delivered shall be deemed to constitute one and the same instrument.

THE PARTIES have executed this Agreement as of the date first written above.

144 Park Ltd.

By: 

Name:

Title:

**GREG PUKLICZ
VICE PRESIDENT**

81 Capital Inc.

By: 

Name: John Nassar

Title: President

I/We have the authority to bind the Corporation.

Schedules:

A - Lands

B - Form of Letter of Credit

C - Lease

D - Postponement

E - List of Equipment

F - Advance Payment Bond

APPENDIX “E”

BILL OF SALE

THIS BILL OF SALE is made as of September 1, 2015 between COLLINS BARROW TORONTO LIMITED, in its capacity as Court-appointed trustee of property owned by 144 Park Ltd. and not in its personal or corporate capacity ("Trustee") and 81 CAPITAL INC., as buyer (together with its successors and assigns, "Buyer").

BACKGROUND:

A. 144 Park Ltd. ("144") and Buyer have entered into a Builder Agreement dated as of February 26, 2014 (the "Builder Agreement") in respect to 144 Park – Uptown Waterloo Condominium at 144 Park Street, Waterloo, Ontario (the "Property").

B. Collins Barrow Toronto Limited was appointed by court order as Trustee of the Property, which court order was registered on title to the Property on January 23, 2015 as Instrument No. WR863820.

C. The Trustee has been informed by representatives of 144 that 144 is the owner of the equipment and other personal property described in the attached Schedule A (collectively, together with all accessories and other items attached thereto or supplied therewith and all parts, additions, attachments and accessions incorporated therein or affixed thereto, the "Equipment").

C. Pursuant to the terms of the Builder Agreement, 144 has agreed to sell, and the Buyer has agreed to buy, (i) the Equipment, (ii) all manuals, service records and repair records relating to the Equipment, (iii) all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by manufacturers, suppliers or others with respect to any or all of the foregoing (collectively, the "Warranties") and (iv) all proceeds of any or all of the foregoing (collectively, the "Assets").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined in this Bill of Sale have the meanings given to them in the Builder Agreement.
2. Sale and Purchase. The Trustee does hereby sell, assign, transfer, convey and set over to Buyer, and Buyer does hereby purchase from the Trustee, all right, title and interest, if any, of 144 in and to each of the Assets.
3. Payment of Purchase Price. The Trustee and Buyer acknowledge that Buyer has previously paid the purchase price payable by Buyer to 144 for the Assets in accordance with the terms of the Builder Agreement.

4. **Representations and Warranties.** The Trustee represents and warrants to Buyer on the date hereof and on the date of the Closing, and acknowledges that Buyer is relying upon such representations and warranties in entering into the transactions contemplated by this Bill of Sale and the Lease, as follows:

- (a) the Trustee has done no act to encumber the Assets or any part thereof;
- (b) the Trustee has the authority to sell, assign and transfer to the Buyer the right, title and interest of 144, if any, in and to the Assets;
- (c) other than this Bill of Sale, the Trustee is unaware of any other agreement, option or other right or privilege outstanding in favour of any person for the purchase from 144 of any of the Assets;
- (d) the Equipment is insured to such extent, against such hazards and liabilities and on such terms as would be required by the Lease, if the Equipment had been leased thereunder and the Trustee has not received any notices or communications indicating that any such insurance may lapse, expire or otherwise cease to be in full force and effect; and
- (e) the Trustee is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

5. **Survival of Representations and Warranties.** All representations and warranties of the Trustee contained in this Bill of Sale are material and shall not merge on the completion of the execution and delivery of this Bill of Sale or the Closing.

6. **Further Assurances.** The Trustee agrees to execute and deliver all such further agreements, and take all such further action, as may be reasonably required by Buyer in order to give effect to the intention of this Bill of Sale and to complete the transactions contemplated hereby, and shall further assist Buyer in pursuing any rights and remedies available to it under any of the Assets and shall not enter into any agreement or do anything else that might diminish or derogate from the rights of Buyer hereunder or hereby created.

7. **Buyer Acknowledgement.** The Buyer acknowledges that it is purchasing the Assets on an "as is, where is" basis without, other than as set out hereunder, any representation, warranty or condition, whether statutory, express or implied, oral or written as to title, encumbrances, merchantability, description, fitness for any particular purpose, suitability, durability, marketability, condition or quality thereof or in respect of any other matter or thing whatsoever. Without limiting the generality of the foregoing, any and all warranties and conditions, express or implied, pursuant to the *Sale of Goods Act* (Ontario) or otherwise do not apply hereto and are hereby expressly waived by Buyer.

8. **Enurement.** This Bill of Sale is made personally with the Buyer and shall not be assigned by it. 81 Capital Inc. may sell, assign or otherwise dispose of, or grant lien in, all or any portion of 81 Capital Inc.'s right, title or interest in this Bill of Sale, the Assets or any part thereof to anyone else, without the consent of or notice to the Trustee. Subject to the foregoing,

this Bill of Sale shall enure to the benefit of and be binding upon the parties and their respective permitted, as applicable, successors and assigns.

9. Governing Law; Counterparts. This Bill of Sale shall be governed by the laws of Ontario. This Bill of Sale may be executed in any number of counterparts and may be delivered by electronic transmission and all of such counterparts taken together and so delivered shall be deemed to constitute one and the same instrument.

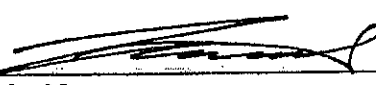
IN WITNESS WHEREOF, the parties have executed this Bill of Sale as of the date first mentioned above.

COLLINS BARROW TORONTO LIMITED,
solely in its capacity as court-appointed trustee of
property owned by 174 Park Ltd. and not in its
personal or corporate capacity

By: 
Name: Bryan Tannenbaum
Title: President

I have the authority to bind the corporation

81 CAPITAL INC.

By: 
Name: John Nassar
Title: President

I have the authority to bind the corporation

Attachments

Schedule A - Description of Equipment

SCHEDULE A

DESCRIPTION OF EQUIPMENT

**144 PARK LTD.
144 PARK STREET, WATERLOO, ONTARIO**

EQUIPMENT
The primary boiler, rooftop heating and air conditioning unit for the common areas, domestic water heaters, and heating and air conditioning units contained in the Residential Units.

CONFIRMATION

TO: 81 Capital Inc.

FROM: COLLINS BARROW TORONTO LIMITED, solely in its capacity as Court appointed trustee of the property owned by 144 Park Ltd. and not in its personal or corporate capacity

DATE: September 1, 2015

RE: Builder Agreement made as of February 26, 2014 between 144 Park Ltd. and 81 Capital Inc. with respect to 144 Park – Uptown Waterloo the Condominium project at 144 Park Street, Waterloo, Ontario (the “Property”)

WHEREAS Collins Barrow Toronto Limited was appointed by Court order as trustee (the “Trustee”) of the Property owned by 144 Park Ltd., which court order was registered on title to the Property on January 23, 2015 as Instrument No. WR863820

The Trustee hereby confirms that as of the date hereof, not less than 50.0% of final closings and title transfers for the residential condominium units at 144 Park – Uptown Waterloo located at 144 Park Street, Waterloo, Ontario have been completed in accordance with the terms of the agreements of purchase and sale.

COLLINS BARROW TORONTO LIMITED, solely in its capacity as Court appointed trustee of the property owned by 144 Park Ltd. and not in its personal or corporate capacity


Name: Bryan Tannenbaum
Title: President

I have authority to bind the corporation.

Lease Agreement

THIS LEASE AGREEMENT (together with any addenda, amendments and schedules made or attached to it from time to time, "this Lease") dated as of September 1, 2015 between 81 Capital Inc. ("81 Capital") and 144 Park Ltd., by its court-appointed trustee, Collins Barrow Toronto Limited (the "Lessee").

BACKGROUND:

A. Collins Barrow Toronto Limited was appointed by court order as trustee (the "Trustee") of the property owned by the Lessee, including the Equipment (as defined below), which court order was registered on file to the property known as 144 Park Street, Waterloo, Ontario on January 23, 2015 as Instrument No. WR863820.



B. 81 Capital wishes to lease to the Lessee the equipment and other personal property described or referred to in Schedule A (collectively, together with all accessories and other items attached thereto or supplied therewith and all parts, additions, attachments and accessions now or hereafter incorporated therein or affixed thereto, the "Equipment") located at the location identified in Schedule A (the "Equipment Location"), and the Lessee wishes to lease the Equipment, on the terms and conditions of this Lease.

C. The parties acknowledge and agree that the Trustee will be assigning the Lessee's rights and obligations under this Lease to Waterloo Standard Condominium Plan No. 591 (the "Condo Corporation") at or shortly following the turnover meeting to be held in September 2015.

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1. Trustee. The parties acknowledge and agree that Collins Barrow Toronto Limited has executed this Lease solely in its capacity as Trustee and not in its personal or corporate capacity. 81 Capital further acknowledges and agrees that, by signing this Lease, Collins Barrow Toronto Limited, in its capacity as Trustee and in its personal and corporate capacity, cannot be held personally liable for any of the rights and obligations of the Lessee contained herein. 81 Capital releases and discharges Collins Barrow Toronto Limited, in its capacity as Trustee and in its personal and corporate capacity, from any and all liability in any way arising out of or relating to this Lease.
2. Lease of Equipment. Subject to the provisions contained in this Lease, 81 Capital leases to the Lessee, and the Lessee leases from 81 Capital, the Equipment in an "as-is" condition.
3. Term. This Lease becomes effective on the date of its execution by the parties. The term of this Lease will start on the date specified in Schedule A as being the Start Date and, unless terminated earlier or renewed in accordance with the provisions of this Lease, will continue to the Scheduled Lease End (as specified in Schedule A). This Lease cannot be cancelled or terminated, except as expressly provided in this Lease.
4. Payments. The amount payable each month by the Lessee to 81 Capital during the term of this Lease will be in the amount or amounts specified in Schedule A as being the Lease Payment (the "Lease Payment"). Lessee shall pay 81 Capital the Lease Payment on the Lease Payment Commencement Date (as specified in Schedule A) and on the same date of each following month (or on the last day of the month if there is no such date). Lessee's obligation to pay any Lease Payment or any other amounts under this Lease shall be absolute and unconditional under all circumstances and will not be affected or reduced in any way for any reason. Lessee must make all payments (including all Lease Payments) owing under this Lease in full when due, without any condition, deduction, set-off, abatement, hold back or claim for compensation whatsoever. Interest at the rate of 10% per annum shall be payable, both before and after default and judgment, on all unpaid amounts under this Lease, from their due date until paid. Lessee further agrees to pay 81 Capital a returned cheque or non-sufficient funds charge (an "NSF Charge") to reimburse 81 Capital for its time and expense incurred with respect to any payment required under this Lease that is dishonoured for any reason, such NSF Charge being equal to the greater of \$25.00 and the actual bank charges to 81 Capital plus any other amounts allowed by law.
5. Title. Until payment in full of all amounts owing under this Lease (including all Lease Payments and all other amounts owing by Lessee under this Lease), ownership of and title to the Equipment will remain with 81 Capital. If at any time Lessee acquires any personal property which thereafter forms part of the Equipment (such as any parts or additions to the Equipment), title thereto will automatically transfer to 81 Capital without the need for any documents of transfer (and Lessee hereby sells such property to 81 Capital), but Lessee will execute such documents as 81 Capital may reasonably request in order to evidence the transfer of title thereto to 81 Capital free and clear of all liens, security interests or other encumbrances. Lessee and 81 Capital agree that (i) the Equipment are "fixtures" and not "building materials" within the meaning given to such terms for purposes of the *Personal Property Security Act* (Ontario) and (ii) the Equipment shall remain removable property (without the need for any other party's consent or waiver to allow 81 Capital to remove it) even though it may become affixed to real property. Lessee acknowledges and agrees that 81 Capital may, at Lessee's expense, register the security interest provided for under this Lease against the Condo Corporation and title to the lands where the Equipment is located.
6. Equipment Selection; Warranties and Limit of Liability. Lessee acknowledges that (i) 81 Capital has purchased the Equipment for the purposes of this Lease, and (ii) 81 Capital has not made or given and does not hereby make or give any warranties, representations or conditions of any kind whatsoever with respect to the Equipment or this Lease (whether express, implied, statutory or otherwise), including any relating to: the merchantability of the Equipment or its quality or fitness for any particular purpose; the durability, safety, condition, capability or suitability of the Equipment or its workmanship; compliance of the Equipment with the requirements of any law, rule, specification, insurance policy or other contract; patent infringement; its freedom from any lien, security interest or other encumbrance; or latent or patent defects. If Lessee encounters any problems with the Equipment, including if it is not properly installed, does not operate as intended by Lessee or as represented by the supplier and/or manufacturer thereof or totally fails to function or perform in whole or in part, or the Equipment is unacceptable for any reason, Lessee's only claim will be against such supplier and/or manufacturer and Lessee agrees that 81 Capital will not be liable to Lessee for any damages whatsoever relating to the Equipment. All warranties of the supplier and/or manufacturer in respect of the Equipment are hereby transferred by 81 Capital to Lessee, to the extent transferable and only for and during the term of this Lease (including any renewal thereof). Lessee acknowledges that where any consent to or approval of such transfer is required, it will be the responsibility of Lessee to obtain such consent or approval from each such supplier and/or manufacturer and, so long as no Event of Default (as defined in Section 15) has occurred, 81 Capital will provide reasonable assistance in that regard, at the expense of Lessee. If, after making commercially reasonable efforts, Lessee is not able to obtain from any such supplier or manufacturer the required consent or approval, then 81 Capital agrees to provide reasonable assistance to Lessee, if requested to do so by Lessee in writing and at the expense of Lessee, in Lessee's enforcement of its claim against such supplier or manufacturer, provided that 81 Capital shall not be required to provide any assistance to Lessee if an Event of Default (as defined in Section 15) has occurred or if Lessee does not have, in the sole determination of 81 Capital (acting reasonably), the financial ability to pay 81 Capital's expenses.
7. Location and Condition of Equipment. Lessee agrees to keep the Equipment at the Equipment Location. Lessee agrees to allow 81 Capital the right to inspect the Equipment including its condition and its state of repair and maintenance and the records maintained in connection with the Equipment at any time, and to allow 81 Capital reasonable access to the Equipment Location (including, for greater certainty, any premises at the Equipment Location in which any of the Equipment is located) and the Equipment for such purposes. Lessee shall not sell, transfer or otherwise dispose of the Equipment, except as expressly permitted. Lessee agrees to keep the Equipment free and clear of all liens, security interests and encumbrances of every kind. Lessee shall be responsible for arranging for the delivery and installation of the equipment at its own expense and shall, at its own expense, keep the Equipment in as good a condition as when delivered, reasonable wear and tear excepted. Lessee shall not make any alterations, modifications or additions to the Equipment, without the prior written consent of 81 Capital.
8. Scope of Work; Maintenance. 81 Capital will not be required to do any work or provide any services related to the Equipment under this Lease. Lessee shall enter into, at its own expense, and maintain in effect for the term of this Lease (including any renewal thereof) a maintenance contract with the manufacturer or with a reputable service company, which is acceptable to 81 Capital in its sole discretion, acting reasonably. Lessee will deliver to 81 Capital a complete copy of such maintenance contract and all supporting documents relating thereto.
9. Operation of Equipment; Indemnity. Lessee assumes all risks and liability for the Equipment. Lessee agrees to indemnify and save 81 Capital and its successors and assigns harmless from any and all expenses, claims and damages, however caused, arising out of, or resulting from (i) the selection, delivery, installation, possession, lease, use, operation, purchase or return of the Equipment, (ii) any personal injury or death or damage to property caused by any of the Equipment, (iii) the failure by Lessee to provide and maintain or cause to be provided and maintained insurance required by this Lease, (iv) rejection by Lessee of any of the Equipment (with or without cause) or (v) assisting Lessee in enforcing any claims against the supplier and/or manufacturer of any of the Equipment. This indemnification will survive termination of this Lease.
10. Legal Compliance and Taxes. Lessee will comply with, and will use and maintain the Equipment according to, the manufacturer's specifications and all other requirements under applicable law and any insurance policies relating to the Equipment and its proper operation and maintenance, including all conditions to maintaining any warranties in effect and any requirements with regard to surroundings, furnishings and electrical wiring. Except as otherwise specifically provided herein, Lessee shall pay when due all taxes and other charges of any kind whatever now or in the future imposed by any government or public authority or agency related to the lease, possession, use, operation or maintenance of the Equipment. Lessee's obligations under this Section will survive the expiration or termination of this Lease.
11. Licenses. At all times during the term of this Lease, including any renewal thereof, Lessee shall maintain in full force and effect all certificates, licenses, registrations, permits and authorizations required by applicable law to be maintained in respect of the use or operation of the Equipment.
12. Insurance. During the term of this Lease, including any renewal thereof, Lessee shall maintain insurance covering the Equipment and against third party liability (including liability imposed on 81 Capital or Lessee for injury to, or death of, persons, or damage to or destruction of property). Lessee shall maintain all such insurance at its own expense except, in the case of extended warranty insurance, where Schedule A indicates that the expense thereof has been included in the Lease Payment. The insurance shall be in amounts, in form and with insurers acceptable to 81 Capital. Each insurance policy shall name 81 Capital and its successors and assigns as additional insureds and first loss payees and shall contain a clause requiring the insurer(s) thereof to give 81 Capital at least 30 days' prior written notice of a revision to its provisions or of its cancellation and shall stipulate that the insurance, as to the interests of 81 Capital and its successors and assigns, shall not be invalidated by any act or omission of Lessee. Lessee hereby appoints 81 Capital as its agent and attorney to make claims and receive payment in accordance with the provisions of such policies. So long as no Event of Default (as defined in Section 15) has occurred, proceeds of insurance (other than extended warranty insurance) shall, at the option of 81 Capital, be disbursed against satisfactory invoices for repair or replacement of the affected Equipment or shall be retained by 81 Capital for application against Lessee's obligations under this Lease and if the insurance proceeds received are less than the Casualty Value (as defined below), Lessee shall pay on demand to 81 Capital the full amount of such deficiency. The total or partial loss of the Equipment for any reason whatsoever or its use or possession shall not relieve Lessee of its obligations and liabilities under this Lease.

