

**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**

**FIRST REPORT OF THE TRUSTEE**

**April 17, 2015**

## INTRODUCTION

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) (“**CLA**”) 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 as **Appendix “A”**.
  
2. The Appointment Order authorized the Trustee 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;
  
  - c) complete and register the condominium declaration and do whatever else is necessary in order to cause the registration of the proposed condominium at the Property; and
  
  - d) complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking units that form part of the Property.
  
3. In addition, pursuant to paragraph 23 of the Appointment Order, the Trustee was authorized to borrow up to \$500,000 (or such greater amount as the Court may further authorize), and any such borrowings, together with interest and charges thereon, is

secured by a fixed and specific charge over the whole of the Property, in priority to all claims in favour of any person, including construction lien and trust claims, but subordinate in priority to the Administration Charge.

#### **PURPOSE OF FIRST REPORT**

4. The purpose of the first report of the Trustee (the “**First Report**”) is to:

- a) provide to the Court details of the Trustee’s activities since its appointment on January 22, 2015;
- b) request that the Court grant an Order or Orders:
  - i. approving the Trustee’s activities as set out in the First Report;
  - ii. authorizing the Trustee to terminate or disclaim an agreement of purchase and sale for a residential unit that was entered into by 144 (as defined below) with a construction lien claimant prior to the commencement of this proceeding for no cash consideration;
  - iii. increasing the amount that the Trustee may borrow from \$500,000 to \$750,000 and authorizing and empowering the Trustee to borrow such funds from MarshallZehr Group Inc. (“**MarshallZehr**”) on the terms and subject to the conditions of the commitment letter dated April 2, 2015 between the Trustee and MarshallZehr;
  - iv. approving an agreement entered into by the Trustee for the transfer of certain parking spaces to the Property; and

- v. approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to January 22, 2015 with respect to the Property, and establishing a committee to assist the Trustee in the review of the claims.

## **TERMS OF REFERENCE**

5. In preparing this First 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 (“MADY”), and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this First 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**

6. This proceeding was commenced by way of application by 144, the registered owner of the Property. The Property was acquired by 144 in September 2011 for the purpose of developing the lands and constructing a 19 story residential condominium project containing 149 total units (the “**144 Park Project**”). 144 is part of the MADY Group, a

diversified real estate development group with commercial and residential business operations across North America.

7. The 144 Park Project has been completely constructed and 129 units within it have been sold to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings.
8. There remain 20 unsold units in the 144 Park Project consisting of two (2) penthouse units, 15 apartment style units, and three (3) townhouse units (collectively, the “**Unsold Units**”). All work has been completed on the Unsold Units, other than the installation of flooring, kitchen and bathroom cabinets, and countertops. The remaining work requires input from purchasers as it involves selecting the materials and finishes to be used.
9. 144 commenced this proceeding as it was insolvent. Over \$3.0 million in construction liens had been registered against the 144 Project, and it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of the 129 pre-sold units, complete the sale of the Unsold Units, and distribute the sale proceeds pursuant to Court order.
10. Additional information with respect to the 144 Project can be found in the Affidavit of Greg Puklicz sworn January 16, 2015, a copy (without exhibits) of which is attached hereto as **Appendix “B”**. A copy of the affidavit with exhibits can be found on the Trustee’s website at: <http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd>

## **TRUSTEE'S ACTIVITIES TO DATE**

11. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since its appointment, with the primary focus being on taking all steps necessary to register to condominium plan for the 144 Park Project:

### **Operational**

- a) opened the Trustee's trust account with Laurentian Bank of Canada;
- b) closed the HST account of 144 and opened the Trustee's HST account;
- c) caused to be deposited the occupancy cheques for January and February 2015, and collected and deposited occupancy cheques for March 2015;
- d) coordinated requests for April 2015 occupancy cheques to be sent to the Trustee by occupants, which have now been deposited;
- e) attended at the offices of Harris Sheaffer LLP, condominium law lawyers for 144, to discuss matters and coordinate tasks;
- f) attended at and toured the 144 Park Project;
- g) attended to re-establishment and supply of required building services including concierge, security, snow removal and salting, property cleaning and property management;
- h) attended to obtaining building insurance and updating insurance coverage;
- i) facilitated required major overdue maintenance of HVAC system, which primarily involved top-up of the glycol level in the HVAC system;

- j) facilitated required inspection of and repairs to the boiler system as a result of residents reporting a lack of hot water;
- k) attended to amending the Shared Facilities Agreement and Condominium Declaration;
- l) attended to the issue of leakage from windows in various suites;
- m) attended to the issue of a leaking pipe in parking garage;
- n) attended two meetings with Tarion Warranty Corporation to discuss the status of the project and a plan to deal with outstanding deficiencies;
- o) contacting and engaging contractors to attend to in suite deficiencies;

**Building Permit Issues Addressed**

- p) completed fire stopping;
- q) attended to ordering and installation of two PH mechanical room doors;
- r) attended to issues with smoke detector protective caps;
- s) attended to issue with paint on emergency speakers;
- t) attended to installation of missing caps and sleeves on sprinklers and fire safety system;
- u) attended to fire inspection and backflow inspection;

- v) arranged for landscape inspection and received approval from the City for same;  
an
- w) arranged for relocation of a sprinkler head based on direction from the City's building inspector. The City's building inspector has advised that he is satisfied with all of the items in the building.

**City and Region Clearance Conditions**

- x) held discussions with and coordinated completion of work and execution of a required declaration with Acoustical Engineer, with respect to garage silencer, which declaration was required for City and Region clearance;
- y) held discussions with the Structural Engineer of record and coordinated execution of required declaration for City and Region clearance;
- z) held discussions with the Architect of record and coordinated execution of required declaration (to be delivered just prior to registration);
- aa) received clearance from City on Plan of Condominium;
- bb) received clearance from Region for easements regarding utilities and drainage;
- cc) received clearance from Region on electrical services provided by Waterloo North Hydro;
- dd) received clearance from Region on Undertaking regarding Excess Lands;
- ee) received clearance from Region regarding Certification Letter;



- ff) received clearance from Region on Undertaking regarding miscellaneous units;
- gg) received approval from the City for an amended Shared Facilities Agreement with One 55 Mady Ltd. (“One 55”) and Condominium Declaration;
- hh) caused to be registered the Shared Facilities Agreement;
- ii) submitted Region Development Agreement for signing and registration on title;
- jj) submitted City Warning Agreement for signing and registration;
- kk) submitted Surveyor’s final draft plans to City for approval; and
- ll) negotiated with the City for the construction and installation of public art at the 144 Park Project.

12. Based on information received from the City on April 16, 2015, the Trustee understands that the items set out below are the remaining outstanding items to obtain the City’s approval for formal registration of the Condominium Plan. The status of such issues is also set out below:

- a) Architect’s Report – Barring any unforeseen issues, the architect should have the report completed and submitted to the City by the end of next week.
- b) Payment of Property Taxes – the City is in the process of generating a statement, which shall be paid by the Trustee as soon as possible.
- c) Undertaking for Public Art – the City is to confirm the revised wording for the necessary undertaking from the Trustee.

- d) Low Steady Water Flow – the City is looking into the issue of a low steady water flow running into the building’s sanitary sewer that was recently discovered.
- e) Construction Lien on City Land – the City’s solicitor has indicated that regardless of clearing all conditions, no formal approval should be provided until the lien is lifted. This issue is discussed in further detail below.