13. **Equipment Risks.** If the Equipment or any part thereof which, in 81 Capital's opinion, is material, is lost, damaged beyond repair, destroyed, stolen, condemned, confiscated, seized or expropriated at any time during the term of this Lease or any renewal thereof, Lessee shall notify 81 Capital of that event and, unless 81 Capital specifies otherwise in writing, will immediately on demand pay to 81 Capital the Casualty Value less the net amount of any insurance proceeds paid to 81 Capital as a result of the occurrence of any such event. "Casualty Value" means an amount equal to the present value of all unpaid and future Lease Payments due under this Lease to the Scheduled Lease End or the expiry of any renewal period, as applicable, discounted at a rate per annum equal to 5% per annum, plus all other amounts owing by Lessee under this Lease.
14. **Renewal; Purchase of Equipment.** This Lease shall be automatically renewed on a continuing month-to-month basis at the Scheduled Lease End on the same terms as during the term of this Lease (except as modified by this Section). Lessee shall pay 81 Capital an amount equal to the amount of the Lease Payment in effect during the last month of the term of this Lease for each month or part of a month beyond the Scheduled Lease End. Lessee may terminate this automatic renewal upon 30 days' prior written notice to 81 Capital that Lessee wishes to purchase all, but not less than all, of the Equipment and specifying in such notice the date on which Lessee wishes to complete the purchase of the Equipment (the "Purchase Date"), which Purchase Date must be the last business day of a month and must occur not less than 30 days after receipt by 81 Capital of such written notice. The purchase price for the Equipment (the "Purchase Price") shall be the fair market value of the Equipment at such time plus the Administration Fee (as specified in Schedule A) plus all applicable taxes thereon. After payment of the Purchase Price and all other amounts owing by Lessee under this Lease, and provided that no Event of Default has occurred, 81 Capital shall sell the Equipment to Lessee on the Purchase Date on an "as is, where is" basis, without any recourse, representation, warranty or condition from 81 Capital (whether express, implied, statutory or otherwise) except that the Equipment is being sold by 81 Capital to Lessee free and clear of any security interest created by 81 Capital.
15. **Events of Default.** The occurrence or happening of any one or more of the following events will constitute an "Event of Default" under this Lease:
 - (a) if Lessee fails to pay any Lease Payment or any other amount owing under this Lease on its due date;
 - (b) if Lessee removes or attempts to remove any part of the Equipment from the Equipment Location without 81 Capital's consent in writing;
 - (c) if Lessee encumbers or transfers ownership or sublets any part of the Equipment without 81 Capital's consent;
 - (d) if Lessee fails to observe any other terms or conditions of this Lease;
 - (e) a writ, execution, attachment or similar process is issued or levied against any Equipment or a substantial part of Lessee's property;
 - (g) if Lessee is a corporation, Lessee amalgamates with any other corporation without 81 Capital's written consent, or if any action is taken to wind-up, liquidate or dissolve Lessee;
 - (h) if any representation or warranty made or deemed to have been made by Lessee in this Lease or in any other document or certificate furnished to 81 Capital with or pursuant to this Lease, is at any time untrue or incorrect; or
 - (i) 81 Capital, acting in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of Lessee's obligations under this Lease is or is about to be impaired or that any part of the Equipment is or is about to be placed in jeopardy.
16. **Remedies Upon Default.** If any Event of Default occurs, 81 Capital may terminate this Lease and/or, in addition to any other right or remedy it may have at law, in equity, under any other agreement or otherwise, may, without notice except as required by applicable law, do any or all of the following, separately or together, in any order or combination:
 - (a) **Repossession.** 81 Capital may enter wherever the Equipment is located (or 81 Capital believes that it is located) and repossess and remove it (if necessary, disconnecting it from any other property) and Lessee waives any claim for any damages to property or otherwise arising from such repossession.
 - (b) **Sell or Dispose.** Without terminating or being deemed to have terminated this Lease, 81 Capital may sell, lease or otherwise dispose of the Equipment or any part thereof, at public or private sale, lease or other disposition, for cash or credit for such amounts and upon such terms as 81 Capital may reasonably determine. 81 Capital will apply the net proceeds from any sale, lease or other disposition of the Equipment (after 81 Capital has deducted all costs and expenses incurred by 81 Capital in enforcing its rights and remedies hereunder) against all or any of Lessee's obligations under this Lease.
 - (c) **Recover Arrears.** 81 Capital may sue for arrears of any Lease Payment and any other amount owing by Lessee under this Lease.
 - (d) **Damages for Termination.** 81 Capital may require Lessee to pay immediately on demand damages suffered by 81 Capital as a result of the termination of this Lease. These damages will be equal to the Casualty Value plus all reasonable costs and expenses (including legal costs on a solicitor and own client basis) incurred by 81 Capital in enforcing the terms of this Lease. Lessee acknowledges and agrees that such damages are a genuine pre-estimate of 81 Capital's liquidated damages for loss of a bargain and are not a penalty.
17. **Provincial Waivers.** To the extent permitted by law, Lessee waives the benefit and protection of any legislation that restricts or limits the rights or remedies of 81 Capital under this Lease.
18. **Assignment.** 81 Capital may sell, assign, transfer, concurrently lease or otherwise dispose of, or grant a security interest or other encumbrance in, (collectively, a "Transfer") all or any portion of 81 Capital's right, title or interest in the Equipment or this Lease or any part thereof to anyone else (a "Transferee") without the consent of or notice to Lessee. Lessee hereby consents to the delivery by 81 Capital to any Transferee or prospective Transferee of such information concerning Lessee as may be in 81 Capital's possession and may be requested by such Transferee or prospective Transferee. Without 81 Capital's consent, the rights and obligations of Lessee under this Lease are not assignable by Lessee, provided that Lessee may assign its rights under this Lease to any condominium corporation, including the Condo Corporation, incorporated pursuant to applicable law for purposes of establishing the Equipment Location as a condominium if such condominium corporation has agreed to assume, in a manner satisfactory to 81 Capital, all obligations of Lessee under this Lease. Subject to the foregoing, this Lease is binding and will endure to the benefit of the parties and their respective successors and permitted assigns, as applicable.
19. **Notices.** Any notice that 81 Capital sends to Lessee under this Lease and any demand for payment will be conclusively considered to have been received by Lessee (a) when 81 Capital delivers or sends by facsimile the notice or demand to Lessee or (b) on the 10th day after 81 Capital mails it to Lessee, at the latest address 81 Capital has for Lessee in its records.
20. **Miscellaneous.** All of Lessee's obligations under this Lease shall survive the termination of this Lease to the extent required for their full performance and observation. No waiver by 81 Capital of any default under this Lease or any of 81 Capital's rights or remedies shall be effective unless in writing. Any such waiver is not a waiver by 81 Capital of any other later default, whether similar or not, or a waiver of 81 Capital's right to exercise its rights or remedies in the future. Any provision of this Lease which is unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease. The captions, titles and section number appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of this Lease or its effect. No change or amendment to this Lease will be effective unless in writing and signed by both 81 Capital and Lessee, except that Lessee authorizes 81 Capital to correct patent errors and to complete (or attach to Schedule A) after the date of this Lease additional descriptive material in respect of all or any of the Equipment, including serial numbers. Lessee will provide all necessary further assurances, do all acts and sign all documents as 81 Capital may require from time to time to give effect to this Lease and to protect 81 Capital's rights hereunder. Lessee will deliver Lessee's audited financial statements to 81 Capital within 120 days of the expiry of each fiscal year of Lessee and will deliver such other financial information regarding Lessee as 81 Capital may from time to time request. If Lessee fails to perform any obligation under this Lease, 81 Capital may, at its option, perform the obligation, without waiving or curing any breach of this Lease from such failure, and Lessee shall reimburse 81 Capital upon demand for all reasonable costs and expenses incurred by 81 Capital in doing so. Time is of the essence of this Lease. Lessee acknowledges receiving an executed copy of this Lease. If more than one person has signed this Lease as lessee or has become bound by this Lease as lessee, their liability under this Lease will be joint and several. Any reference in this Lease to "including" means "including, without limitation".
21. **Governing Law.** This Lease will be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.
22. **Additional Security.** As general and continuing security for the payment and performance of all of its obligations to 81 Capital under this Lease, the Lessee hereby grants to 81 Capital a security interest in (a) that portion of all common expenses payable to the Lessee by unit owners of the condominium managed by the Lessee which the Lessee requires to pay all amounts under this Lease, and (b) all personal property in any form derived directly or indirectly from the common expense payments described in (a) above (collectively, the "Collateral").

LESSOR: 81 Capital Inc.	LESSEE: 144 Park Ltd., by its court-appointed trustee, COLLINS BARROW TORONTO LIMITED
By: 	By: 
Name/Title: John Nassar - President	Name/Title: Bryan Tannenbaum - President
I have the authority to bind the Corporation.	I have the authority to bind the Corporation.

11059403.8

SCHEDULE A to Lease Agreement dated May 1st, 2015 (the "Lease") between 81 Capital Corporation, as lessor, ("81 Capital") and 144 Park Ltd., as lessee, ("Lessee")

This Schedule A (as amended, modified or replaced from time to time, "this Schedule") is attached to and incorporated into the Lease. Capitalized terms used and not defined in this Schedule A will have the meanings given to them in the Lease.

1. Description of Equipment.

See Schedule B attached.

2. Equipment Location.

144 Park Street, Waterloo, Ontario

3. Term and Rental Provisions.

Start Date:

Sept 1, 2015

Lease Payment Commencement Date:

September 1st, 2015

Scheduled Lease End:

180 months from the Lease Payment Commencement Date

Lease Payment:

\$14,431.67 per month plus all applicable taxes thereon, payable in accordance with the provisions of the Lease

Administration Fee:

\$200.00 (only payable if purchase option exercised – see Section 14 of the Lease)

Expense of Extended Warranty

Insurance included in Lease

Payment:

NO

Interim Rent Payable:

NO

LESSOR:

81 Capital Inc.

By: 

Name: John Nassar

Title: President

I have the authority to bind the Corporation.

LESSEE:

144 Park Ltd., by its court-appointed trustee,
COLLINS BARROW TORONTO LIMITED

By: 

Name:

Title:

I have the authority to bind the Corporation.

SCHEDULE B to Lease Agreement dated May 1st, 2015 (the "Lease") between 81 Capital Inc., as lessor, ("81 Capital") and 144 Park Ltd., as lessee, ("Lessee")

This Schedule B (as amended, modified or replaced from time to time, "this Schedule") is attached to and incorporated into the Lease. Capitalized terms used and not defined in this Schedule B will have the meanings given to them in the Lease.

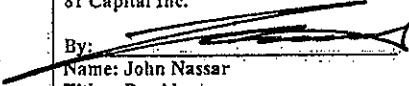
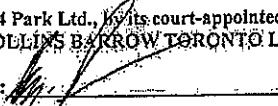
1. Description of Equipment.