**Flooding at the Property**

- 13. On the evening of March 20, 2015, the Trustee was advised by on-site personnel that a flooding incident had occurred at the Property, which was the result of a ball valve breaking in an unoccupied unit on the fifth floor of the 144 Park Project. The ball valve was connected to a heat pump, which is part of the HVAC system installed in the Property by Nelco Mechanical Ltd. (“Nelco”).
- 14. The ball valve break resulted in significant leakage of a mixture of water and glycol, a chemical used in the HVAC system, accumulating in the unoccupied unit and spreading to adjacent units on the fifth floor, certain units on the fourth floor, the third floor and in-suite elevators of two townhouse units and a portion of the third floor parking garage. A total of six units in the Property, portions of the hallways on the fourth and fifth floors and the ceiling of third floor parking garage were damaged. The Trustee was advised that the fire department was on site and was providing direction to on site staff and residents.
- 15. Upon being advised of the incident, the Trustee immediately directed on site staff to contact Nelco to attend at the Property to stop the flooding and replace the ball valve in the fifth floor suite and an emergency restoration services provider to attend to doing what was necessary to clean up the discharge and commence drying out affected units

and common areas. Nelco and IBX Services (“**IBX**”), an emergency services provider, attended the same evening to attend to matters.

16. On March 21, 2015, the Trustee notified its insurer (the “**Insurer**”) of the incident and advised that an emergency services provider had been called out to attend to clean up and damages. The Insurer confirmed with the Trustee that all measures taken by the Trustee were appropriate, that an incident report had been logged and that a representative of the Insurer would be in contact with the Trustee on March 23, 2015 to discuss the matter.
17. On March 24, 2015, the Trustee attended at 144 Park with two representatives of the Insurer and the Insurer’s emergency services provider, Strone Restoration Services (“**Strone**”) to view the damages and determine how to best proceed. The Insurer advised that it wished to continue emergency and restoration services with Strone rather than IBX, which the Trustee consented to. The Trustee toured the affected areas with the Insurer, Strone and on-site staff. Strone advised that it would take approximately 6-8 weeks to deal with the emergency work and restore the suites and common areas of the Property to the state they were in prior to the flooding incident. The insurer advised that under the building insurance policy, the Trustee’s deductible would be \$50,000 and that the Insurer may require that the deductible be paid immediately. The Insurer has not yet advised the Trustee to pay the deductible.
18. Since that time, Strone has been working diligently to attend to remedying the damage that occurred as a result of the flood. The Insurer re-attended at the Property during the week of April 6-10, 2015 to view the work Strone had completed to date and obtain a

detailed understanding of the remaining work to be done. The Insurer has advised that restoration of the affected areas is progressing as expected.

**Occupancy Fees**

19. Occupancy fees from various residents continue to be outstanding for certain months.

These residents have informed the Trustee that they are of the view that they do not need to pay occupancy fees as a result of their dissatisfaction with the following:

- a) the fact that registration of the condominium plan has not yet occurred and that the period of time that has elapsed from the time initial occupancy was provided has been excessive;
- b) the delay in rectifying in-suite deficiencies. The Trustee has engaged a number of trades and they are currently working through rectifying in-suite deficiencies; and
- c) the delay in rectifying common area deficiencies. The Trustee will attend to common area deficiencies after registration.

20. The Trustee continues to pay for utilities and other services required to appropriately maintain the property with occupancy fees that have been paid and from funds borrowed by the Trustee. The Trustee intends to recoup the unpaid occupancy fees upon closing of the units.

**TERMINATION OR DISCLAIMER OF AGREEMENT FOR UNIT 1503**

21. Pursuant to an agreement of purchase and sale dated December 5, 2014 (the “**1503 APS**”), Brody Wall System Ltd. (“**Brody**”) agreed to purchase Unit 1503 (“**Unit 1503**”)

in the 144 Park Project from 144. The 1503 APS lists a purchase price of \$324,000. A copy of the 1503 APS with all schedules and amendments is attached as **Appendix “C”**.

22. Schedule “X” to the 1503 APS provides that the consideration for the purchase of Unit 1503 is the partial satisfaction the indebtedness of 144 and other MADY entities to Brody in the amount of \$324,000. As a result, no cash consideration is contemplated in the 1503 APS.

23. Brody is a construction contractor that performed work on the 144 Park Project and other MADY projects. According to the books and records of 144, Brody is owed \$32,532.50. Brody registered a construction lien against the Property on January 21, 2015 in the amount of \$113,327.50, a copy of which is attached as **Appendix “D”**.

24. The 1503 APS was entered into less than sixty (60) days prior to the appointment of the Trustee and at a time when 144 was insolvent.

25. In the Trustee’s view, the sale of Unit 1503 to Brody pursuant to the 1503 APS, if completed, would result in Brody obtaining an unjust preference over other creditors of 144. As a result the Trustee is seeking the Court’s authorization to terminate or disclaim the 1503 APS.

26. In the event that the Court authorizes the Trustee to terminate or disclaim the 1503 APS, the Trustee intends to market Unit 1503 for sale in order to realize the maximum value for all stakeholders.

## **PARKING AGREEMENT**

27. As noted above, 144 acquired the Property in September 2011. Another company in the MADY Group, One 55, acquired the lands adjacent to the Property and municipally known as 155 Caroline Street South, Waterloo (the “**155 Caroline Lands**”) in May 2011.
28. One 55 was to construct a 19 story residential condominium tower on the 155 Caroline Lands containing 178 residential units (“**155 Uptown Waterloo Project**”). It was intended that the 155 Uptown Waterloo Project would constitute a second phase to the 144 Park Project, and the two projects would share certain facilities, including parking.
29. One 55 has pre-sold 83 units in the 155 Uptown Waterloo Project. Because of the MADY Group’s financial difficulties, no construction work has been commenced on the 155 Caroline Lands.
30. With respect to parking, there are presently 149 parking units located at the 144 Park Project, which was originally comprised of 132 parking units for residents of 144 Park and 17 visitor parking spaces. It was originally contemplated that certain unit owners in the 144 Park Project would be allocated permanent parking units in the 155 Uptown Waterloo Project.
31. The 17 visitor parking spaces in the 144 Park Project were eventually converted to parking units, and 144 has agreed to sell these units to purchasers of the 129 pre-sold residential units.

32. To date, 144 has agreed to sell a total of 156 parking units to the purchasers of the 129 pre-sold residential units. As a result, 144 has sold 7 more parking units to the purchasers of the 129 pre-sold residential units than are currently available at the 144 Park Project.
33. The Unsold Units will also require a number of parking units in order for them to be effectively marketed for sale. Some of the Unsold Units are penthouse units and larger suites, which will likely each require two parking units. The Trustee, in consultation with Charles Mady, the President of 144, has determined that a total of 28 parking units are required for the Unsold Units.
34. Therefore, the 144 Park Project currently requires an additional 35 parking units.
35. Following numerous discussions between One 55 and the Trustee, the parties have agreed, pursuant to an agreement dated April 17, 2015, a copy of which is attached as **Appendix "E"** (the "**Parking Agreement**") and is subject to the approval of the Court, that One 55 will transfer, when constructed, 35 parking units to 144 for consideration of \$250,000 (inclusive of HST).
36. The acquisition of the additional parking units is necessary in order for the Trustee to market and complete the sales of the Unsold Units.
37. If the Court approves the agreement with One 55, the Trustee intends to register the agreement on title to the 155 Caroline Lands, so that any purchaser of the 155 Caroline Lands will be required to take title to the lands subject to the agreement and will be bound by its terms.

## **TURNER ARCHITECTS**

38. The Trustee has been informed by representatives of the Corporation of the City of Waterloo (the “City”) that a construction lien has been registered against lands owned by the City adjacent to the Property and the 155 Caroline Lands by Turner Fleischer Architects (“Turner Architects”). Based on Turner Architects’ construction lien, the Trustee understands that Turner Architects provided architectural services to One 55. A copy of Turner’s construction lien is attached hereto as **Appendix “F”**.

39. As noted above, the Trustee has been focused since its appointment on completing the necessary steps for registration of the condominium plan for the 144 Park Project in order to close the 129 pre-sold units. Although the work completed by Turner Architects had nothing to do with the 144 Park Project, the City has taken the position that the Trustee must have the lien removed from the City lands before it is prepared to finally approve the condominium plan for the 144 Park Project..