EQUIPMENT LIST

144 PARK LTD.
144 PARK STREET, WATERLOO, ONTARIO

EQUIPMENT			
The primary boiler, rooftop heating and air conditioning unit for the common areas, domestic water heaters, and heating and air conditioning units contained in the Residential Units.			
Tag	DESCRIPTION and MODEL	Serial Number	Notes
PENTHOUSE MECHANICAL ROOM BOILERS:			
DOMESTIC BOILERS			
#1	Model YFM1302PM	Serial D13H00248548	
#2	Model PFN1302PM	Serial D13H00248547	
PENTHOUSE MECHANICAL ROOM BOILERS:			
HEATING BOILERS			
#1	Model PBN2007	Serial D13H00248823	
#2	Model PBN2007	Serial D13H00248857	
#3	Model PBN2007	Serial D13H00248824	
WATER METER ROOM			
PH #13	Series 80 1.4 x 1.5 x 7 BF	Serial 708855	60 GPM
PENTHOUSE MECHANICAL ROOM			
PH 2A	Model 80TCBF	Serial 702422A	
PH 2B	Model 80TCBF	Serial 702422B	
PH 3A	Model 1505BF-4E	Serial#706830A	
PH 3B	Model 1505BF-4E	Serial 706830B	
PH 4A	Model 1510BF-2BC	Serial#706829A	
PH 4B	Model 1510BF-2BC	Serial 706829B	
STORAGE TANK			
#1	CRN #M1073.5231.9087YTN	Serial 12-050	
#2	CRN #M1073.5231.9087YTN	Serial 12-051	
COOLING TOWER			
	Model LRWB8-6n12-t	Serial 12-475755	
BASEMENT MECHANICAL ROOM			
PH 5	Series 60 1.5 x 5.25 BF	Serial 703425B	20 GPM
PH 6	Series 90 1.25AA	Serial 701316C	20 GPM
PH 7	Series 60 1.5 x 5.25 BF	Serial 703424	45 GPM
PH 8	Series 60 1.5 x 5.25 BF	Serial 703423	44 GPM
PH 9	Series 60 1.5 x 5.25 BF	Serial 703422	27 GPM

Tag	DESCRIPTION and MODEL	Serial Number	Notes
3rd FLOOR MECHANICAL ROOM			
PH 5	Series 60 1.5 x 5.25 BF	Serial 703425A	20 GPM
PH 6	Series 90 1.25AA	Serial 7031316B	20 GPM
PH 8A	Series 90 1AA	Serial 701314B	20 GPM
PH 8B	Series 90 1AA	Serial 701314A	20 GPM
PH 10A	Series 60 1 x 5.25 AB	Serial 708428B	10 GPM
PH 10B	Series 60 1 x 5.25 AB	Serial 703426A	10 GPM
PH 11	Series 80 4 x 4 x 7 BF	Serial 708654	120 GPM
	Unit Heater Model HUH-2	Serial L7274H-UH-2A	
STAIR A UNIT HEATERS			
3rd Flr UH-3E	L7332H	N/A	
2nd Flr UH-3B	L7332H	N/A	
1st Flr UH-3A	L7332H	N/A	
PARKING GARAGE HEATERS			
3rd FL South	Model V-3	Serial L7274H-UH-8J	
3rd FL Mid	Model V-3	Serial L7332H-1-UH-8	
3rd FL North	Model V-3	Serial L7472-UH-8E	
2nd FL South	Model V-3	Serial L7274H-UH-8D	
2nd FL Mid	Model V-3	Serial L7274H-UH-8H	
2nd FL North	Model V-3	Serial L7274H-UH-8I	
1st FL South	Model V-3	Serial L7274H-UH-8M	
1st FL Mid	Model V-3	Serial L7274H-UH-8K	
1st FL North	Model V-3	Serial L7274H-UH-8A	
B FL South	Model V-3	Serial L7274H-UH-8G	
B FL S-East	Model V-3	Serial L7274H-UH-8L	
B FL N-East	Model V-3	Serial L7274H-UH-8B	
B FL North	Model V-3	Serial L7274H-UH-8C	
B FL West	Model V-3	Serial L7274H-UH-8F	

LESSOR: 81 Capital Inc. By:  Name: John Nassar Title: President I have the authority to bind the Corporation.	LESSEE: 144 Park Ltd., by its court-appointed trustee, COLLINS BARROW TORONTO LIMITED By:  Name: Title: I have the authority to bind the Corporation.
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CONDO ASSUMPTION AGREEMENT

144 Park Ltd. – Uptown Waterloo
144 Park Street, Waterloo, Ontario

THIS AGREEMENT is made as of September 1, 2015 between 144 PARK LTD., by its court-appointed trustee COLLINS BARROW TORONTO LIMITED (the "Builder"), Waterloo Standard Condominium Corporation No. 591 (the "Condo Corp") and 81 CAPITAL INC. ("81 CAPITAL")

BACKGROUND:

- A. The Builder and 81CAPITAL have entered into the Builder Agreement. The Builder, as lessee, has also entered into the Lease with 81 CAPITAL, as lessor, in respect of the Equipment.
- B. Collins Barrow Toronto Limited was appointed by court order as trustee (the "Trustee") of the property owned by the Builder, including the Property, which court order was registered on title to the Property on January 23, 2015 as Instrument No. WR863820.
- C. The Builder has agreed to assign and the Condo Corp has agreed to assume the obligations of the Builder under the Lease.
- D. The Condo has been established as a condominium, in respect of which the Condo Corp is the condominium corporation. The Declaration and Description of the Condo have been registered against title to the Lands as Instrument No. WR882241 and Waterloo Standard Condominium Plan No. 591.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency which are acknowledged, the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Act" means the *Condominium Act 1998* (Ontario).

"Affiliate" has the meaning given to it in the *Business Corporations Act* (Ontario).

"Agreement" means this Condo Assumption Agreement, as it may be amended, supplemented, restated or otherwise modified from time to time.

"Builder Agreement" means the builder agreement dated February 26, 2014 between the Builder and 81 CAPITAL.

"Business Day" means any day other than a Saturday, a Sunday or a day that is a statutory holiday in Ontario.

"Common Elements" has the meaning given to it in the Act.

"Condo" means such condominium or condominiums as may be established under the Act on the Lands.

"Condo Fees" means the contribution towards common expenses of the Condo by the Owners.

"Condo Lien" means the lien created under the Act in favour of the Condo Corp for unpaid contributions from the Owners towards the common expenses of the Condo.

"Condo Unit" means a condominium unit (as defined in the Act) in the Condo.

"Declaration" has the meaning given to it in the Act.

"Default" means an event that, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Description" has the meaning given to it in the Act.

"Equipment" means all equipment and other property forming the subject matter of the Lease and includes all present and future attachments, replacements, parts, substitutions, additions and accessories relating to such equipment and other property.

"Event of Default" means the occurrence of one or more of the following events or circumstances:

- (a) the occurrence of an Event of Default (as defined in the Lease); or
- (b) the Condo Corp. fails to perform or observe, in any material manner, any of its covenants or obligations contained in this Agreement,

provided that 81 CAPITAL shall have given to the Condo Corp. five (5) Business Days' written notice of the default and it has not been remedied within such period.

"include" or **"including"** means to include without limitation.

"Lands" means Waterloo Standard Condominium Plan No.591.

"Lease" means the lease agreement dated ~~August~~ ³¹ August 1, 2015 relating to the Condo entered into between 81 CAPITAL, as lessor, and the Builder, as lessee, as it may be amended, supplemented, restated, replaced or otherwise modified from time to time including as may be added to this Agreement by 81 CAPITAL and the Condo Corp as a

schedule or by amendment or otherwise identified by 81 CAPITAL and the Condo Corp as forming part of the Lease.

“Lease Payments” means the rent, interest, taxes, costs and other amounts payable by the lessee to the lessor under the Lease.

“Owner” means an owner (as defined in the Act) of a Condo Unit.

“PPSA” means the *Personal Property Security Act* (Ontario).

“Proportionate Share” means, in respect of a Condo Unit, the proportion specified in the Declaration for sharing the interests in the Common Elements appurtenant to the Condo Unit.

1.2 General

Words importing the singular include the plural and *vice versa*. Words importing gender include all genders including the neuter gender. The division of this Agreement into sections and headings is for convenience only and such division and headings shall not affect the interpretation or construction of this Agreement. Any reference in this Agreement to any statute shall, unless otherwise expressly stated, be deemed to be a reference to such statute, as amended, renamed, restated or re-enacted or replaced from time to time (and includes all regulations from time to time made under such statute). This Agreement shall be governed by the laws of Ontario.

ARTICLE 2 ASSIGNMENT AND ASSUMPTION OF LEASE

2.1 Assignment

The Builder assigns to the Condo Corp all of the Builder's interest, both at law and in equity, in the Lease and the Equipment, together with all rights, benefits and advantages to be derived from them, including the unexpired residue of the term of years granted in the Lease and in any option to purchase contained in the Lease.

2.2 Builder's Covenants

The Builder covenants and represents to the Condo Corp and 81 CAPITAL that, with respect to the Lease and the Equipment:

- (a) the Builder has good right, power and authority to assign its interest in the Lease and the Equipment as set out in this Agreement;
- (b) the Lease is valid and subsisting, is in full force and has not been amended or modified; and

- (c) the Lease is in good standing, neither 81 CAPITAL nor the Builder is in default under the Lease and there is no dispute between them with respect to the Lease or the Equipment.

2.3 81 CAPITAL's Covenants

81 CAPITAL covenants and represents to the Condo Corp and the Builder that, with respect to the Lease and the Equipment, as far as it is aware:

- (a) the Lease is valid and subsisting, is in full force and has not been amended or modified; and
- (b) the Lease is in good standing, neither 81 CAPITAL nor the Builder is in default under the Lease and there is no dispute between them with respect to the Lease or the Equipment.

2.4 Condo Corp's Covenants

The Condo Corp hereby assumes the Lease and covenants with the Builder and 81 CAPITAL that the Condo Corp shall, during the balance of the term granted by the Lease and every renewal of it (if any), pay the Lease Payments and perform all of the other obligations of the lessee under the Lease as of and from the date of this Agreement in the same manner and with the same effect as if the Condo Corp had been the original lessee under the Lease, and indemnify 81 CAPITAL and the Builder against all actions, suits, costs, losses, charges, damages and expenses in respect of any default in doing the foregoing.

2.5 81 CAPITAL's Consent

81 CAPITAL consents to the assignment made under this Agreement by the Builder to the Condo Corp, reserving 81 CAPITAL's rights under the Lease with respect to, among other things, the necessity of obtaining prior written consent to any future assignment of it.

**ARTICLE 3
CONDO**

3.1 Fixtures

The parties agree that the Equipment shall constitute personal property until it is installed, and upon installation shall constitute fixtures, but in no event shall it constitute building materials. "Fixtures" and "building materials" have the meaning given to them for the purposes of the PPSA.

3.2 Notice of Security Interest

81 CAPITAL shall be entitled to register against the Lands notice of, or other document evidencing, its security interest arising under the Lease or this Agreement regarding the Equipment.

3.3 Declaration and Description

The Builder and Condo Corp, jointly and severally, represent and warrant to 81 CAPITAL that:

- (a) the recitals above (under the heading "**Background**") are true; and
- (b) the Declaration and Description of the Condo in the forms as registered have not been amended and, to the extent within the control of the Builder, shall not be amended in any way that affects the interest of 81 CAPITAL or the Equipment without the prior written consent of 81 CAPITAL.

3.4 Payments and Security

The Condo Corp:

- (a) shall include the Lease Payments in the Condo Fees levied monthly by it; and
- (b) shall obtain and deliver to 81 CAPITAL from the lawyer for the Builder a comfort letter substantially in the form attached as **Schedule A** hereto attached to this Agreement.

3.5 Remedies etc.

The rights and remedies of 81 CAPITAL under this Agreement: are cumulative; may be exercised as often and in such order as 81 CAPITAL considers appropriate; are in addition to its rights and remedies under the general law; and, shall not be capable of being waived or varied except by an express waiver or variation in writing signed by an officer of 81 CAPITAL.

3.6 Trustee

The parties acknowledge and agree that Collins Barrow Toronto Limited has executed this Agreement solely in its capacity as Trustee and not in its personal or corporate capacity. 81 CAPITAL and the Condo Corp further acknowledge and agree that, by signing this Agreement, Collins Barrow Toronto Limited, in its capacity as Trustee and in its personal and corporate capacity, cannot be held personally liable for any of the rights and obligations of the Lessee contained in the Lease. 81 CAPITAL and the Condo Corp release and discharge Collins Barrow Toronto Limited, in its capacity as Trustee and in its personal and corporate capacity, from any and all liability in any way arising out of or relating to the Lease.

**ARTICLE 4
NOTICES**

4.1 Notices

(1) Any notice or other communication required or permitted to be given under this Agreement (a "notice") shall be in writing and shall be given by registered mail (except during an actual or threatened postal disruption), personal delivery or by fax to the applicable address set out below:

(a) If to the Builder:

144 Park Ltd.
c/o Collins Barrow Toronto Limited
Collins Barrow Place
11 King Street West
Suite 700, Box 27
Toronto, Ontario
M5H 4C7

Attention: Bryan Tannenbaum / Arif Dhanani
Fax No: 416-480-2646

(b) If to the Condo Corp:

Waterloo Condominium Corporation No. 591
C/O FirstService Residential Ontario
89 Skyway Avenue, Suite 200
Toronto, Ontario
M9W 6R4

(c) If to 81 CAPITAL:

302 The East Mall
Suite 301
Etobicoke, Ontario
M9B 6C7

Attention: Legal Department
Fax No.: (416) 622-7029

- (2) Any notice: if sent by registered mail, shall be deemed to have been given and received on the fourth Business Day after it was mailed; if delivered, shall be deemed to have been given and received on the date of delivery; and, if sent by fax, shall be deemed to have been given and received on the date of transmission unless such date is not a Business Day in which case such notice shall be deemed to have been given and received on the next following Business Day.
- (3) By giving to the other party at least 10 days' Notice, any party may, at any time and from time to time, change its address for delivery or communication for the purposes of this Section.

ARTICLE 5 GENERAL

5.1 Enurement

This Agreement is made personally with the Builder and with the Condo Corp and shall not be assigned by either of them except with the prior written consent of 81 CAPITAL, which will not be unreasonably withheld. 81 CAPITAL may sell, assign or otherwise dispose of, or grant a security interest or other encumbrance in, all or any portion of 81 CAPITAL's right, title or interest in this Agreement or any part thereof to anyone else, without the consent of or notice to the Builder or the Condo Corp. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties and their respective permitted, as applicable, successors and assigns.

5.2 Waiver

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the party to be bound by the waiver. The waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

5.3 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5.4 Further Assurances

Each party to this Agreement shall do such further things and execute such further documents as may be reasonably required by the other party to more fully implement the intent of this Agreement.

5.5 Counterparts

This Agreement may be executed in any number of counterparts and may be delivered by facsimile and all of such counterparts taken together and so delivered shall be deemed to constitute one and the same instrument.

THE PARTIES have executed this Agreement as of the date first written above.

**144 PARK LTD. by its court-appointed trustee,
COLLINS BARROW TORONTO LIMITED**

By: 
Name: Bryan Tannenbaum
Title: President

I/We have the authority to bind the Corporation.

**WATERLOO STANDARD CONDOMINIUM
CORPORATION NO. 591**

By: 
Name: Bryan Tannenbaum
Title: President

By: 
Name: Arif Dhanani
Title: Secretary

I/We have the authority to bind the Corporation.

81 CAPITAL INC.

By: 
Name: JOHN NASSAR
Title: PRESIDENT

I/We have the authority to bind the Corporation.

SCHEDULE A
COMFORT LETTER

September 1, 2015

Ari M. Katz
Direct Line: (416) 250-2869
E-mail: akatz@harris-sheaffer.com

81 Capital Inc.
302 The East Mall
Suite 301,
Etobicoke, Ontario
M9B 6C7

Assistant: Emmanuelle D'or
Direct Line: (416) 250-2865
E-mail: edor@harris-sheaffer.com

File No.: 150540

Dear Sir:

RE: Waterloo Standard Condominium Corporation No. 591
144 Park – Uptown Waterloo, 144 Park Street, Waterloo, Ontario

We confirm that any two of the officers and/or directors set out on the Resolution of the Declarant, the Resolution of the Directors, the Minutes of Owners Meeting have authority on behalf of Waterloo Standard Condominium Corporation No. 591 to sign the Condo Assumption Agreement entered into with you, as well as any related documents in this matter.