40. If the Parking Agreement is approved by the Court, the Trustee and One 55 have agreed that the funds One 55 will receive will be used in part to bond off the Turner Architects construction lien registered against the City lands. This will allow for the final steps for the registration of the condominium plan to be completed, which is to the benefit of all of 144’s stakeholders.

## **TRUSTEE BORROWINGS**

41. In accordance with the authority granted to it under the Appointment Order, to date the Trustee has borrowed \$500,000 from MarshallZehr pursuant to the commitment letter



dated April 2, 2015 (the “**Commitment Letter**”), a copy of which is attached hereto as **Appendix “G”**.

42. So that the Trustee may complete the agreement with One 55 with respect to the parking units, it requires additional financing. As a result, the Trustee is requesting that the Court increase the borrowings available to the Trustee under the Appointment Order from \$500,000 to \$750,000, and approve the Trustee borrowing such funds from MarshallZehr on the same terms of the Commitment Letter.

43. As set out in the Commitment Letter:

- a) the purpose of the facility is to fund the costs of this proceeding;
- b) the term of the facility is the earliest of demand and 3 months from the date of the initial advance;
- c) the annual rate of interest is 12% calculated on the daily outstanding balance of the facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments; and
- d) a facility fee of 5% (\$37,500) shall be payable to MarshallZehr (the “**Facility Fee**”).

#### **CONSTRUCTION LIEN CLAIM PROCESS AND VETTING COMMITTEE**

44. As noted above, 144 sought the appointment of the Trustee to take all necessary steps to register the condominium plan and complete the sale of the 129 pre-sold units. In the event that the relief sought by the Trustee on this motion is granted by the Court, the

Trustee expects for the condominium plan to be registered in May 2015 and the sale of the 129 pre-sold units to close in early June 2015.

45. As set out in paragraph 5 of the Appointment Order, the Trustee, as soon as practical following the sale of at least 65 of the 129 pre-sold units, is required to bring a motion for interim distribution of the net proceeds.

46. As noted above, at the time 144 commenced these proceedings there were approximately \$3.0 million in construction liens registered against the Property. The Trustee has been informed by its counsel that, as of March 30, 2015, 21 lien claimants had registered construction liens against the Property in a total aggregate amount of approximately \$4.33 million.

47. As a result of the existence of the construction liens, and the need for all construction liens against the Property to be asserted so that the Trustee can make a recommendation to the Court as to the parties entitled to the net sale proceeds, it is necessary, in the Trustee's view, to establish a claims process for the submission, review and determination of all *CLA* lien claims for the provision of services and materials prior to January 22, 2015 with respect to the Property, and that this process be the exclusive process by which all construction lien claims and their priority are determined.

48. The Trustee is proposing the following construction lien claim process be approved by the Court:

- a) a claims bar date of May 15, 2015 be established, by which date all lien claimants must provide to the Trustee specified documentation with respect to their claims, otherwise their claims are forever barred and extinguished;
- b) counsel for three construction lien claimants, along with counsel to Laurentian Bank of Canada as first mortgagee (or its assignee or successor) and counsel to the Trustee, be appointed as a committee (the “**Vetting Committee**”) to, in consultation with and subject to the supervision of the Trustee, administer the claim process, including the review, determination, acceptance, revision, disallowance and/or settlement of any claim;
- c) the Vetting Committee shall, if it reaches a consensus with respect to a claim, recommend to the Trustee to accept, revise and/or disallow a claim by delivering a notice of determination to the claimant including the reasons for such determination;
- d) any determination or disposition by the Trustee, based on a recommendation made by the Vetting Committee, shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*;
- e) a claimant may appeal the revision and/or disallowance of its claims as set out in a notice of determination by delivering a dispute notice to the Trustee within 10 days of delivery of the notice of determination from the Trustee. Any claimant who does not deliver a dispute notice within 10 days of delivery of the notice of determination with respect to its claim shall be deemed to have accepted the

determination as set out in the notice of determination, which shall be final and binding; and

- f) any appeal of a notice of determination as set out in a dispute notice for which the Vetting Committee and the Trustee cannot reach a consensus with the claimant, shall either be referred to a claims officer to be appointed by further order of the Court in recommendation by the Vetting Committee and the Trustee, or be heard by the Court. Any appeal hearing before the claims officer 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.

49. The Trustee is of the view that the construction lien claim process and the establishment of the Vetting Committee will allow for a timely and cost effective adjudication of the claims of the construction lien claimants, and is in the best interest of all of 144's stakeholders.

#### **TRUSTEE'S REQUEST TO THE COURT**

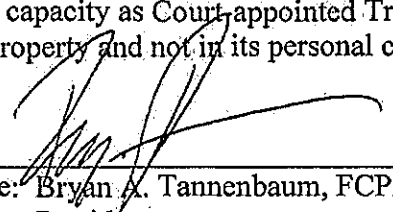
50. Based on the foregoing, the Trustee respectfully requests that the Court issue an Order:

- a) approving the First Report and the Trustee's conduct and activities for the period from January 22, 2015 to April 16, 2015 as described therein;
- b) authorizing the Trustee to terminate or disclaim the 1503 APS;
- c) approving the increase of the Trustee's borrowings amount from \$500,000 to \$750,000 and approving the MarshallZehr Commitment Letter and payment of the Facility Fee;

- d) authorizing the Trustee to enter into the Parking Agreement with One 55; and
- e) approving the Construction Lien Claims Process and the establishment of the Vetting Committee.

All of which is respectfully submitted to this Court as of this 17<sup>th</sup> day of April, 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 “A”**



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

THE HONOURABLE MR. ) THURSDAY, THE 22<sup>nd</sup> 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 Publicz 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.

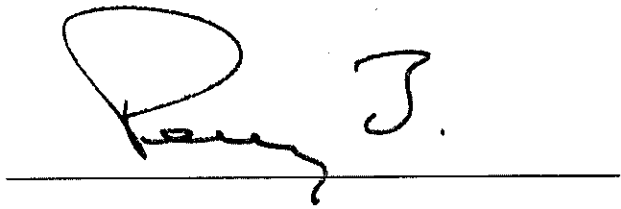
30. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof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



ENTURED AT / MOORIT A TORONTO  
ON / 2015  
LE / 1015 811 000 0786 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"**

<b>Task</b>	<b>Notes</b>	<b>Timing to Completion</b>
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 22<sup>nd</sup> day of January, 2015 (the "Order") made in an application having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Trustee is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the Claims (as defined in the Order) of any other person, but subject to the priority of the charges set out in the Order, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

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

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

Per: \_\_\_\_\_  
Name:  
Title:

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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**  
(appointment of a trustee)

**CHATTONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7B9

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

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

# **APPENDIX “B”**

Court File No.

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

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

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

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

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

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

**Overview**

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

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

### **The MADY Group**

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

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

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

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

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



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

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

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

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

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

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

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

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

Mortgagees

Allen Street

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

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

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

Allen Street Charge is subordinated to the MarshallZehr Charge (as defined below). Copies of the amending agreement and the postponement and priorities agreement are attached hereto and respectively marked as Exhibit "F" and Exhibit "G".

16. As of January 15, 2015, 144 was indebted to Allen Street for the Allen Street Loan in the principal amount of \$3,000,000.

Aviva

17. In connection with the proposed development of the Property and the 144 Park Project, 144 obtained a Tarion Warranty Corporation Bond from Aviva Insurance Company of Canada ("Aviva"). The Tarion Warranty Corporation Bond was obtained to secure 144's deposit and warranty obligations under the *Ontario New Home Warranties Plan Act*. 144 also entered into a deposit trust agreement and an indemnity agreement in favour of Aviva, and agreed to indemnify Aviva from any losses or claims Aviva may suffer in connection with the issuance of the Bond.