Yours very truly,
HARRIS, SHEAFFER LLP

Ari M. Katz
Encls.

C:\Users\sam\AppData\Local\Temp\2\py0cusxl\Condo Comfort Letter (w comment).doc

UNDERTAKING

TO: 81 Capital Inc. ("81 Capital")

AND TO: ANY PERSON, CORPORATION, PARTNERSHIP, TRUST, BANK, INSURANCE COMPANY OR OTHER ENTITY OF ANY NATURE OR KIND THAT HAS PROVIDED OR PROVIDES IN THE FUTURE FINANCING TO 81 CAPITAL INC. FOR THE PURPOSE OF ASSISTING IT IN ACQUIRING "EQUIPMENT"

RE: Builder Agreement between 144 Park Ltd. and 81 Capital in respect of a building municipally known as 144 Park – Uptown Waterloo, 144 Park Street, Waterloo, Ontario (the "Project")

WHEREAS Collins Barrow Toronto Limited was appointed by court order as trustee (the "Trustee") of the property owned by 144 Park Ltd. (the "Seller" or the "Corporation"), including the Project, which court order was registered on title to the Project on January 23, 2015 as Instrument No. WR863820;

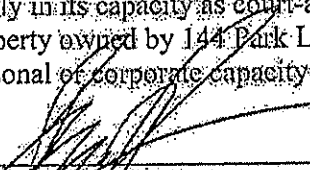
AND WHEREAS 81 Capital has purchased certain HVAC and related equipment (hereinafter called the "Equipment") and has leased the Equipment acquired by it to 144 Park Ltd. (the "Lease");

AND WHEREAS the Trustee has agreed with 81 Capital to use reasonable efforts obtain from the purchasers of the units in the Project acknowledgements (the "Acknowledgements") substantially in the form attached hereto as Schedule A, on the understanding that such purchasers are not legally or contractually obligated to sign said Acknowledgements;

NOW THEREFORE THIS UNDERTAKING WITNESSES, that, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the undersigned hereby undertakes to use its reasonable best efforts to obtain the Acknowledgements from the purchasers of the units in the Project within (i) 10 days of the date hereof for suites that have already closed; or (ii) 10 days of final closing of suites that have not closed as of the date hereof.

DATED as of the ~~15th~~ ^{15th} day of August, 2015.

COLLINS BARROW TORONTO LIMITED,
solely in its capacity as court-appointed trustee of
property owned by 144 Park Ltd. and not in its
personal or corporate capacity

By: 
Name: Bryan Tannenbaum
Title: President

I have the authority to bind the corporation

APPENDIX “F”

**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 September 25, 2015**

Receipts	25-Sep-15	Notes
Closing proceeds from sale of units	24,969,844	1
HST collected	2,398,958	1
Occupancy fees paid by residents	929,242	2
DIP funds received	500,000	3
Property taxes collected from closing of units	451,338	1
Hydro utilities recovery	59,023	4
HST refunds	183,616	
Transfers from Harris Sheaffer accounts	8,564	5
Bank interest	6,591	
Sale of access fobs and other miscellaneous receipts	1,090	
Total Receipts	29,508,265	
Disbursements		
Operating expenses (property manager, security, snow removal and landscaping, property cleaner, garbage disposal)	67,147	
Payment of DIP Facility fee	25,000	3
Repayment of DIP funds	517,062	3
Insurance premiums	26,703	
Payment of fees and bond premium to Westmount Guarantee	40,480	6
Insurance deductible	50,000	7
Trustee's fees		
- pre-appointment consulting fees	36,737	
- post-appointment fees	334,970	
Legal counsel fees	350,804	8
Utilities	167,815	
Common area maintenance fees paid to WSCC 591	214,357	9
Amounts paid on behalf of WSCC 591 (insurance, utilities)	45,761	9
Repairs and maintenance	229,418	
Wages	168,366	10
Third party consultants (engineer, surveyor, planner, architect)	138,626	11
HST/PST paid	204,282	
HST remitted to Canada Revenue Agency	1,953,270	
Property taxes	22,960	
Registration fees paid to the City and Region of Waterloo	3,375	
Courier	420	
Other	1,825	
Total disbursements	4,599,378	
Excess of receipts over disbursements before distributions to mortgagees and lien claimants	24,908,888	
Distribution to mortgagees and lien claimants		
Laurentian Bank of Canada	14,000,000	12
Excess of receipts over disbursements	10,908,888	13

**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 September 25, 2015**

Notes:

1. As at September 25, 2015, the Trustee has closed the sales of 97 units. Total proceeds received from 96 closings total \$27,820,140. As at September 25, 2015, proceeds totaling \$226,426 from one closing on September 24, 2015 had not yet been received into the Trustee's bank account from Harris Sheaffer LLP.

2. Occupancy fees paid by residents consist of occupancy fees collected by the Trustee for the months of January to June 2015. The Trustee did not cash all occupancy cheques received for June 2015, but on the advice of counsel, sent those cheques that had not been deposited to counsel to be returned to the respective residents. These residents' closing statements of adjustments reflected the June 2015 occupancy fee and all residents' statements of adjustments will reflect fees payable from July 1, 2015 forward to the date of closing, as appropriate. The occupancy fees adjusted for on residents' statements of adjustments are included in closing proceeds from the sale of units with one exception.

One unit purchaser has been unable to close his particular transaction. Based on the purchaser's circumstances the Trustee agreed to extend the purchaser's closing date to September 30, 2015, but has required the purchaser to pay all occupancy fee arrears, interest and penalties thereon and all occupancy fees to September 30, 2015, which are reflected above. This purchaser recently advised that he will be unable to close his transaction until October 14, 2015. The Trustee has agreed to further extend the closing date of this transaction until October 14, 2015, if the purchaser pays occupancy fees for the month of October 2015. The Trustee has not yet received payment from this purchaser for the occupancy fees for October 2015 and intends to terminate the transaction if the fees are not received by end of business on October 2, 2015.

3. On April 7, 2015, pursuant to the Court-approved term sheet (the "DIP Term Sheet") and authority to borrow funds, the Trustee borrowed \$500,000 (the "DIP Funds") from MarshallZehr Group Inc. ("MZ"). The DIP Funds were repaid by the Trustee to MZ on July 16, 2015, including interest of \$16,812 and an administration fee of \$250. The Trustee also paid to MZ a Facility Fee of \$25,000 in accordance with the DIP Term Sheet.

4. The Trustee has paid the main hydro account charges each month for the Property. Residents' usage is metered and billed to them by a third party. This third party, upon receiving payments from residents, reimburses the Trustee for the charges paid by the Trustee on the residents' behalf. Since the date of registration, May 25, 2015, the Trustee has continued to pay hydro bills on the condominium corporation's behalf; however, reimbursements from the third party for recoveries are paid to the condominium corporation. The condominium corporation has contacted the hydro utility to change ownership of the hydro account into the name of the condominium corporation; however, this change has not yet been effected by the utility company.

5. Harris Sheaffer LLP ("HS"), real estate counsel to 144 Park Ltd. and the Trustee, held in its accounts accounts funds paid to HS as a retainer for fees. HS has sent the remainder of the retainer funds held by it to the Trustee.

6. Westmount Guarantee Services Inc. ("Westmount Guarantee") acts as agent for the Aviva Insurance Company with respect to a bond securing the obligations of the developer for rectification of in-suite and common area deficiencies that are warranted by Tarion Warranty Corporation. In its capacity as agent, Westmount Guarantee charges annual fees for its services and the invoices paid by the Trustee are for the period August 24, 2014 to August 23, 2015. Westmount Guarantee's recourse for unpaid fees is to charge the bond and obtain payment from the cash collateral supporting the bond, which is held by HS.

**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 September 25, 2015**

7. As set out in previous reports of the Trustee, a flooding incident occurred on March 20, 2015 at the Property. The Trustee's insurance deductible in accordance with its policy was \$50,000. Costs for rectification of the damage to the Property are in excess of \$240,000.

8. Legal counsel's fees include the fees of the Chaitons LLP and Harris Sheaffer LLP.

9. Pursuant to the requirements of the *Condominium Act*, the declarant, upon registration of the Condominium Corporation, is deemed to be the owner of all the units in the Condominium Corporation. Upon the advice of counsel, the Trustee has paid the common area maintenance fees for the period May 25 to August 31, 2015, which fees the Trustee was invoiced for by the property manager, First Service Residential of Ontario ("First Service"). The invoices received total approximately \$251,000. The Trustee has paid First Service \$214,357, which is net of expenses the Trustee has paid on behalf of the Condominium Corporation of approximately \$37,000 as at August 25, 2015. Since that time, the Trustee has paid certain further expenses on behalf of the Condominium Corporation.

Common area maintenance fees for the month of September 2015 have not been paid yet by the Trustee as it was sorting out certain billing and recovery errors with First Service. All issues have been resolved and the Trustee intends on issuing a cheque for the September 2015 common area maintenance fees net of amounts paid by the Trustee on the condominium corporation's behalf.

10. The Trustee retained the services of two employees of Mady Development Corporation to assist it with its on-site duties at the Property. One employee is on site at the Property full time, while the other now spends approximately 25% of this time on the Property (previously 75%).

11. The Trustee was required to retain the services of certain professionals in order to deal with various issues at the Property to obtain registration.

12. In accordance with an Order of the Court dated August 5, 2015 (the "Approval and First Interim Distribution Order"), the Trustee distributed \$14 million to Laurentian Bank of Canada.

13. In accordance with the Approval and First Interim Distribution Order, the Trustee has retained \$5.4 million in an interest bearing account in respect of the lien claims pending further order of the Court.

APPENDIX “G”

APPENDIX "G" - LIEN CLAIMS

Lien Claimant	Instrument No.	Registration Date	Amount
Global Fire Protection Ltd.	WR847447	10/24/2014	\$301,592.04
694643 Ontario Limited cob as O'Connor Electric	WR849030	10/31/2014	\$88,882.72
J & I Gaweda Construction Limited	WR854810	12/1/2014	\$537,285.80
Bast Home Comfort Inc.	WR854978	12/2/2014	\$26,889.48
Frendel Kitchens Limited	WR856756	12/11/2014	\$328,259.71
T.I.C. Contracting Ltd.	WR857239	12/12/2014	\$436,313.73
Global Precast Inc.	WR857322	12/15/2014	\$188,393.19
2050491 Ontario Inc. o/a The Downsview Group	WR857462	12/15/ 2014	\$110,715.72
Sam Tortola Enterprises Inc.	WR857468	12/15/2014	\$104,008.59
CRS Contractors Rental Supply General Partner Inc.	WR857793	12/16/2014	\$15,869.50
Adlers Main Tile & Carpet Co. Ltd.	WR857850	12/16/2014	\$83,436.17
Hammerschlag & Joffe Inc.	WR858748	12/19/2014	\$46,043.26
Sereen Painting Ltd.	WR858991	12/22/2014	\$345,952
Weston Flooring Limited	WR859188	12/23/2014	\$176,771.34
Great Pyramid Aluminum Ltd.	WR859941	12/30/ 2014	\$32,380.71
Adlers Main Tile & Carpet Co. Ltd.	WR860525	1/5/2015	\$139,287.39
Brody Wall System Ltd.	WR863291	1/21/2015	\$113,327.50
Skyway Canada Ltd.	WR863658	1/23/2015	\$4,257.84
DKS Stone Fabrication & Design Inc.	WR863814	1/23/2015	\$210,189.60
Clonard Group Inc.	WR864339	1/24/2015	\$752,632.01
Aluminum Window Design Installations Inc.	WR864655	1/29/2015	\$260,446.93
TOTAL			\$4,302,935.23

APPENDIX “H”



Court File No. CV15-10843-00CL

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

THE HONOURABLE Mr.)
)
JUSTICE Wilton-Siegel)

THURSDAY, THE 23rd DAY

OF APRIL, 2015

Handwritten initials

**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

(re Construction Lien Claims 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 and legally described in Schedule "A" attached hereto (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 First Report of the Trustee dated April 17, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee 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 April 20, 2015, filed,

CLAIMS PROCESS

1. **THIS COURT ORDERS AND DECLARES** that the process set out in this Order (the "**Construction Lien Claims Process**") for the submission, review and determination of all lien claims (each, a "**Claim**") pursuant to the *Construction Lien Act* (Ontario) (the "**CLA**") for the provision of services and materials prior to January 22, 2015 with respect to the improvement (the "**Improvement**") located on the Property is hereby approved and is the exclusive process by which all Claims shall be determined, and all Claims shall attorn to the Construction Lien Claims Process.

2. **THIS COURT ORDERS** that the Trustee shall implement and administer the Construction Lien Claims Process, including the review, determination (including, but not limited to, the determination of the quantum and timeliness of all liens), acceptance, revision, disallowance and/or settlement of any Claims by any party filing a Claim pursuant to the provisions of this Order (each, a "**Lien Claimant**"), and may take any steps which the Trustee believes are incidental or necessary for the implementation of the Construction Lien Claims Process.

3. **THIS COURT ORDERS AND DIRECTS** all Claims shall be administered pursuant to the Construction Lien Claims Process by the Trustee, under the supervision of this Court, and any determination or disposition of any Claim by the Trustee shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*. The Trustee shall, as necessary, consult with 144 Park Ltd. ("**144 Park**") with respect to the quantum and timeliness

of all Claims. The Trustee may retain any consultant or assistant as it may require to assist in the review and determination of any Claim.

4. **THIS COURT ORDERS AND DIRECTS** that in order to file a Claim pursuant to the Construction Lien Claims Process, a Lien Claimant shall provide, if it has not done so to date, the following to the Trustee on or before 5:00 p.m. Toronto time on May 29, 2015 (the "**Claims Bar Date**"):

- (a) copies of the Lien Claimant's Statement of Claim and Certificate of Action;
- (b) copies of the applicable Land Registry Construction Lien and Certificate instruments;
- (c) a copy of any contract or subcontract including the names of the parties to any contract or subcontract, any change orders, amendments, purchase orders, documentation evidencing the last date on which the Lien Claimant provided services or materials to the Improvement or other related documents on which such Claim is asserted;
- (d) the contract price and a statement of account, including the dates and amounts of payments received;
- (e) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor; and
- (f) any other documents or information as the Trustee may reasonably request for the purpose of assessing and determining any Claims in accordance with this Order.

5. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to make recommendations to the Court regarding the determination of holdback(s) and priorities with respect to the Improvement and the Property, including priorities with respect to any proceeds of the sale of the Property. The Trustee shall serve its report to the Court setting out such recommendations on the Service List in this proceeding no less than 10 days prior to the return date of any motion where the Court will be asked to make a determination as to the holdbacks and priorities with respect to the Improvement and the Property.

DETERMINATION OF CLAIMS

6. **THIS COURT ORDERS** that the Trustee shall accept, revise and/or disallow a Claim as set out in a Lien Claimant's Statement of Claim by delivering a notice of determination including the reasons for such determination (a "Notice of Determination"), and all documentation, if any, referred to in the Notice of Determination to such Lien Claimant.

DISPUTE NOTICE AND APPEALS

7. **THIS COURT ORDERS** that a Lien Claimant may appeal the revision and/or disallowance (as the case may be) of its Claim as set out in a Notice of Determination by delivering a Dispute Notice to the Trustee substantially in the form attached to this Order as **Schedule "B"** (a "Dispute Notice") within 10 days of the sending of such Notice of Determination by the Trustee. Any Lien Claimant who does not deliver a Dispute Notice within 10 days of the sending of a Notice of Determination with respect to its Claim shall be deemed to have accepted the Trustee's determination as set out in the Notice of Determination, which shall be final and binding, and any portion, or the whole, of the Claim (as the case may be) which is

disallowed in the Notice of Determination shall be forever barred and extinguished pursuant to this Order.

8. **THIS COURT ORDERS AND DIRECTS** that any appeal or dispute of a Notice of Determination as set out in a Dispute Notice, shall be referred to a claims officer to be appointed by further order of this Court on recommendation by the Trustee (the "**Claims Officer**") or brought before this Court for adjudication. Any appeal or dispute of a Notice of Determination as set out in a Dispute Notice shall be conducted as a hearing *de novo* and any appeal of any decision of the Claims Officer shall be heard by this Court on a timetable approved by this Court and shall be final and binding on all parties with no further appeal thereof.

CLAIMS BAR PROVISIONS

9. **THIS COURT ORDERS** that any Claim:

- (a) the particulars of which are not delivered to the Trustee by the Claims Bar Date in accordance with paragraph 4 above; or
- (b) for which a Dispute Notice is not delivered within 10 days of the sending of a Notice of Determination by the Trustee but only with respect to any portion, or the whole (as the case may be) of any such Claim which is disallowed,

shall be forever barred and extinguished and such Lien Claimant submitting the Claim shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Property and 144 Park except that nothing in this Order shall bar or extinguish any Claim in its entirety or any part thereof which has been accepted by the Trustee, or approved by the Claims Officer or this Court, as applicable.

10. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the Construction Lien Claims Process.

NOTICES AND COMMUNICATION

11. **THIS COURT ORDERS** that, except as otherwise provided herein, the Trustee may deliver any notice or other communication to be given under this Order to Lien Claimants by forwarding true copies thereof by e-mail to such Lien Claimants or parties at the address on the Service List, and that any such service or notice by e-mail shall be deemed to be received on the day the e-mail is sent by the Trustee.

12. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by e-mail addressed to:

COLLINS BARROW TORONTO LIMITED

11 King St. West Suite 700, Box 27
Toronto, ON M5H 4C7
Attention: Arif Dhanani
Email: andhanani@collinsbarrow.com

- with a copy to -

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Attention: Sam Rappos
Email: samr@chaitons.com

13. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Construction Lien Claims

Process and/or such further order or orders as this Court may consider necessary or desirable to amend or supplement this Order.

C. Van-MS.

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

APR 23 2015
MB

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"

Dispute Notice Re: 144 Park Ltd.

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Construction Lien Claims Process Order dated April 23, 2015. Pursuant to paragraph 7 of the Construction Lien Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination dated _____ issued by Collins Barrow Toronto Limited as Trustee of the Property in respect of our Claim.

Name of Creditor: _____

Reasons for Dispute (attach additional sheets and copies of all supporting documentation, if necessary):

Signature of Authorized Signing Officer: _____

Date: _____

(Please print name) _____

Telephone Number: () _____ Facsimile Number: () _____

Full Mailing Address: _____

E-mail Address: _____

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY E-MAIL, TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 10 DAYS AFTER SENDING OF THE NOTICE OF DETERMINATION BY THE TRUSTEE TO:

COLLINS BARROW TORONTO LIMITED

11 King St. West Suite 700, Box 27

Toronto, ON M5H 4C7

Attention: Arif Dhanani

Email: andhanani@collinsbarrow.com

- with a copy to -

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Attention: Sam Rappos
Email: samr@chaitons.com

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

(re Construction Lien Claims Process)

CHATTONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

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

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

Lawyers for the Trustee

APPENDIX “I”

**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 S. 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**AFFIDAVIT OF BRYAN A. TANNENBAUM
(Sworn on October 13, 2015)**

I, BRYAN A. TANNENBAUM, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of Collins Barrow Toronto Limited (“**CBTL**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), with respect to the lands and premises municipally known as 142, 144 and 148 Park Street and 21 Allen Street West in Waterloo, Ontario (the “**Property**”) and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto and marked as **Exhibit “A”** are detailed invoices (the “**Invoices**”) issued by CBTL for its fees and disbursements in connection with the proceedings

related to the Property pursuant to the Construction Lien Act for the period July 1, 2015 to August 31, 2015 (the "Appointment Period"). The total fees charged by CBTL during the Appointment Period were \$94,191.50 plus disbursements of \$1,256.60, plus HST of \$12,408.26 totaling \$107,856.36.

3. The Invoices are a fair and accurate description of the services provided and the amounts charged by CBTL.

4. Attached hereto and marked as **Exhibit "B"** is a schedule summarizing the invoices in Exhibit "A" including the total billable hours charged, the total fees charged and the average hourly rate charged.

5. I make this affidavit in support of a motion for an Order approving the Monitor's fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on the
13th day of October, 2015



Commissioner for Taking Affidavits
(or as may be)

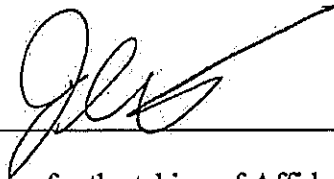


BRYAN A. TANNENBAUM

EXHIBIT "A"

Detailed Invoices

This is Exhibit "A" to the Affidavit of
Bryan A. Tannenbaum, sworn on October 13, 2015

A handwritten signature in black ink, appearing to be 'JLS', is written over a horizontal line.

A Commissioner for the taking of Affidavits, etc.



Collins Barrow Toronto Limited
 Collins Barrow Place
 11 King Street West
 Suite 700, PO Box 27
 Toronto, Ontario
 M5H 4C7 Canada

To 144 Park Ltd.
 c/o Collins Barrow Toronto Limited
 11 King Street West, Suite 700
 Toronto, Ontario
 M5H 4C7

T. 416.480.0160
 F. 416.480.2646

www.collinsbarrow.com

Date August 10, 2015

GST/HST: 80784 1440 RT 0001

Client File 300027
 Invoice 7
 No. C000093

For professional services rendered with respect to the appointment of Collins Barrow Toronto Limited as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period to July 31, 2015.

Date	Professional	Description
7/2/2015	Bryan Tannenbaum	Attend at Harris Sheaffer LLP ("HS") offices to sign condo closing documents, etc., and met with K. McNeill, A. Katz.
7/2/2015	Arif Dhanani	Review invoices from Jones Electric and approve for payment; review correspondence between insurer and K. Roelofsz; draft and submit HST returns for May and June 2015; review remaining HVAC lease documents and email to 81 Capital with questions; emails to HS regarding closings and obligations; telephone call with HS regarding documents to be signed by condo board; contact First Service Residential for copies of common element fee invoices for May 25 to July 31, 2015, review same and facilitate payment, draft cover letter to First Service regarding payment net of amounts already paid on behalf of WSCC 591.
7/3/2015	Bryan Tannenbaum	Conference call regarding parking issues and Mint Realty with M. Karoly of HS, D. Marshall and M. Snedden of MarshallZehr Group ("MZ"), S. Rappos of Chaitons LLP, A. Dhanani.
7/3/2015	Arif Dhanani	Facilitate and attend conference call with MZ, Chaitons, HS and B. Tannenbaum.
7/6/2015	Bryan Tannenbaum	Sign Trustee's Certificates accompanying vesting order for Suites 510,601, 605, 701, 608, 610, 709, 705, 708, 801, TH3, 405, 401, 408, 409, 501, 504, 505, 509, 508, 1002, 910, 1004, 805, 808, 901, 905, 908, 909, 1109, 1202, 1006, 1008, 1009, 1108, 1101, 1104, 1001, 1209, 1205, 1206, 1210, 1301, 1303, 1302, 1304, 1305, 1307, 1405, 1409, 1410, 1502, 1507, 1505, 1402, 1404, 1403, 1308, 1309, 1106, 1601, 1605, 1602, 1606, 1715, 1704, 1706, PH6, PH5, 1006, 602; attend to various emails regarding closings and parking issues and HVAC lease; email from S. Rappos regarding 72 units for vesting orders.
7/6/2015	Arif Dhanani	Review and respond to emails from HS, Tarion and K. Roelofsz regarding closing documents and adjustments to be made; review and confirm accuracy of information in 70 Vesting Orders and Trustee's Certificates sent by Chaitons.
7/6/2015	Silvia Paredes	Prepare disbursement cheques.

Date	Professional	Description
7/7/2015	Daniel Weisz	Review and sign cheques; review directors resolution and discussion with A. Dhanani on same.
7/7/2015	Arif Dhanani	Meet with S. Rappos to deliver executed Trustee's Certificates for signature by the Court; telephone call with MZ regarding parking reallocations; responding to emails from HS and Tarion regarding closing adjustments to be made on various units; draft spreadsheet with closed, pending and units not sold.
7/8/2015	Daniel Weisz	Discussion with A. Dhanani on status of director resolutions and review emails regarding same.
7/8/2015	Arif Dhanani	Review emails from HS with registrations for vesting orders, funds to be transferred to Trustee on closed units; discussions with HS regarding breakdown of proceeds; review of invoices received for services rendered and approve for payment; telephone call with MZ regarding parking; telephone call with Canada Revenue Agency ("CRA") regarding ITCs; emails to/from and telephone call with Tarion regarding unit vs. common element warranties; dealing with various closing issues and responding to HS on same; working on parking reallocation spreadsheet and discussions with MZ regarding same.
7/9/2015	Donna Nishimura	Prepare paperwork for deposit of cheque.
7/9/2015	Bryan Tannenbaum	Meeting at Chaitons to discuss parking issue and development of One55 Caroline; conference call with C. Hayes of MZ.
7/9/2015	Arif Dhanani	Review of correspondence from Gowlings regarding suite 508; further emails to/from Tarion regarding common element vs. in-suite warranties; respond to email from creditor regarding unsecured claims; emails to/from HS regarding closings - defaults, requests for extensions and other issues; emails to/from Tarion regarding eligibility of specific units for delayed occupancy claims; review of various invoices for services and approve for payment; telephone call with Chaitons regarding lien claims; emails with MZ on repayment of DIP funds and payment of fee thereon; telephone call with Westmount Guarantee on payment of bond premium invoice; review of letter from lawyer engaged for certain purchasers of two parking spots, forward same to Chaitons; call with K. Koury at NBC.
7/9/2015	Sandra Pereira	Prepare cheques for payment.
7/10/2015	Arif Dhanani	Corresponding with HS on closing matters for various suites; corresponding with Tarion on delayed occupancy claims; telephone call with P. Fontaine, purchaser; emails to/from MZ regarding closings and issues with same; telephone call with LBC with status update on units, closings, issues; telephone call with and emails to/from Chaitons regarding lien claims and holdback deficiency; telephone call with LBC regarding investing funds in short-term investment and making arrangements for same; emails from/to purchaser of unit 408.
7/13/2015	Sandra Pereira	Prepare cheques for payment.

Date	Professional	Description
7/13/2015	Arif Dhanani	Finalize parking reallocation spreadsheet and send to MZ for comments; amend draft letter to be released to counsel for Units 1407 and 1408; responding to questions from MZ on various matters; review transfer and settlement agreement and release to be sent to Purchaser of Unit 903, amend and send back to HS; responding to S. Dooman regarding Nelco; review vesting orders and Trustee's Certificates for units 1401, 1407 and 1408, speak to D. Weisz regarding same and meet S. Rappos at Court to have documents executed by Registrar; email to and discussion with M. Snedden regarding reallocation of parking units; review invoices for services supplied to Trustee and approve for payment; respond to S. Rappos with estimate of net sale proceeds.
7/13/2015	Daniel Weisz	Review Trustee Certificates regarding 1401, 1407 and 1408, and discussion with A. Dhanani on changes and sign updated documents.
7/14/2015	Arif Dhanani	Emails to/from Tarion regarding Unit 1307 delayed occupancy claim; draft closing proceeds spreadsheet for lien claimants and forward to Chaitons; review correspondence related to closing of Unit 409 and providing HS with direction regarding same; emails to/from MZ regarding repayment of DIP Loan; discussions with K. Roelofs regarding 409 and reallocation of parking unit; discussions with MZ regarding obtaining Order for payment of sales proceeds; call with CRA regarding examination of HST returns for May and June and decision regarding ITC's claimed for March and April 2015; preparing documentation supporting sales proceeds received for update to G/L.
7/15/2015	Sandra Pereira	Prepare cheques for payment and post deposits from sale of units.
7/15/2015	Arif Dhanani	Review email from HS regarding further 3 closings; modify closings schedule for lien claimants and send to Chaitons; corresponding with Tarion regarding delayed occupancy claim for Unit 1307; email to HS regarding suite 604 deficiencies; complete documentation to record in Trustee's G/L investment of \$15 million and receipts for July 14, 2015 closings; respond to email from sales agent; discussion with K. Roelofs regarding fencing and return of same; draft reply to Gowlings letter regarding Suite 508; telephone call with LBC and draft email to same.
7/15/2015	Donna Nishimura	Prepare paperwork to deposit cheque.
7/16/2015	Arif Dhanani	Telephone call with MZ regarding parking reallocation and timing of court attendance for distribution order; review of various draft correspondence from HS and amend or request that HS release; email to LBC, NBC and MZ regarding closings and anticipated timing for others; discussions with K. Roelofs regarding various issues, Nelco, parking; telephone call with and review of Chaitons' draft letter to Duncan Linton LLP and amend same; email to LBC/NBC regarding problem units that may not close.
7/17/2015	Arif Dhanani	Telephone call with K. Roelofs regarding parking allocations; draft cover letter to MZ regarding payment of Facility Fee and repayment of DIP funds; email to Chaitons confirming amounts outstanding to Nelco Mechanical Inc.; review of Bell invoices and email to S. Dooman regarding transfer of services to condo corp, approve payment of invoices; review Corporation Notice of Assessment for 144 Park December 31, 2014 year end; attend to administrative matters; telephone call with RSA Insurance representative regarding Wrap Up liability policy; review Chaitons letter to service list regarding intention to go to Court for distribution order and comment on same.
7/17/2015	Daniel Weisz	Review and sign cheques.