18. As security for the obligations 144 owes to Aviva, 144 granted a charge/mortgage in the principal amount of \$8,500,000 in favour of Aviva, which charge/mortgage was registered on title to the Property on September 1, 2011 as Instrument No. WR639368 (the "Aviva Charge"). A copy of the Aviva Charge is attached hereto and marked as Exhibit "H".

19. The Aviva Charge is the first mortgage registered against title to the Property. However, as described below, a postponement has been registered in favour of the Laurentian Charge.

20. As of January 15, 2015, I am not aware of any claims having been made to Aviva in connection with the Tarion Warranty Corporation Bond issued in connection with the 144 Park Project.

MarshallZehr

21. 144 obtained mezzanine financing from MarshallZehr in the amount of \$2,887,696 pursuant to a commitment letter dated October 24, 2011, a copy of which is attached hereto and marked as **Exhibit "I"**.

22. As security for the mezzanine financing, 144 granted a charge/mortgage in the principal amount of \$2,887,696 in favour of MarshallZehr, which charge/mortgage was registered on title to the Property on December 13, 2011 as Instrument No. WR660381 (the "**MarshallZehr Charge**"). A copy of the MarshallZehr Charge is attached hereto and marked as **Exhibit "J"**.

23. The MarshallZehr Charge is the third mortgage registered against title to the Property. As discussed below, the MarshallZehr Charge has been postponed in favour of the Laurentian Charge. As noted above, I understand that Allen Street agreed to postpone its loan and charge/mortgage in favour of mezzanine financing such as the financing provided by MarshallZehr.

24. As of January 15, 2015, 144 was indebted to MarshallZehr pursuant to the terms of the commitment letter in the principal amount of \$2,887,696, plus accrued interest.

Laurentian

25. The development of the 144 Park Project was also financed by credit facilities made available to 144 by Laurentian Bank of Canada ("**Laurentian**"), pursuant to an offer of financing dated March 7, 2012, as amended (the "**Laurentian Offer of Financing**"). A copy of the Laurentian Offer of Financing is attached hereto and marked as **Exhibit "K"**.

26. The Laurentian Offer of Financing initially established three credit facilities in favour of 144: a non-revolving construction loan in the maximum amount of \$36,044,000; a letter of credit facility in the maximum amount of \$2,000,000; and an operating credit facility in the maximum amount of \$250,000. Pursuant to an amendment dated September 12, 2014, a bridge loan was advanced by Laurentian to 144 in the amount of \$3,000,000.

27. As security for 144's indebtedness to Laurentian, 144 granted, and Laurentian received, among other things:

- (a) a charge/mortgage in the principal amount of \$40,000,000 in favour of Laurentian, which charge/mortgage was registered on title to the Property on May 25, 2012 as Instrument No. WR690395 (the "Laurentian Charge"). A copy of the Laurentian Charge is attached hereto and marked as **Exhibit "L"**;
- (b) a General Assignment of Rents dated April 24, 2012 and registered on title to the Property on May 25, 2012 as Instrument No. WR690396, a copy of which is attached hereto and marked as **Exhibit "M"**;
- (c) an Assignment of Sale Agreements dated April 24, 2012, a copy of which is attached hereto and marked as **Exhibit "N"**; and
- (d) a General Security Agreement dated April 24, 2012, a copy of which is attached hereto and marked as **Exhibit "O"**.

28. The Laurentian Charge is the fourth registered mortgage against title to the Property. Laurentian obtained postponements from Aviva, Allen Street and MarshallZehr respectively with respect to the Aviva Charge, the Allen Street Charge and the MarshallZehr Charge (collectively,

the "Postponements"). The Postponements were registered on title to the Property on May 25, 2012. Copies of the Postponements are collectively attached hereto and marked as Exhibit "P".

29. As a result of the Postponements, it is my understanding that the Laurentian Charge is the first ranking mortgage with respect to the Property.

30. As of January 6, 2015, 144 was indebted to Laurentian pursuant to the terms of the Laurentian Offer of Financing in the amount of \$39,022,634.38 (principal and interest).

#### Status of the 144 Park Project

31. 144 has sold 129 of the 149 units. The vast majority of the purchasers have assumed interim occupancy of the units. Purchasers of units on the first ten (10) floors of the 144 Park Project were granted interim occupancy commencing in early 2014. Purchasers of units on floors 11 through to 19 of the 144 Park Project were granted interim occupancy commencing in the fall of 2014.

32. 144 has received monthly occupancy fees and related amounts from such purchasers in accordance with the provisions of the *Condominium Act* (Ontario). Occupancy fees and related amounts for January 2015, totaling approximately \$180,000, is currently being held in an account with Laurentian and has not been applied by Laurentian to reduce 144's indebtedness or used by 144 to date (the "Occupancy Funds").

33. Occupancy fees and related amounts received by 144 for months prior to January 2015 were used by 144 to fund project expenses.

34. Additionally, in connection with the 129 sold units, 144 received deposits in the aggregate amount of approximately \$6,350,000. As a result of obtaining the Taron Warranty

Corporation Bond with Aviva, 144 was entitled to, and has used approximately \$3,350,000 of such funds to finance the completion of the 144 Park Project. The remaining amount of approximately \$3,000,000 is currently being held in trust by the law firm Harris Sheaffer LLP as escrow agent, pursuant to an agreement between 144, Aviva and Harris Sheaffer LLP.

35. There remain 20 unsold units in the 144 Park Project. The units are comprised of two penthouse units, 15 apartment style units, and three townhouse units.

36. All work has been completed on the units, other than the installation of flooring, kitchen and bathroom cabinets, and countertops. All appliances and fixtures for the units are on site but have not been installed. The remaining work is typical given the unsold status of the units, as the remaining work requires input from purchasers as it involves designer finishings and upgrades.

37. 144 obtained an appraisal from a third party in November 2014 that indicated that the unsold units had substantial value.

38. All exterior work, and work with respect to the common elements of the 144 Park Project, other than as described below, has been completed.

39. 144 had submitted a draft Plan of Condominium 30CDM-13406 for the 144 Park Project (the "Plan") for approval by the City of Waterloo (the "City") and the Regional Municipality of Waterloo (the "Region"). The Region granted draft approval of the Plan on November 14, 2014, and the draft approval of the Plan came into effect on December 5, 2014. The draft approval is subject to a number of conditions that must be satisfied by 144 before the Plan can be finalized and registered. The City also provided comments on the Plan and conditions to 144 in October 2014.

40. I have been informed by Hal Kersey, Vice President of MADY, that the City and the Region are currently working on final comments and resolving minor issues in connection with the registration of the Plan and the condominium declaration. Mr. Kersey has also informed me that there are material conditions that remain to be satisfied so that registration of the Plan may proceed, which are:

- (a) installation of a silencer and related bracket in the garage, which is required for the garage exhaust fans and is to be installed on Monday January 19, 2015;
- (b) registration of an easement in favour of Waterloo North Hydro and postponements of the charges/mortgages in favour of the easement;
- (c) registration of certain notices regarding noise agreements with the City and the Region, and a notice with respect to shared facilities, and postponements of the charges/mortgages in connection with such notices; and
- (d) registration of the consent of the mortgagees to the registration of the condominium.

41. Such documents cannot be registered on title to the Property until all registered construction liens and certificates have been vacated.

**Financial Difficulties**

42. In 2014, 144 began to experience financial difficulties in connection with the 144 Park Project as a result of, among other things:

- (a) significant delays as a result of:



- (i) higher than reported ground water conditions, which required the installation of a temporary de-watering system on site and obtaining Ministry of Environment permits;
  - (ii) the need to redesign the structure of the 144 Park Project to install a raft slab structure;
  - (iii) a forming contractor that was three months behind schedule;
  - (iv) a glazing contractor that was four months behind schedule and had delivery difficulties; and
- (b) cost overruns in connection with the delays described above, along with the costs incurred by 144 to take steps to mitigate the delay in time for interim occupancy.

43. As a result of such financial difficulties, 144 is in default of its obligations under the Laurentian Offer of Financing.