Date	Professional	Description
7/20/2015	Arif Dhanani	Review email from K. Ball regarding public art and cheque received from City of Waterloo and respond to same; review of emails from K. Roelofsz and engineer regarding air conditioning at property; respond to email from HS regarding Unit 1802; set up conference call for July 21st amongst lenders, counsel and Trustee; review CRA correspondence regarding HST examination for March and April 2015, draft ITC listing for February 2015, assemble requested information for examination of May and June 2015 HST returns; email to City of Waterloo regarding public art; review statements of adjustments for additional 35 units for closing purposes; emails from/to HS regarding Unit 1604 and 1802.
7/21/2015	Arif Dhanani	Review various emails from HS regarding statements of adjustments for upcoming closings and respond to same; review of notice to purchasers drafted by HS regarding parking reallocation, amend and send to HS for finalization and issuance; telephone call with Tarion Corporation regarding in-suite warranties; emails from/to Tarion regarding delayed occupancy claims; email to/from Tarion regarding refund of enrollment fees for Suite 1104/1105; review of email from First Service regarding Nelco charges and respond thereto; responding to emails from purchasers forwarded by HS regarding parking reallocations and respond to same; attend call with LBC, NBC, MZ, HS, Chaitons and B. Tannenbaum; telephone call with HS regarding letter to go to purchasers with two parking spots; prepare unit status update and reconciliation and send to LBC, NBC and MZ with HS deposit report.
7/21/2015	Bryan Tannenbaum	Conference call on status with A. Desrochers, K. Koury, G. Moffat, M. Karoly, A. Katz, M. Snedden, H. Chaiton, S. Rappos and A. Dhanani
7/22/2015	Sandra Pereira	Prepare cheques for payment.
7/22/2015	Arif Dhanani	Update reconciliation of status of units, discussion with LBC regarding same and distribute update to NBC, LBC, MZ; emails with K. Roelofsz and HS regarding parking reallocation, including responses to correspondence from purchasers' counsel; emails with Chaitons regarding upcoming court date and materials therefor; review of email regarding installation of public art and email to City in this regard; telephone calls with and emails to/from PBL Insurance; email to H. Kersey and A. Hanoman regarding status of certificates required by CCI Group; review various invoices received for services and approve for payment.
7/23/2015	Arif Dhanani	Email to S. Dooman of First Service regarding HVAC system; corresponding with K. Roelofsz regarding closing of specific units; email to S. Rappos regarding Trustee's Third Report; emails with K. Roelofsz regarding Tarion conciliations; email to lenders with current amount of Tarion security value; emails to HS regarding responses to correspondence from counsel to various purchasers; draft portions of Trustee's Third Report and send same to Chaitons; commence drafting Trustee's statement of receipts and disbursements and reconciling proceeds received from sales to general ledger and adjusting same.
7/23/2015	Daniel Weisz	Review and sign cheques.

Date	Professional	Description
7/24/2015	Arif Dhanani	Complete drafting Trustee's statement of receipts and disbursements for inclusion in Third Report; attending to emails from K. Roelofsz and S. Dooman on electrical doors and HVAC system; review various invoices from service suppliers and approve for payment; responding to emails from HS regarding purchaser lawyer letters received; facilitate execution of documents for transfer of Suite 903; discussion with HS regarding Condominium and Board related matters.
7/27/2015	Bryan Tannenbaum	Receipt and review of email from A. Slavens regarding Tarion.
7/27/2015	Arif Dhanani	Review and respond to emails from HS regarding closing suite 1501, mortgage issues on suite 605, correspondence from lawyer on suite 402; emails to/from property manager regarding panel installation on Unit 402 balcony and status certificates; review and comment on 3rd parking letter; confirm August 10, 2015 closings with HS; drafting responses to legal counsel for purchasers in Units 1803 and 1902; email to HS regarding refund of deposits paid.
7/28/2015	Arif Dhanani	Finalize email to Unit 408 resident regarding default on closing and send same; telephone call with MZ regarding various matters, including discharge amount requested by counsel for certain purchasers; draft sections of Trustee's Third Report; discussion with S. Rappos regarding responding letter to counsel for certain purchasers; review of documentation for Suite 1803 delayed occupancy claim; email to property manager regarding reserve fund; responding to HS on correspondence received from counsel to Unit 408 resident; responding to C. Mady on message received from trade creditor; emails to/from Strone regarding suites damaged by flood and status thereof; review and approve quote for carpeting of common areas; email to property manager with respect to status certificates; review HS taxation affidavit and send questions on same to A. Katz.
7/29/2015	Donna Nishimura	Prepare paperwork for deposit of cheque.
7/29/2015	Arif Dhanani	Email to Chaitons with Affidavit of Fees and revised R&D; responding to HS regarding Suites 1802 and 1604; emails with First Service and HS regarding status certificate requests and protocol; emails with Tarion regarding delayed occupancy claim for Unit 504 and 807; email to 81 Capital regarding HVAC lease and materials thereto; email to unsecured creditor regarding filing of proof of claim; review draft of Third Report of Trustee and make amendments thereto.
7/30/2015	Arif Dhanani	Further amend and draft portions of Trustee's Third Report and send same to Chaitons; responding to HS on adjustments on various units scheduled to close on August 10, 2015; telephone call with MZ regarding Unit 1802 purchaser; redact Mint Proposal and send to Chaitons for inclusion in Court Report; finalize and execute Third Report; complete weekly unit status reconciliation.
7/30/2015	Sandra Pereira	Prepare cheques for payment.
7/31/2015	Arif Dhanani	Review emails from S. Dooman regarding status certificates, review sample status certificate and send email to HS and B. Tannenbaum regarding amendments; review Trustee's Motion Record returnable August 5, 2015 and email to Chaitons in this regard; facilitate posting of Motion Record and Trustee's Third Report on Trustee's website; review status of closing and pending units; respond to emails from resident; meet with B. Tannenbaum regarding August 5th court attendance and possible issues.

August 10, 2015
 144 Park Ltd.
 Invoice 7
 Page 6

Date	Professional	Description
7/31/2015	Silvia Paredes	Prepare deposits.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP	President	7.70	\$ 525	\$ 4,042.50
Daniel R. Weisz, CPA, CA, CIRP	Senior Vice President	1.00	\$ 495	495.00
Arif N. Dhanani, CPA, CA, CIRP	Senior Manager	130.10	\$ 350	45,535.00
Sandra Pereira/Silvia Paredes	Estate Administrator	6.10	\$ 110	671.00
Donna Nishimura	Estate Administrator	0.30	\$ 110	33.00
Total hours and professional fees		145.20		\$ 50,776.50
HST @ 13%				6,600.95
Total payable				\$ 57,377.45

PAYMENT BY VISA ACCEPTED

VISA NUMBER _____ Expiry Date _____
 Name on Card _____ Amount _____

WIRE PAYMENT DETAILS

For CAS Payments: For credit to the account of Collins Barrow Toronto Limited, Account No. 65-84918, Canadian Imperial Bank of Commerce
 Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

PLEASE RETURN ONE COPY WITH REMITTANCE

Terms: Payment upon receipt. Interest will be charged at the rate of 12% per annum (1% per month) on overdue accounts.
 The Collins Barrow trademarks are used under license.



Collins Barrow

Collins Barrow Toronto Limited
Collins Barrow Place
11 King Street West
Suite 700, PO Box 27
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M5H 4C7 Canada

To 144 Park Ltd.
c/o Collins Barrow Toronto Limited
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T. 416.480.0160
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Date September 11, 2015

GST/HST: 80784 1440 RT 0001

Client File 300027
Invoice 8
No. C000107

For professional services rendered with respect to the appointment of Collins Barrow Toronto Limited as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period to August 31, 2015.

Date	Professional	Description
8/4/2015	Bryan Tannenbaum	Conference call with S. Rappos of Chaitons LLP and A. Katz of Harris Sheaffer LLP ("HS") regarding parking and the Trustee's Motion to do the reallocation and terminate transactions; telephone call from Mr. Dyer LL.B. representing Mueller and Coghill on parking issue and clarifying that August 5, 2015 hearing does not affect their rights which were confirmed.
8/5/2015	Bryan Tannenbaum	Draft emails regarding conference call to discuss parking reallocations in order to prepare for Court Report for advice and directions; email drafted regarding lien claims and holdback distribution to be determined so as to reduce the \$5.4M reserve; emails regarding payment of \$12M to LBC and sign cheque for delivery to LBC; prepare for Court including receipt and review of various emails from lien creditors lawyers and from Mr. Romaniuk; attend at Court and in Chambers to obtain Order; subsequent discussion with Mr. Romaniuk; discussion with S. Rappos regarding parking and delay of closing the 36 units as a result of reallocated parking; telephone call with A. Dhanani regarding same and request to now forward \$12M of the \$14M to LBC per the Order; receipt and review of emails for condo status certificate and execute same and send to S. Dooman.
8/5/2015	Brenda Wong	Emails and calls to Bassel Abou-Nafeh and J. Tartaglia regarding investment certificate to be cashed.
8/5/2015	Donna Nishimura	Prepare paperwork for deposit of cheque.
8/6/2015	Bryan Tannenbaum	Attending to emails on the payment of \$12M to Laurentian Bank; emails regarding lien claimants requesting timing of payments; email from Nelco's solicitors regarding lien claim holdback; email explaining to LBC and MarshallZehr Group Inc. ("MZ") why \$12M being distributed vs. \$14M.
8/6/2015	Donna Nishimura	Prepare paperwork for deposit of cheque.
8/6/2015	Sandra Pereira	Prepare disbursement cheques.

Date	Professional	Description
8/10/2015	Arif Dhanani	Obtain and review information concerning interim occupancy for Unit 1803 and telephone calls and emails with Tarion in this regard; emails to/from HS regarding closing Suite 1208; reviewing Vesting Orders and Trustee's Certificates for 9 Units and facilitate execution of Trustee's Certificates; email to Tarion regarding mailing address changing from Mady Windsor/Woodbine location to Trustee's address on matters concerning 144 Park; emails to/from PBL Insurance Brokers; email to S. Dooman regarding invoice from Richmond Fire Protection with respect to July 2015 service and description of charges levied by Skyway Rentals; attend to administrative matters; email to K. Roelofz regarding delay in closings scheduled for August 10th; review and approve for payment invoices rendered by service suppliers; conference call with B. Tannenbaum, MZ and Chaitons regarding parking.
8/10/2015	Daniel Weisz	Meet with B. Tannenbaum and A. Dhanani regarding meeting to be held next week.
8/10/2015	Bryan Tannenbaum	Conference call with MZ (M. Snedden, C. Hayes), Chaitons (H. Chaiton and S. Rappos) and A. Dhanani regarding parking reallocations, discuss background and involvement of Mint Realty, potential change to APS for unsold units to contain option to move purchasers to 155 and impact of same, right to terminate the APS, allocation ideas for 10 temporary parking spots and form of agreement and meeting with purchasers of two parking spots in Waterloo.
8/10/2015	Bryan Tannenbaum	Sign trustee's certificate for Units # TH1, TH4, 1208, 1406, 1703, 1207, 1702, 1603, 1005; attend conference call with HS, Chaitons and MZ regarding parking reallocations and Court Report.
8/11/2015	Silvia Paredes	Posting deposits.
8/11/2015	Arif Dhanani	Review and email of Tarion conciliation notices to K. Roelofsz; correspond with K. Roelofsz regarding common area carpets, quote and approval for purchase and installation of same; review of emails from HS regarding closings on August 10, 2015 and proceeds to be paid to Trustee; email report to mortgagees regarding closings scheduled, deferred, funds to be received and further closings scheduled for August; review and respond to CCI regarding Bulletin 19 Report and email to H. Kersey in this regard; corresponding with Mint Realty regarding proposed agreement and model suite; review invoices received from various suppliers, including Jones Electric and HS and approve for payment; telephone call with Insitu-Contractors regarding holdback amount owed by 144 Park Ltd. and email to same; email to purchaser regarding sales of units and timing of turnover meeting; telephone calls to Waterloo Inn and Waterloo Recreational Centre regarding potential venues to hold residents' meeting; email to Laurentian Bank with request to transfer lien claimant holdback funds of \$5.4 million into guaranteed investment certificate; reconcile bank account and property tax and HST liabilities to determine funds available for further payment to LBC and email reconciliation to D. Weisz; email to LBC/NBC regarding rationale for engaging Mint Realty.
8/11/2015	Daniel Weisz	Discussion with A. Dhanani regarding proposed meeting next week; discussion with A. Dhanani on proposed distribution.

Date	Professional	Description
8/12/2015	Arif Dhanani	Emails to/from HS regarding Unit 1702 and default on closing; email to Chaitons and HS regarding review of HVAC lease documents and amending same; discussion with LBC regarding investing \$5.4 million for lien claimants in GIC; draft notice to purchasers with two parking spots regarding meeting; review emails from purchasers with two spots and draft list of attendees; speak to insurer regarding coverage for units not sold/closed; email to NBC regarding insurance and adding LBC as named insured; discussion with HS regarding HVAC documents and indemnities; review of HST collection/payment information and preparation of HST returns for submission to CRA; telephone call with Hughes, Amyss litigation counsel for Northbridge Insurance.
8/12/2015	Daniel Weisz	Review notice to be sent to certain purchasers regarding parking issue and discussion with A. Dhanani on potential changes thereto, review suggested changes from Chaitons and HS and discussion with A. Dhanani on same; review proposed distribution to Laurentian Bank and discussion with A. Dhanani on same.
8/13/2015	Sandra Pereira	Prepare disbursement cheques.
8/13/2015	Arif Dhanani	Emails from and responding to purchasers with two parking units regarding August 17, 2015 meeting in Waterloo; reviewing communication between H. Kersey and CCI and email to H. Kersey regarding outstanding items for Bulletin-19 Report; review Vesting Orders and Trustee's Certificates for TH8 and Unit 906; amend unit update and issue reconciliation schedule and send same to mortgagees; responding to email from purchaser that has not closed; email to Frenel regarding additional rectification of deficiencies.
8/13/2015	Daniel Weisz	Review Certificates to be signed regarding vesting of TH1 and discussion with A. Dhanani on same.
8/14/2015	Arif Dhanani	Review Mint Realty contract and email in this regard to Chaitons and HS with comments and request comments from them; arrange with LBC for meeting to deliver further interim distribution cheque for \$2 million; telephone call with Mint Realty regarding opinion of value; email to H. Chaiton and D. Weisz list of confirmed attendees for August 17, 2015 meeting; email to counsel for Northbridge regarding production of documents; file July 2015 HST return.
8/14/2015	Daniel Weisz	Review emails; review proposal from Mint Realty; review schedules for Monday meeting with parties which purchased two parking units.
8/17/2015	Daniel Weisz	Discussion with A. Dhanani on Mint Realty agreement; discussion with A. Dhanani on report to court status; prepare for meeting this evening; prepare for and attend meeting in Waterloo with purchasers of units regarding unavailability of sufficient parking units.
8/17/2015	Arif Dhanani	Email to Tarion in response to question on Unit 1803; updating attendees list for meeting on August 17, 2015; email to A. Katz regarding HS attendance at meeting; email to AD Richmond Fire Protection regarding invoices; meet with D. Weisz to obtain comments on Mint Realty contract; emails to H. Sahian regarding flooding incident on March 20, 2015; update list of attendees for meeting; discussion with D. Weisz regarding same; meet with H. Chaiton regarding meeting with residents with two parking spots; attend meeting in Waterloo to meet with residents with two parking spots.
8/18/2015	Daniel Weisz	Review and update letter to owners of units regarding parking units; review and exchange emails with Chaitons regarding court date for motion.