44. By a letter dated January 7, 2015, Laurentian demanded immediate payment of 144's obligations under the Laurentian Offer of Financing, terminated the credit facilities, and confirmed that no further credit will be made available to 144. Laurentian has also delivered a notice of its intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada). Copies of the demand letter and notice are collectively attached hereto and marked as **Exhibit "Q"**.

45. 144 has no further availability under its credit facilities with Laurentian.

**Construction Lien Claimants**

46. During the period starting on October 24, 2014 up to and including January 15, 2015, seventeen (17) construction liens, with an aggregate value of \$2,992,932.77, have been registered against title to the Property, as described in further detail below:

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Lien Claimant</b>	<b>Amount of Lien</b>	<b>Services / Materials</b>
WR847447	October 24, 2014	Global Fire Protection Ltd.	\$301,592.04	Sprinkler system and related work
WR849030	October 31, 2014	694643 Ontario Limited cob as O'Connor Electric	\$88,882.72	Work for section 16000 electrical installation
WR854810	December 1, 2014	J & I Gaweda Construction Ltd.	\$537,285.80	Supply and install trim carpentry
WR854978	December 2, 2014	Bast Home Comfort Inc.	\$26,889.48 <sup>1</sup>	Supply and installation of fireplaces
WR856756	December 11, 2014	Frendel Kitchens Limited	\$328,259.71	Supply and install kitchen cabinets and bathroom vanities
WR857239	December 12, 2014	T.I.C. Contracting Ltd.	\$436,313.73	Installation of metal stud, drywall, taping and acoustical ceilings
WR857322	December 15, 2014	Global Precast Inc.	\$188,393.19	Supply and install of architectural concrete and precast
WR857462	December 15, 2014	2050491 Ontario Inc. o/a The Downsview	\$110,715.72	Supply and install of hard landscaping concrete works, sodding, irrigation

<sup>1</sup> I have been advised by 144's legal counsel, Chaitons LLP, that this lien has been registered against only one of the two parcels that form the Property.

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
		Group		
WR857468	December 15, 2014	Sam Tortola Enterprises Inc.	\$104,008.59	Supervision, labour materials, equipment and incidentals to stock, supply and install washers, dryers, connection hoses, vents, clamps, microwave ovens, dishwashers, refrigerators and ranges
WR857793	December 16, 2014	CRS Contractors Rental Supply General Partner Inc.	\$15,869.50	Rental and/or sale of construction and related equipment/materials
WR857850	December 16, 2014	Adlers Main Tile & Carpet Co. Ltd.	\$83,436.17	Supply and installation of various flooring
WR858473	December 19, 2014	Turner Fleischer Architects Inc.	\$30,851.42	Supply of architectural services for the design, development, construction document and contract administration phases of a residential condominium development
WR858748	December 19, 2014	Hammerschlag & Joffe Inc.	\$46,043.26	Electrical consulting services and related matters
WR858991	December 22, 2014	Screen Painting Ltd.	\$345,952.00	Painting, caulking, staining, touch-ups
WR859188	December 23, 2014	Weston Flooring Limited	\$176,771.34	Supply and install flooring
WR859941	December 30, 2014	Great Pyramid	\$32,380.71	Supply and install GWG Glass, frameless shower

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
		Aluminum Ltd.		enclosures, handrail, guardrail and firelite glass
WR860525	January 5, 2015	Adlers Main Tile & Carpet Co. Ltd.	\$139,287.39	Supply and installation of various flooring

47. In addition to the lien claims described above, 144 has received a letter from counsel to Lipton's Audio Video Unlimited ("Lipton's") dated December 12, 2014, which sets out that Lipton's is claiming a lien in the amount of \$37,516.93 in connection with various audio/visual materials, services and equipment supplied in connection with the Theatre room at the 144 Park Project. In late December 2014, Lipton's attended at the 144 Park Project and removed certain of the equipment it had supplied from the Theatre room.

48. As a result, 144 is aware of in excess of \$3,000,000 in construction liens being claimed with respect to services and/or materials supplied in connection with the 144 Park Project.

**PPSA Secured Creditors**

49. In addition to the mortgagees and construction lien claimants described above, I have been informed by Sam Rappos of Chaitons LLP, 144's legal counsel, that the following parties have registered financing statements under the *Personal Property Security Act* (Ontario), as set out in the copy of the PPSRS Enquiry Response Certificate current as of January 11, 2015 that is attached hereto and marked as Exhibit "R":

- (a) Aviva, with a financing statement registered on July 19, 2011 with respect to collateral classified as Accounts and Other;

- (b) MarshallZehr, with a financing statement registered on November 28, 2011 with respect to collateral classified as Inventory, Equipment, Accounts, Other and Motor Vehicles Included. MarshallZehr's registration has been subordinated to Laurentian's registration;
- (c) Laurentian, with a financing statement registered on April 3, 2012 with respect to collateral classified as Inventory, Equipment, Accounts and Other, and a General Collateral Description of "property now or hereafter used in connection with, situate at, or arising from the ownership, development, use or disposition of the lands municipally known as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and all proceeds thereof.";
- (d) VW Credit Canada Inc., with a financing statement registered on November 2, 2012 with respect to an amount of \$77,449, collateral classified as Consumer Goods, Equipment, Other and Motor Vehicle Included, and more specifically described as a 2013 Audi A7 Premium;
- (e) MarshallZehr, with a financing statement registered on November 5, 2014 with respect to collateral classified as Inventory, Equipment, Accounts, Other and Motor Vehicle Included; and
- (f) MarshallZehr, with a financing statement registered on November 5, 2014 with respect to collateral classified as Accounts and Other and a General Collateral Description of "general assignment of rents covering the property municipally known as 21 Allen Street and 142, 144 and 148 Park Street, Waterloo, Ontario".

Need for the Appointment of a Trustee

50. As a result of the registration of the construction liens against the Property, 144 cannot complete the necessary conditions to have the Plan registered against title and close the sale of the 129 units. Additionally, 144 does not have funds available to complete the unsold units and market them for sale. As a result, 144 is seeking the appointment of Collins Barrow Toronto Limited (“Collins Barrow”) as a trustee under section 68 of the *Construction Lien Act* (Ontario). A copy of the consent of Collins Barrow to act as trustee is attached hereto and marked as Exhibit “S”.

51. Collins Barrow is well qualified to act as a trustee, as its representatives have acted as a trustee under the *Construction Lien Act* (Ontario) previously, and it is well versed in the 144 Park Project as it has been involved in numerous meetings and discussions with MADY on the 144 Park Project on an ongoing basis since November 2014, and more recently with representatives of Laurentian and MarshallZehr.

52. Once Collins Barrow is appointed as trustee, it intends to borrow \$500,000 from MarshallZehr so that the trustee may complete the necessary steps to enable the registration of the Plan and the sale of the 129 units to be completed. The \$500,000 intends to be applied by the trustee for payment of the following expenses:

- (a) expenses to be incurred in connection with completion of the project (unit PDI repairs, corridor carpets, common areas, and unit HVAC repair);
- (b) expenses to be incurred in connection with services required to operate the project (hydro, gas, water, janitorial, security, waste removal, management, insurance, office and phones); and

- (c) other expenses including, among other things, professional fees.

53. Additionally, the trustee intends to take steps to complete the development of the 20 unsold units and market the units for sale. MarshallZehr has agreed to provide the additional funding required by the trustee to take such steps. The trustee would seek the Court's approval prior to obtaining such funding from MarshallZehr.

54. The trustee will be requesting that the Court grant orders that the financing provided by MarshallZehr have priority over all existing mortgagees, existing and future lien claimants and other encumbrancers pursuant to, among other things, sections 68 and 78(7) of the *Construction Lien Act* (Ontario).