Date	Professional	Description
8/18/2015	Arif Dhanani	Corresponding with Mint Realty regarding estimate of value for unsold units; emails to HS regarding confirmation of closing of unit 1501; meet with D. Weisz on various issues related to parking; finalize draft letter to closed purchasers; facilitate posting of recent Court Order and Endorsement received on Trustee's website; corresponding with HS regarding closing of unit 1010; corresponding with purchaser of unit 1801; email to Royal LePage regarding commissions and unsecured position; telephone call with HS to discuss comments on Mint Realty contract; review of invoices and facilitating payments for various services rendered and common area fees for August; meet with T. Contractor to discuss 144 Park file and listing of closed purchasers to which Trustee's letter regarding sale and rental of parking units is to be sent; telephone call with Mint Realty regarding required amendments to contract; email to Chaitons with status reconciliation.
8/19/2015	Daniel Weisz	Discussion with A. Dhanani regarding letter to parties which closed their purchases with respect to parking units; review email from S. Rappos regarding Monday meeting and reply thereto; email to H. Chaiton and M. Karoly regarding S. Pollard decision to terminate agreement; discussion with A. Dhanani on various matters; sign documents relating to closing of Suites 1501, 402 and 1010, sign cheques, email to S. Rappos regarding change in hearing date and forward names of purchasers wanting to be served with the motion materials.
8/19/2015	Sandra Pereira	Prepare cheques and deposit.
8/19/2015	Talib Contractor	Prepare list of condo owners/units.
8/19/2015	Arif Dhanani	Reconciliation of closed units and parking spots conveyed with Chaitons; finalize parking letter to closed purchasers and send to K. Roelofs for release; email to S. Dooman regarding changeover of telephone lines and internet services; email to First Service regarding common area charges; email to Mint Realty with further changes to amended agreement received; review of status certificate for unit 1209, emails with HS regarding appropriateness for execution, execute same and send to First Service; responding to email from D. Mason; telephone call with Chaitons regarding HVAC documents and scheduling parking motion; email to City of Waterloo regarding public art; email to Mint Realty regarding qualifications document required; analysis of further units that can be closed and send same to HS and Chaitons; email to First Service regarding turnover meeting; telephone call with HS regarding turnover meeting, manuals, and ability to be elected to the condo board without closing units.
8/20/2015	Talib Contractor	Preparing list of condo owners/units.
8/20/2015	Arif Dhanani	Review correspondence from purchaser of 1902 regarding termination of contract; email to Tarion regarding unit 1803; email to HS regarding estimate of closing proceeds; email to Chaitons regarding purchasers wishing to terminate agreements; forward email from Chaitons regarding HVAC lease to 81 Capital; providing details to Chaitons regarding certain purchasers' deposits and upgrade monies; telephone call with O. Faria of Tarion regarding invoices sent to wrong address, email to O. Faria regarding same, review voicemail from O. Faria and email to A. Darr of Tarion regarding same; telephone call with purchaser of Unit 1801 regarding status and potential termination of agreement; telephone call with purchaser of Unit 402 regarding closing; email to S. Dooman regarding Reilly Security and Locks and front door repair.

Date	Professional	Description
8/21/2015	Arif Dhanani	Emails to/from K. Roelofsz regarding deficiencies in various suites and recommendations therefor; emails to/from Mint Realty regarding contract and access to TH8 over weekend; email to LBC with status update on parking motion; email to S. Rappos regarding additional units to close and those requesting termination of their agreements; call with W. Seegmiller; email report to NBC.
8/24/2015	Arif Dhanani	Review CRA assessment of HST returns for March 2015 to June 2015; review various emails regarding condo turnover, status certificate requests, correspondence from MGB Claims Consultants Inc., closing issues/requests and other matters; corresponding with Chaitons regarding closings, review Vesting Order and Trustees Certificates for Unit 902 and meet with B. Tannenbaum regarding execution of same; telephone call with S. Li of Northbridge regarding discussion with insurer for Nelco; review of invoices received for water and A.D. Richmond, email to S. Dooman in this regard; telephone call with Mint Realty regarding parking; telephone call with Tarion regarding Unit 1803; email to S. Dooman regarding turnover meeting; telephone call with HS regarding turnover and amendment to declaration, set up conference call with Mint Realty and HS for August 25, 2015, discussion with B. Tannenbaum regarding same.
8/24/2015	Sandra Pereira	Prepare disbursement cheques.
8/24/2015	Bryan Tannenbaum	Receipt and review of emails from lien creditor solicitors to S. Rappos regarding motion for interim distribution and their ability to review beforehand; emails regarding date for Court due to date scheduling issues; receipt and review email from S. Rappos regarding comments on HVAC lease documents; receipt and review of A. Dhanani email to NBC responding to their request for estimated realizations (revenues and costs); subsequent email from NBC regarding estimated distributions; receipt and review of various emails between Chaitons and J. Byrne of Miller Thomson regarding G. Moore motion; email from A. Dhanani regarding unit closing and issue reconciliation; email regarding Mint contract required for the Court Report; execute #902 Certificate; email from A. Dhanani attaching same along with his extensive comments; email from M. Karoly regarding parking units reduced as a result of high water table and email from S. Rappos regarding same; receipt and review of email regarding \$2M payment to LBC; email from S. Rappos commenting on Mint Realty comments by A. Dhanani; receipt and review of A. Katz email with additional comments on the Mint engagement letter; email from S. Rappos regarding priority of security.
8/25/2015	Arif Dhanani	Review email from O. Romaniuk regarding Allen Street temporary parking, email to City of Waterloo with proposed temporary parking request; emails to/from First Service regarding utility bills received; draft schedule of closed units that received delayed occupancy credit for Tarion and send same; telephone call with HS and Mint Realty regarding parking; responding to HS regarding closing of units; detailed email to Chaitons regarding Moore units (1407 and 1408); review statements of adjustments for various units closing shortly; email to A. Hanoman regarding document turnover at Condo Corp. turnover meeting; emails to/from H. Kersey regarding CCI documents yet to be obtained; telephone call with S. Rappos regarding parking and HVAC documents; draft schedule and email same to Mint Realty.

Date	Professional	Description
8/25/2015	Bryan Tannenbaum	Receipt and review of email from S. Rappos regarding application by G. Moore requiring us to respond to amounts claimed; status meeting with A. Dhanani regarding distributions made to LBC, timing of Court Motion, water damage claim and letter from MGB on coverage, meeting with purchasers in Waterloo regarding parking reallocation to preserve value, Court Report, Mint Realty contract now in final format with some changes necessary to the standard listing agreement, and Mint Realty request for change to registered declaration amendment for 3 of the permanent spots to be reclassified as drive aisle (knock out panels) spots to allow for the parking garage to be connected on all levels, status of lien claim holdbacks and priority issue for the Oct. 5th Motion.
8/26/2015	Arif Dhanani	Review various emails from Taron regarding delayed occupancy claims, HS and Chaitons regarding condo corporation and HVAC lease, MZ regarding conference call; telephone call with K. Roelofsz regarding HVAC operating issues, turnover meeting and documentation and Bulletin 19 certificates and documentation required; email to Chaitons regarding correspondence from counsel for units 903 and 1504 on sales of units scheduled to close; email to Chaitons regarding correspondence received from counsel to unit 406; review of "editable" version of Listing Agreement and email to Mint Realty regarding same; email to HS and Chaitons regarding parking for unit 1604 being unchanged; telephone call with purchaser of unit 1010 regarding closing date; review of changes made by Chaitons and HS to standard Listing Agreement for unsold units, incorporate changes into soft copy and send to Mint Realty for consideration; telephone call with MZ regarding issues at 144 Park, parking, Mint Realty and communication to be sent to National Bank; draft communication to National Bank and send to B. Tannenbaum and MZ for comments; email to counsel for DKS Stone regarding invoice for work not completed with regard to party room.
8/26/2015	Talib Contractor	Reviewing all leases and determining if additional rent/basic rent etc. were appropriately calculated.
8/26/2015	Daniel Weisz	Review draft email to K. Koury and provide comments to A. Dhanani.
8/26/2015	Bryan Tannenbaum	Receipt and review of email from A. Dhanani to Mint Realty regarding spreadsheet of units that may require to be terminated; email from A. Katz regarding HVAC lease to be entered into by condo corp.; emails between Chaitons and HS as to what is better to sign as Trustee or condo corp.
8/27/2015	Arif Dhanani	Telephone call with A. Chaaban of LBC regarding sales reconciliation and issues, amend document, lengthy call with A. Desrochers on amended reconciliation and discussion of issues on a unit by unit basis; corresponding with HS and Chaitons on further units to be closed; corresponding with purchaser of Unit 402; telephone call with MZ regarding Unit 1802 and 105; finalize email to K. Koury of NBC and release same; corresponding with HS regarding termination of unit 1009 transaction due to default from inability to close, calculation of interest on overdue occupancy fees; emails to/from Mint Realty regarding questions on amendments made by Trustee to Listing Agreement.

Date	Professional	Description
8/28/2015	Arif Dhanani	Emails with Mint Realty regarding finalization of contract and schedules; email to 81 Capital with balance of amended HVAC documents; telephone call with S. Dooman regarding water softening system and HVAC; review emails between D. Marshall and City of Waterloo regarding public art; emails to/from purchaser of Unit 1310 regarding status of deposit and upgrade monies; email to MZ regarding assignment of units where purchaser seeking to terminate agreement; review of insurance policy for unsold/not closed units; telephone call with K. Roelofsz regarding landscaping, Unit 1009, Superior Sealants and other issues at 144 Park.
8/31/2015	Arif Dhanani	Review of insurance policy details, telephone call to PBL Insurance Limited with questions and concerns regarding policy; emails to/from K. Roelofsz regarding HVAC and filtration system required to be installed; exchange of emails with HS and K. Roelofsz regarding Unit 1604; email to Chaitons regarding Unit 1102; telephone call with S. Cruickshank regarding parking matters and assignment of units; finalize contract with Mint Realty, have contract executed by B. Tannenbaum and send to Mint Realty.
8/31/2015	Sandra Pereira	Prepare disbursement cheques.
8/31/2015	Talib Contractor	Reviewing leases and determining management fee calculation.
8/31/2015	Daniel Weisz	Review and sign cheques.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP	President	10.40	\$ 525	\$ 5,460.00
Daniel R. Weisz, CPA, CA, CIRP	Senior Vice President	10.20	\$ 495	5,049.00
Arif N. Dhanani, CPA, CA, CIRP	Senior Manager	91.70	\$ 350	32,095.00
Brenda Wong, CIRP	Senior Manager	0.50	\$ 350	175.00
Talib Contractor, CPA, CA	Senior Analyst	8.40	\$ 195	1,638.00
Sandra Pereira/Silvia Paredes	Estate Administrator	3.10	\$ 110	341.00
Donna Nishimura	Estate Administrator	0.20	\$ 110	22.00
Total hours and professional fees		<u>124.50</u>		\$ 44,780.00
HST @ 13%				5,821.40
Total payable				\$ 50,601.40

PAYMENT BY VISA ACCEPTED

VISA NUMBER _____ Expiry Date _____
 Name on Card _____ Amount _____

WIRE PAYMENT DETAILS

For CAS Payments: For credit to the account of Collins Barrow Toronto Limited, Account No. 85-84918, Canadian Imperial Bank of Commerce
 Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

PLEASE RETURN ONE COPY WITH REMITTANCE

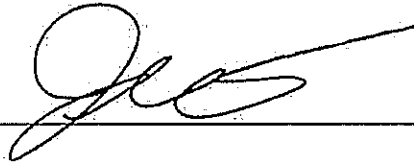
Terms: Payment upon receipt. Interest will be charged at the rate of 12% per annum (1% per month) on overdue accounts.
 The Collins Barrow trademarks are used under license.

EXHIBIT "B"

Calculation of Average Hourly Billing Rates of Collins Barrow Toronto Limited for the Consultancy and Appointment Period

Invoice No.	Billing Period	Total Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
1	July 1, 2015 to July 31, 2015	\$ 50,776.50	\$ -	\$ 6,600.95	145.20	\$ 349.70	\$ 57,377.45
2	August 1, 2015 to August 31, 2015	43,415.00	1,256.60	5,807.31	117.50	369.49	50,478.91
Total		\$ 94,191.50	\$ 1,256.60	\$ 12,408.26	\$ 262.70	\$ 358.55	\$107,856.36

This is Exhibit "B" to the Affidavit of
Bryan A. Tannenbaum, sworn on October 13, 2015



A Commissioner for the taking of Affidavits, etc.

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

-and-

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

Court File No. CV-15-10843-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF BRYAN TANNENBAUM

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

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

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

**Lawyers for the Trustee, Collins Barrow Toronto
Limited**

APPENDIX “J”

**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 SAM RAPPOS
(sworn October 13, 2015)**

**I, SAM RAPPOS, of the City of Markham, in the Province of Ontario MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a lawyer with the law firm of Chaitons LLP (“Chaitons”), lawyers for Collins Barrow Toronto Limited, in its capacity as Court-appointed *Construction Lien Act* (Ontario) trustee in this proceeding (the “Trustee”), and as such have knowledge of the matters to which I hereinafter depose.
2. Attached hereto as **Exhibit “A”** is a copy of the account for the period up to and including August 31, 2015 issued by Chaitons to the Trustee totalling \$81,278.78 (comprised of fees of \$71,258, disbursements of \$695.18 and HST of \$9,325.60) with respect to this proceeding.

3. I confirm that the account described above accurately reflects the services provided by Chaitons in this matter and the fees and disbursements claimed by it from June 26, 2015 to August 31, 2015.

4. Attached hereto as **Exhibit "B"** is a summary of additional information with respect to Chaitons' account, indicating all members of Chaitons who have worked on this matter, their year of call to the bar, total time charges and hourly rates, and I hereby confirm that this list represents an accurate account of such information.

SWORN before me at the City)
of Toronto, this 13th)
day of October, 2015)
)



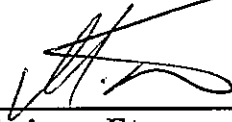


SAM RAPPOS

A Commissioner For Taking Affidavits, etc.

MAYA POLIAK

**THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF SAM RAPPOS
SWORN BEFORE ME THIS 13TH
DAY OF OCTOBER, 2015**

A handwritten signature in black ink, appearing to be 'J.H.', is written over a horizontal line.

A Commissioner Etc.