55. The appointment of Collins Barrow as trustee will be for the benefit of all parties that have an interest in the Property and the 144 Park Project, as it will:

- (a) allow for the trustee to obtain an order vacating the construction liens without posting security so that the necessary steps can be taken to have the Plan and the condominium declaration registered against title to the Property;
- (b) allow the trustee to close the sale of the 129 sold units;
- (c) permit the purchasers of all units to obtain vesting orders from the Court, ensuring clear title to their units free from all mortgages, construction lien claims and other encumbrances;
- (d) allow Collins Barrow to access the Occupancy Funds if necessary for use toward satisfying the remaining conditions for the Plan to be registered;

- (e) permit Collins Barrow to complete the necessary work for the 20 unsold units and sell the units;
- (f) provide for the proceeds of sale of the units to be paid into the trustee's trust account, which will allow for the monetization of the sold units; and
- (g) provide a forum for the amount and priority of claims of the mortgagees and the construction lien claimants to be adjudicated.

56. I have spoken with representatives of Laurentian, MarshallZehr, Allen Street and Aviva, and can confirm that the mortgagees either support or do not object to 144's application for the appointment of Collins Barrow as trustee.

57. The 144 Park Project is currently at a standstill. As detailed herein, there is outstanding work that cannot be completed, and 144's creditors are owed money and cannot be paid. Purchasers have had interim occupancy of their units for some time without obtaining clear title to their units. These purchasers cannot otherwise lease or sell their units.

58. As a result of the registration of the claims for construction liens, 144 cannot convey good title to unit purchasers. If the closings of the units do not occur, there will be no source of money available to pay the claims of the mortgagees and the construction lien claimants. The appointment of the trustee will provide a mechanism to allow for the completion and registration of the Plan and condominium declaration, permit the sales to close and allow the trustee to complete the sale of the unsold units. All sale proceeds will be held by the trustee and distributed in accordance with Court order.



SWORN BEFORE ME at the City of  
Markham, in the Province of Ontario on  
January 16, 2015

*R. Standil*

Commissioner for Taking Affidavits  
(or as may be)

*[Handwritten Signature]*

GREG PUKLICZ

Ryan Cale Standil, a Commissioner, etc.,  
Province of Ontario, while a  
Student-at-Law.  
Expires August 12, 2017.

# APPENDIX “C”



**SCHEDULE "X" AGREEMENT**

AMONG:

**BRODY WALL SYSTEM LTD.**  
(hereinafter referred to as the "Buyer")

-and-

**144 PARK LTD.**  
(hereinafter referred to as the "Seller")

-and-

**MADY COLLIER CENTRE LTD., 144 PARK LTD., JADE-KENNEDY (RESIDENTIAL)  
DEVELOPMENT CORPORATION, MADY CONTRACT DIVISION LTD., MADY  
BURLINGTON LTD.**

(hereinafter collectively referred to as the "Debtor")

WHEREAS the Buyer has made an offer to purchase from the Seller, at a purchase price of Three Hundred and Twenty Four Thousand Dollars (\$324,000.00) (the "Purchase Price"), the property described as Unit 3, Level 15, Suite 1503 (the "Property"), being a proposed unit in the condominium to be registered on those lands and premises situate in the City of Waterloo on parcel of land at the corner of Park and Allen Road, pursuant to an offer to purchase executed by the Seller on December 5, 2014 (the "Offer to Purchase");

AND WHEREAS the Debtor is indebted to the Buyer in an amount in excess of THREE HUNDRED AND TWENTY FOUR THOUSAND DOLLARS (\$324,000.00), as more particularly evidenced by the Statement of Accounts attached hereto (the "Debt");

AND WHEREAS the Seller is desirous of paying the Debt;

AND WHEREAS the parties have agreed to permit the Seller to satisfy a portion of the Debt by setting off the amount THREE HUNDRED AND TWENTY FOUR THOUSAND DOLLARS (\$324,000.00) of the Debt against the purchase price of the Property payable on the completion of the transaction of purchase and sale evidenced by the Offer to Purchase (the "Transaction");

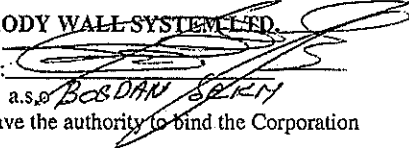
NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the said parties hereby agree as follows:

1. The foregoing recitals are true both in substance and in fact.
2. The amount of the Debt shall, on the date of completion of the Transaction, be deducted in the amount of THREE HUNDRED TWENTY FOUR THOUSAND DOLLARS (\$324,000.00) from and set off against the Purchase Price, and, provided that the Transaction is completed, such deduction and set off shall constitute partial payment of the said Debt by the Seller.
3. The Parties hereby acknowledges that payment of the Debt to the Buyer as aforesaid shall constitute partial payment of the Debt by the Seller, and the Buyer shall have no further claim to payment of the this portion of the Debt from the Seller.
4. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument.
5. Time shall be of the essence of the Agreement and of every part hereof and no extension or variation of this agreement shall operate as a waiver of this provision.
6. This Agreement constitutes the entire Agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regards as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto.
7. This Agreement shall in ensure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

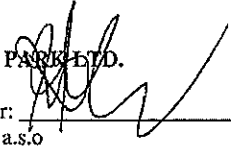
DATED this 5<sup>th</sup> day of November, 2014.

*B-S*

**BRODY WALL SYSTEM LTD.**

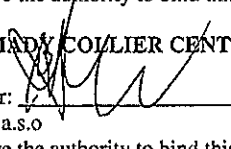
Per:   
a.s.o. BOSDAN SERIN  
I have the authority to bind the Corporation

**144 PARK LTD.**

Per:   
a.s.o.

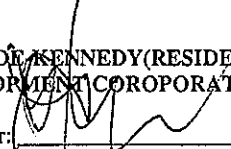
I have the authority to bind this Corporation

**MADY COLLIER CENTRE LTD.**

Per:   
a.s.o.

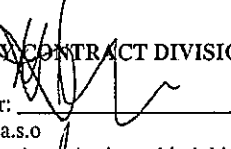
I have the authority to bind this Corporation

**JADE KENNEDY (RESIDENTIAL)  
DEVELOPMENT CORPORATION**

Per:   
a.s.o.

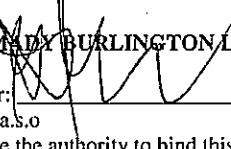
I have the authority to bind this Corporation

**MADY CONTRACT DIVISION LTD.**

Per:   
a.s.o.

I have the authority to bind this Corporation

**MADY BURLINGTON LTD.**

Per:   
a.s.o.

I have the authority to bind this Corporation

## Summary of Outstanding Accounts and Resolution

### Mady Contract Division Ltd / Brody Wall System Ltd.

Project(s):

1. Collier Centre – 144 Collier Street, Barrie, Ontario.

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
155	14/05/25	\$ 56,500.00	\$ 50,850.00	\$ 5,650.00
160	14/06/23	\$ 70,060.00	\$ NIL	\$ 70,060.00
164	14/07/22	\$ 98,310.00	\$ NIL	\$ 98,310.00
169	14/08/25	\$ 70,060.00	\$ NIL	\$ 70,060.00
172	14/09/24	\$ 96,050.00	\$ NIL	\$ 96,050.00
174	14/10/24	\$ 83,620.00	\$ NIL	\$ 83,620.00
177	14/11/20	\$ 147,702.00	\$ NIL	<u>\$ 147,702.00</u>

Project Outstanding as of November 24<sup>th</sup>, 2014. \$ 571,452.00

2. 144 Park – 144 Park Street, Waterloo, Ontario.