INVOICE NUMBER: 255589

August 31, 2015

COLLINS BARROW TORONTO LIMITED
11 KING STREET WEST, SUITE 700
TORONTO, ON M5H 4C7

**Re: 144 PARK LTD.
Our file: 006998-56868**

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including August 31, 2015:

PROFESSIONAL FEES

SUBJECT TO HST	\$71,258.00	
SUB-TOTAL		\$71,258.00

DISBURSEMENTS

NON TAXABLE	\$217.78	
SUBJECT TO HST	\$477.40	
SUB-TOTAL		\$695.18
HST at 13.00%		\$9,325.60

GRAND TOTAL \$81,278.78

Amount payable on the current invoice	\$81,278.78
Plus outstanding invoices on this matter	\$0.00
Amount Due	<u>\$81,278.78</u>
Trust Balance	



PROFESSIONAL FEES:

- Jun 26, 15 Reviewed and drafted correspondence; discussed motion with H. Chaiton;
- Jun 29, 15 Drafted correspondence to Joe DiPietro regarding vesting orders to be issued; reviewed and drafted correspondence regarding upcoming closing transactions;
- Jun 30, 15 Reviewed and drafted correspondence regarding upcoming sale transactions and vesting orders to be obtained;
- Jul 2, 15 Reviewed and drafted correspondence; reviewed parcel registers; reviewed documents and charts regarding upcoming closings;
- Jul 3, 15 Attended conference calls with Arif Dhanani and Karen McNeil; attended conference call with trustee, Marshall Zehr and Harris Sheaffer to discuss outstanding matters;
- Jul 6, 15 Prepared and revised vesting orders and trustee certificates for units to close; reviewed charts and lists to confirm accuracy of information to be included in vesting orders; discussed matters with Arif Dhanani;
- Jul 7, 15 Attended at Courthouse to arrange for filing of 70 trustee certificates and obtaining 70 vesting orders signed; attended at office of Harris Sheaffer re vesting orders; reviewed registered applications for vesting orders and inputted information into trustee certificates for closings; reviewed and drafted correspondence;
- Jul 9, 15 Meeting with C. Mady and B. Tannenbaum re interim distribution of sale proceeds;
- Jul 9, 15 Conference with S. Rappos re interim distributions including response of Conte to request for confirmation of holdback amount(s) for Global; telephone call with A. Esposito re calculation of holdback;
- Jul 9, 15 Reviewed information regarding closing of sales of units and inserted information into trustee certificates; drafted correspondence to counsel to Tarion; reviewed lien claim documents and prepared spreadsheet regarding same; discussed lien claims and other matters with Arif Dhanani; drafted correspondence to lien claimants re holdback amounts; discussed matters with H. Chaiton and Anna Esposito;
- Jul 10, 15 Review emails from Conte & Gionet re holdbacks; conference with S. Rappos;

GST No R124110933

INVOICE NUMBER: 255589

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.



- Jul 10, 15 Telephone call with C. Hayes re sale to Magnussen; telephone call with B. Tannenbaum and A. Dhanani with respect to sale to Magnussen and also with respect to certificate of substantial completion;
- Jul 10, 15 Reviewed and drafted correspondence regarding holdbacks; reviewed lien claims regarding name of Mady contracting party; reviewed lien claim documents re holdback amounts; drafted additional vesting orders and amending orders and reviewed documentation to confirm accuracy of information; drafted trustee certificates; discussed matters with Arif Dhanani;
- Jul 13, 15 Drafted additional vesting order and two amending orders; reviewed and drafted correspondence regarding sale and other issues; drafted trustee certificates; attended at Commercial List Office to have orders signed; reviewed correspondence regarding holdback matters;
- Jul 14, 15 Reviewed and drafted correspondence regarding sale transactions and lien claims; updated trustee certificate re closed sales; drafted correspondence to service list re net sale proceeds and closed transactions; reviewed lien claims and updated chart;
- Jul 15, 15 Reviewed and drafted correspondence re sale transactions, including correspondence to service list; continued to review lien claims, update chart and drafted correspondence to Jeff Bolton re questions; drafted follow up correspondence to lien claimants re holdback amounts;
- Jul 16, 15 Drafted additional vesting order; reviewed and drafted correspondence regarding lien claim matters; reviewed holdback documentation received from lien claimants; discussed letter from Irwin Duncan with Arif Dhanani and drafted responding letter;
- Jul 17, 15 Conference with S. Rappos including telephone call with A. Slavens; conference with S. Schwartz to discuss consequence of lien claimants failure to register in respect of claim to holdback; reviewed and revised letter to lien claimants;
- Jul 17, 15 Meeting with Harvey Chaiton and Sam Rappos concerning rights of trades to participate in holdback claims;
- Jul 17, 15 Discussed matters with S. Schwartz and H. Chaiton; finalized letter to Irwin Duncan; drafted letter to service list regarding upcoming motion and discussed same with H. Chaiton;
- Jul 21, 15 Review email from A. Conte re effect of publication of Certificate of Substantial Performance by Mady Development Corporation; review relevant provisions of Construction Lien Act; conference with S. Rappos;



- Jul 21, 15 To participate in lenders update call with respect to status of closing;
- Jul 21, 15 Attended conference call with representatives from Trustee, the Bank and MarshallZehr and counsel; reviewed correspondence regarding next steps in proceeding; reviewed condo declaration and drafted correspondence regarding units in condo; reviewed and drafted correspondence regarding appraisals and certificates;
- Jul 22, 15 Discussed Laurentian opinion with D. Loomis; reviewed listing of 95 sold units previously approved by Court and remaining pre-sold units; drafted correspondence to Mady regarding questions on certificate of substantial performance that was filed and registered; discussed same with H. Chaiton;
- Jul 23, 15 Continued to draft report regarding Trustee's motion on August 5; drafted e-mails regarding Trustee certificates for closed sales; reviewed draft portions of report provided by Arif Dhanani;
- Jul 24, 15 Reviewed and drafted correspondence;
- Jul 27, 15 To review of mortgage, assignment of rents and postponements; to review of parcel registers and PPSA search results; to draft security opinion;
- Jul 27, 15 Reviewed and drafted correspondence; reviewed and commented on draft letter from Ari Katz;
- Jul 28, 15 To review and revise PPSA summary and security opinion;
- Jul 28, 15 Reviewed and drafted correspondence; reviewed letter from I. Duncan and drafted response and discussed same with Arif Dhanani; continued to draft Trustee report;
- Jul 29, 15 Review draft court report;
- Jul 29, 15 Review comments of A. Dhanani on draft report; telephone call with S. Rappos to provide comments;
- Jul 29, 15 Continued to review and revise draft third report; reviewed and drafted correspondence; reviewed draft fee affidavits; discussed draft report with H. Chaiton;
- Jul 30, 15 Reviewed and drafted correspondence; reviewed comments on draft third report; continued to review and revised draft third report; drafted notice of motion; revised service list; reviewed and revised draft motion record; finalized materials for service;



- Jul 31, 15 Reviewed correspondence received regarding motion and drafted responses; discussed matters with Arif Dhanani; reviewed and drafted correspondence to Oliver Romaniuk; left voicemail for counsel to Muellers;
- Aug 4, 15 Review various emails; conference with S. Rappos re motion; review email of O. Romaniuk dated July 28, 2015 and draft response of S. Rappos; conference with R. Rappos;
- Aug 4, 15 Discussed matters with Arif Dhanani, Bryan Tannenbaum and Ari Katz; drafted correspondence to counsel to Muellers; reviewed parking spreadsheets; drafted order and discussed same with H. Chaiton; reviewed comments and revised draft order; discussed distribution matters with Anna Esposito and with Barry Greenberg; drafted correspondence to Oliver Romaniuk and discussed same with H. Chaiton; revised correspondence to Oliver Romaniuk;
- Aug 5, 15 Prepared for and attended at Commercial List motion; discussed matters with Bryan Tannenbaum and Oliver Romaniuk; reviewed parking spreadsheets; discussed matters with counsel to Muellers; reviewed documents from purchasers that agreed to relinquish one parking space; reviewed and drafted correspondence regarding distributions to lien claimants;
- Aug 6, 15 Drafted request form for court time; reviewed and drafted correspondence regarding sale transactions; discussed matters with Bryan Tannenbaum; reviewed and commented on draft e-mail regarding parking matters; discussed draft e-mail to LBC with H. Chaiton and commented on same; reviewed and drafted correspondence to lien claimants re holdbacks; reviewed parking allocations; reviewed and drafted correspondence re quantum of holdbacks; reviewed and updated spreadsheet re construction liens;
- Aug 7, 15 Drafted vesting orders and trustee certificates for 9 units; reviewed and updated service list; reviewed and drafted correspondence re holdbacks and updated spreadsheet; drafted correspondence to service list re upcoming motion; reviewed and drafted correspondence to Tony Conte re holdbacks and liens;
- Aug 10, 15 Telephone conference call with receiver and MarshallZehr re parking issues;



- Aug 10, 15 Attended at Commercial List to have vesting orders issued and entered; discussed matters with Arif Dhanani; attended conference call to discuss parking matters; discussed matters with H. Chaiton; updated service list and a trustee certificate; reviewed and drafted correspondence re various matters;
- Aug 11, 15 Reviewed and drafted correspondence re sale transactions;
- Aug 12, 15 Reviewed and commented on draft notice re parking meeting with purchasers; discussed matters with H. Chaiton; reviewed Moore application record and drafted correspondence re transferring matter to Commercial List; reviewed and updated service list; reviewed and updated construction lien claim spreadsheet;
- Aug 13, 15 Telephone call with A. Dhanani with respect to meeting with purchasers;
- Aug 13, 15 Drafted vesting orders and certificates for two more sale transactions; continued drafting fourth report re parking matters; reviewed unit allocations and drafted reconciliation; drafted e-mail to lien claimants' counsel re holdbacks; discussed matters with S. Schwartz;
- Aug 14, 15 Reviewed and drafted correspondence re opinion from Mint Realty; reviewed documents and drafted correspondence re claim by Ella Painting;
- Aug 17, 15 Attend meeting with purchasers in Waterloo;
- Aug 17, 15 Reviewed comments on 81 Capital documents received from Harris Sheaffer; reviewed Mint Realty opinion and commented on same; discussed HVAC matters with Arif Dhanani; provided comments on draft bill of sale; reviewed and drafted correspondence regarding various matters;
- Aug 18, 15 Review draft letter to purchasers of closed units; discussions with S. Rappos concerning timing of motion;
- Aug 18, 15 Drafted fourth report re parking matters and reviewed file documents; drafted vesting order re suite 1501; reviewed and drafted correspondence re potential hearing date for upcoming motion; reviewed correspondence re holdbacks received from Jeff Bolton; reviewed file documents for uploading to Drop Box for review by parties on service list; reviewed parking allocation and status of units; reviewed and drafted correspondence to service list; meeting with A. Tevel to discuss issues to be researched re holdbacks and lienable services;



- Aug 18, 15 Researched whether various types of work qualified for a construction lien;
- Aug 19, 15 Reviewed information provided by Oliver Romaniuk; discussed parking reallocation with Arif Dhanani; reviewed and drafted correspondence re scheduling of upcoming motion; drafted vesting orders and trustee certificates; drafted correspondence to parties regarding being added to the service list; reviewed and revised service list; reviewed information regarding sale transactions that can close; discussed holdback matters with Jeffrey Long; reviewed and commented on draft 81 Capital documents;
- Aug 19, 15 Researched whether various types of work qualified for a construction lien;
- Aug 20, 15 Reviewed correspondence and updated service list; reviewed and drafted correspondence re possible terminations; drafted correspondence re scheduling matters;
- Aug 20, 15 Researched whether various types of work qualified for a construction lien;
- Aug 24, 15 Reviewed and revised service list; drafted vesting orders and certificates for two sale transactions; drafted request form re Moore application; reviewed and drafted correspondence regarding upcoming sale transactions; drafted correspondence regarding information requests; reviewed documents and drafted parking allocation;
- Aug 25, 15 Review various emails; conference with S. Rappos;
- Aug 25, 15 Reviewed and commented on listing agreement; reviewed information requests and drafted responses to Oliver Romaniuk; reviewed and drafted correspondence regarding sale transactions; drafted correspondence regarding Moore application; discussed parking matters with H. Chaiton and with Arif Dhanani; reviewed and commented on 81 Capital undertaking and drafted correspondence regarding same; discussed same with Arif Dhanani; reviewed and revised parking allocation;
- Aug 26, 15 Reviewed and drafted correspondence re parking matters and sale transactions;
- Aug 27, 15 Attended at Commercial List for chambers appearance re Moore application; reviewed and drafted correspondence to purchasers; reviewed parking allocation; reviewed and commented on 81 Capital documents for lease, undertaking and assumption agreement;

GST No R124110933

INVOICE NUMBER: 255589

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.



Aug 28, 15 Reviewed and drafted correspondence regarding upcoming closings;
 reviewed and drafted correspondence regarding holdbacks; finalized
 chart with information requested by Oliver Romaniuk; updated service
 list; reviewed and drafted correspondence re parking matters;

Aug 31, 15 Reviewed and drafted correspondence to counsel to purchasers;
 reviewed and drafted correspondence to service list regarding
 documents available on Drop Box;

To all matters of a general nature not more particularly referred to
 herein.

TOTAL PROFESSIONAL FEES	\$71,258.00
HST at 13.00%	9,263.54

DISBURSEMENTS:

Subject to HST:

Kap Litigation Service	\$210.00	
Internet Search Fee Taxable	\$60.00	
Teraview Charges Taxable	\$81.00	
Courier and Taxi Charges	\$46.00	
Photocopying Charges	\$80.40	
		\$477.40

Non-Taxable:

File Motion Record(s)	\$127.00	
Teraview Charges Non-Taxable	\$38.00	
Government Disbursement Internet Search Non-Tax	\$52.78	
		\$217.78


TOTAL DISBURSEMENTS	\$695.18
HST at 13.00%	62.06

GRAND TOTAL	\$81,278.78
--------------------	--------------------



CHAITONS LLP

per:



Harvey Chaiton

GST No R124110933

INVOICE NUMBER: 255589

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#3437678v1

**LAWYERS' SUMMARY:**

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$695.00	19.40	\$13,483.00
STEPHEN SCHWARTZ	\$595.00	0.40	\$238.00
DEBRA LOOMIS	\$415.00	2.00	\$830.00
SAM RAPPOS	\$425.00	130.40	\$55,420.00
ALANNA TEVEL	\$195.00	6.60	\$1,287.00
Total:		158.80	\$71,258.00

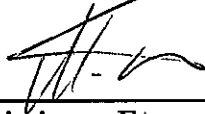
GST No R124110933

INVOICE NUMBER: 255589

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#3437678v1

**THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF SAM RAPPOS
SWORN BEFORE ME THIS 13TH
DAY OF OCTOBER, 2015**

A handwritten signature in black ink, appearing to be "J. H. ...", is written over a horizontal line.

A Commissioner Etc.

SUMMARY

Lawyer	Year of Call	Hours Billed	Hourly Rate	Amount Billed
Harvey Chaiton	1982	19.40	\$695	\$13,483.00
Stephen Schwartz	1986	0.40	\$595	\$238.00
Sam Rappos	2005	130.40	\$425	\$55,420.00
Debra Loomis	2006	2.00	\$415	\$830.00
Alana Tevel	Articling Student	6.60	\$195	\$1,287.00
Total Hours and Amounts Billed		158.80		\$71,258.00
Average Hourly Rate			\$448.73	
Total Costs				\$695.18
Total Taxes (HST)				\$9,325.60
TOTAL				\$81,278.78

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

AFFIDAVIT OF SAM RAPPPOS
(sworn October 13, 2015)

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Lawyers for the Trustee

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

Proceedings commenced at Toronto

MOTION RECORD
(re Interim Distributions and Ancillary Matters)
(returnable October 16, 2015)

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Toronto, ON M2N 7E9

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