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
141	13/07/25	\$ 80,795.00	\$ NIL	\$ 80,795.00
145	13/08/27	\$ 88,140.00	\$ 79,326.00	\$ 8,814.00
147	13/09/27	\$ 79,665.00	\$ 71,698.50	\$ 7,966.50
152	14/02/28	\$ 22,600.00	\$ 20,340.00	\$ 2,260.00
176	14/11/20	\$ 13,492.00	\$ NIL	<u>\$ 13,492.00</u>

Project Outstanding as of November 24<sup>th</sup>, 2014. \$ 113,327.50

3. South Unionville Square Phase 2 - 8323 Kennedy Road, Markham, Ontario

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
140	13/07/10	\$ 54,805.00	\$ 49,324.50	\$ 5,480.50
144	13/08/27	\$ 163,850.00	\$ 147,465.00	\$ 16,385.00
146	13/09/27	\$ 165,545.00	\$ 148,990.50	\$ 16,554.50
151	14/02/28	\$ 33,900.00	\$ 30,510.00	\$ 3,390.00
161	14/06/28	\$ 20,566.00	\$ NIL	\$ 20,566.00
162	14/06/28	\$ 16,667.00	\$ NIL	\$ 16,667.00
163	14/06/28	\$ 2,486.00	\$ NIL	\$ 2,486.00

Project Outstanding as of November 24<sup>th</sup>, 2014. \$ 81,529.00

4. Walmart Store #3049 - Main Entrance Canopy Only - 330 Clark Road, London, Ontario.

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
150	14/02/28	\$ 5,650.00	\$ 5,085.00	\$ 565.00
154	14/05/25	\$ 5,650.00	\$ 5,085.00	\$ 565.00

Project Outstanding as of November 24<sup>th</sup>, 2014. \$ 1,130.00

5. Private Christian School - 25 & 33 Mallard Road, Toronto, Ontario.

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
139	13/07/10	\$ 5,085.00	\$ 4,576.50	\$ 508.50

Project Outstanding as of November 24<sup>th</sup>, 2014. \$ 508.50

6. Bridgewater Sales Office - Elizabeth St / Lakeshore Rd, Burlington, Ontario.

Brody Wall System Ltd.

<u>Invoice No.</u>	<u>Inv. Date</u>	<u>Inv. Value (Inc. HST)</u>	<u>Amount Paid</u>	<u>Amount Outstanding</u>
167	14/07/23	\$ 27,685.00	\$ 24,916.50	<u>\$ 2,768.50</u>
Project Outstanding as of November 24 <sup>th</sup> , 2014.				\$ 2,768.50

Total Project(s) Outstanding as of November 24, 2014. \$ 770,715.50



**THIS IS SCHEDULE "Z" (ADDITIONAL PROVISIONS) REFERRED TO IN AND FORMING PART OF THE AGREEMENT OF PURCHASE AND SALE MADE BETWEEN 144 PARK LTD AS VENDOR, AND , BRODY WALL SYSTEM LTD, AS PURCHASER**

1. Vendor and Purchaser agree that notwithstanding anything contained to the contrary in any other pages of this Agreement including any other schedules thereto, the terms and covenants of this Schedule "Z" shall govern and supercede and if there is any conflict, inconsistency or uncertainty with respect to any term or covenant contained in any other pages this Agreement including any other schedules thereto, the terms and covenants of this Schedule "Z" shall govern and supercede.
2. The transfer of title to the Unit shall be completed on the Title Transfer Date which is January 30, 2015. The Firm Occupancy Date and Outside Occupancy Date shall be one and the same, namely, January 15, 2015.
3. The Statement of Critical Dates contained in the Tarion Condominium Form shall not apply in this transaction. For greater certainty the Vendor shall not have the right to extend the Title Transfer Date, unless any such extension is mutually agreed to in writing by Vendor and Purchaser subsequent to execution of this Agreement.
4. The Purchase Price shall be adjusted to reflect only the following items contained in the following subparagraphs on pages 2 and 3 of this Agreement, namely:  
  
6(b)(i),(ii) and 6(d)(i),(iv)(v),(vi), (vii), (viii) and (ix), and no other items.
5. Vendor acknowledges that the Purchaser does not qualify for the Rebate referred to subparagraph 6(h) on page 4 of this Agreement, and notwithstanding this fact Purchaser shall not be obliged to pay to the Vendor or to any other individual or entity any amount equivalent to the Rebate or in any other amount related or pertaining to the Rebate, and the Vendor hereby quit-claims and waives any and all rights to the Rebate or assignment of same in favour of the Vendor with no recourse against the Purchaser
6. Vendor represents and warrants that that it has not:
  - (i) become bankrupt or insolvent or made an assignment for the benefit of creditors;
  - (ii) had a receiver appointed; or
  - (iii) taken action with a view to winding up, dissolution or liquidation,and is not aware of any circumstances that would reasonably cause any of the foregoing representations and warranties not to be correct and valid on the Unit Transfer Date.
7. Vendor confirms and agrees that Harris Sheaffer LLP will be acting as its solicitors in this transaction.

B-S  


AMENDMENT TO THE  
AGREEMENT OF PURCHASE AND SALE

BETWEEN: 144 PARK LTD. (the "Vendor") and BRODY WALL SYSTEM LTD. (the  
"Purchaser")

Unit (Legal#) 03, Level 15, Sult 1503.

It is hereby understood and agreed between the Vendor and the Purchaser that the following change(s) shall be made to the above-mentioned Agreement of Purchase and Sale, and except for such change(s) noted below, all other terms and conditions of the Agreement shall remain as stated therein, and time shall continue to be of the essence.

INSERT

The parties acknowledge and agree that Interim Occupancy shall take place on or immediately thereafter as deemed by the Vendor, on ~~December 16<sup>th</sup>, 2014~~ as indicated on the Tarion Statement of Critical Dates. *January 15, 2015 B.S.A.*

The parties acknowledge and agree that the Title Transfer Date shall be on or by January 30<sup>th</sup>, 2015. Notwithstanding the foregoing this Agreement shall be null and void.

DATED at MALDEN, ON, this 5<sup>th</sup> day of DECEMBER, 2014.

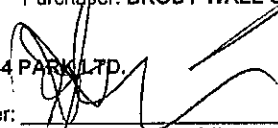
IN WITNESS whereof the parties hereto have affixed their hands and seals.

SIGNED, SEALED AND DELIVERED  
in the presence of

)  
)  
)  
)  
)

  
Purchaser: BRODY WALL SYSTEM LTD.

144 PARK LTD.

Per:   
Authorized Signing Officer  
I have the authority to bind the Corporation.

# **APPENDIX “D”**

# Schedule "A"

LRO # 58 Construction Lien

Received as WR663291 on 2015 01 21 at 16:30

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

## Properties

**PIN** 22417 - 0134 LT  
**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 WR668383; CITY OF WATERLOO  
**Address** 144 PARK STREET  
WATERLOO

**PIN** 22417 - 0135 LT  
**Description** PART OF LOTS 217, 218, 219 & 267 PLAN 385, BEING PART 1 ON 58R-17836;  
SUBJECT TO AN EASEMENT AS IN WR668383; CITY OF WATERLOO  
**Address** 144 PARK STREET  
WATERLOO

## Consideration

**Consideration** \$113,327.50

## Claimant(s)

**Name** BRODY WALL SYSTEM LTD.  
**Address for Service** Document prepared by/registered for  
Solicitors:  
HAMMOND FLESIAS, Barristers &  
Solicitors  
300 - 3800 Steeles Avenue West  
Vaughan, Ontario, L4L 4G9  
Phone: (905) 850-8550 Fax: (905)  
850-9998  
Attention: Richard Hammond

I, Bogdan Sekh, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Bogdan Sekh, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

## Statements

Name and Address of Owner: 144 Park Ltd., 144 Park Street, Waterloo, Ontario. Name and address of person to whom lien claimant supplied services or materials: Mady Contract Division Ltd. and/or Mady Contract Division (2009) Ltd., 8791 Woodbine Ave., Ste 100, Markham, ON L3R 0P4. Time within which services or materials were supplied from 2013/08/15 to 2014/12/18 Short description of services or materials that have been supplied: Supply of material and labour in relation to precast, stucco and wall systems. Contract price or subcontract price \$240,000.00 plus extras. Amount claimed as owing in respect of services or materials that have been supplied \$113,327.50.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien.

## Signed By

Paul Anthony Valenti 300-3800 Steeles Ave. W. acting for Signed 2015 01 21  
Vaughan Applicant(s)  
L4L 4G9

Tel 9058508550

Fax 9058509998

I have the authority to sign and register the document on behalf of the Applicant(s).

## Submitted By

PAUL M VALENTI LAW OFFICE 300-3800 Steeles Ave. W. 2015 01 21  
Vaughan  
L4L 4G9

Tel 9058508550

Fax 9058509998

LRO # 58 Construction Lien

Received as WR863291 on 2015 01 21 at 18:30

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Claimant Client File Number : HF1739 BRODY

# **APPENDIX “E”**

**AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT dated as of the 17<sup>th</sup> day of April, 2015.

BETWEEN:

**ONE 55 MADY LTD.**  
(the "Vendor")

- and -

**144 PARK LTD.**  
(the "Purchaser")

WHEREAS:

- A. The Vendor is the owner of those lands legally described in PINs 22417-0137 (LT), 22417-0123 (LT), 22417-0018 (LT), 22417-0019 (LT), 22417-0133 (LT), 22417-0129 (LT), 22417-0122 (LT), 22417-0138 (LT), 22417-0145 (LT) and 22417-0147 (LT) in the Land Registry Office for the Land Titles Division of Waterloo (the "LRO"), and municipally known as 155 Caroline Street South, Waterloo, Ontario (collectively, the "Lands") upon which it intends to construct a residential condominium and townhome development project (the "Condominium"); and
- B. The Vendor has agreed to transfer to the Purchaser thirty-five (35) parking units, together with an undivided interest in the common elements appurtenant thereto (collectively, the "Parking Units"), to form part of the Condominium, in accordance with and subject to the terms and conditions hereinafter set out.

**NOW THEREFORE IN CONSIDERATION OF** the sum of Two (\$2.00) Dollars and other good and valuable consideration now paid by each of the parties hereto to the other (the receipt and sufficiency whereof are hereby acknowledged by each of the parties hereto), the parties hereto hereby agree as follows:


1. The Vendor hereby covenants and agrees to transfer the Parking Units to the Purchaser on the Closing Date (as hereinafter defined), subject to the terms and conditions hereinafter set out.
2. The purchase price of the Parking Units is \$250,000 (inclusive of HST, if applicable) (the "Purchase Price"), in lawful money of Canada, the receipt and sufficiency of which is hereby acknowledged by the Vendor.
3. The Vendor hereby acknowledges and agrees that it shall deliver to the Purchaser a copy of the draft plan of condominium (the "Draft Plan") for which the Parking Units shall form a part, immediately following preparation of same. Within ten (10) days following receipt by the Purchaser of the Draft Plan, the parties hereto shall mutually agree upon the location of the Parking Units, each acting reasonably. Provided that in the event that it is necessary to change the location of any Parking Unit(s) (the "Relocated Parking Units") solely as a result of any amendments to the Draft Plan required by the Regional Municipality of Waterloo (the "Revised Draft Plan"), the Vendor shall deliver a copy of the Revised Draft Plan to the Purchaser, whereupon the parties hereto shall have a further five (5) day period to mutually agree upon the new location of any such Relocated Parking Units, each acting reasonably. For clarity, the parties hereto hereby acknowledge and agree that inasmuch as the Parking Units are intended to be utilized by residents of those lands adjacent to the Lands municipally known as 144 Park Street, Waterloo, Ontario (the "Adjacent Lands"), the Parking Units shall be located as close as is reasonably possible to the Adjacent Lands.
4. The transaction of purchase and sale arising from this Agreement shall be completed on the thirtieth (30<sup>th</sup>) day immediately following the date upon which the Condominium is created upon registration of the declaration and description required under the *Condominium Act, 1998* (Ontario), or the next business day, as applicable, (the "Closing Date") provided that in no event shall the Closing Date be later than the 31<sup>st</sup> day of December, 2019.
5. The Vendor hereby acknowledges and agrees that prior to the successful completion of the sale transaction contemplated hereby, the Purchaser shall have the right to lease the Parking Units from the Vendor in consideration of a yearly rent equal to the sum of One (\$1.00) Dollar per Parking Unit, for a term to commence on the initial occupancy date(s) for any residential condominium unit(s) within the Condominium or such later date as the Purchaser may determine in its sole and unfettered discretion to and including the Closing Date, or the Extended Closing Date (as hereinafter defined), as applicable (the "Lease Term").

6. The Purchaser agrees to accept title to the Parking Units subject only to the Declaration and By-Laws of the Condominium and any existing municipal/utility agreements. The Vendor agrees to discharge all other existing mortgages, liens and encumbrances affecting the Lands (collectively, the "Encumbrances") at the Vendor's expense, on or prior to the Closing Date. Notwithstanding the foregoing, in the event that there are Encumbrances remaining on title to the Parking Units on the Closing Date (collectively, the "Remaining Encumbrances"), the Closing Date shall be automatically extended to the business day following the date that the Remaining Encumbrances are so discharged (the "Extended Closing Date") and the parties hereto hereby covenant and agree to complete the transaction contemplated hereby on the Extended Closing Date in accordance with and subject to the terms and conditions of this Agreement, *mutatis mutandis*. Provided that in such event, the Lease Term shall not expire until the Extended Closing Date.
7. The Transfers/Deeds of Land for the Parking Units shall, save for the Land Transfer Tax Affidavits, be prepared in registerable form at the expense of the Vendor. The Vendor acknowledges and agrees that the Purchaser shall be entitled to require that title to the Parking Units be engrossed in the name(s) of such other persons, firms or corporations as the Purchaser may determine in its sole and unfettered discretion from time to time.
8. The Vendor hereby covenants and agrees that the Purchaser shall have the right, at any time prior to the Closing Date, to register notice of this Agreement against title to the Lands (whether in the form of a caution or other instrument satisfactory to the LRO) at the Purchaser's expense and the Vendor hereby irrevocably constitutes and appoints the Purchaser as its attorney to execute all documents and do all acts to register such a notice, and for so doing, this shall be the Purchaser's good, sufficient and irrevocable authority.
9. The Vendor hereby acknowledges and agrees that the holders of any Encumbrances registered against title to the Lands shall be required, concurrently upon the registration of notice of this Agreement by the Purchaser as aforesaid, to subordinate and postpone their respective security to the right, title and interest of the Purchaser hereunder and shall agree in writing to be bound by the terms and conditions hereof.
10. This Agreement shall constitute the entire agreement between the Purchaser and the Vendor. There is no representation, warranty, collateral agreement or condition, whether direct or collateral, or express or implied, which induced any party hereto to enter into this Agreement or on which reliance is placed by any such party, or which affects this Agreement or the property or supported hereby other than as expressed herein.
11. Any tender of documents hereunder may be made upon the Vendor or the Purchaser or any solicitor acting for either the Vendor or the Purchaser.
12. This Agreement shall be governed by and construed in accordance with the Laws of the Province of Ontario and the Laws of Canada applicable in that Province.
13. This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the Vendor, the Purchaser and their respective successors and permitted assigns.
14. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form or electronically in ".PDF" format, and the parties hereto adopt any signatures received by a receiving fax machine or email as original signatures of such parties.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

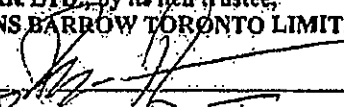
ONE 55 MADY LTD.

Per:   
Name: Charles Mady  
Title: President

I have authority to bind the Corporation 



144 PARK LTD., by its lien trustee,  
COLLINS BARROW TORONTO LIMITED

Per:   
Name: Byron D. Janszkaum  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

# **APPENDIX “F”**

**Properties**

PIN 22417 - 0018 LT  
Description PT LT 217-219 PL 385, BEING PT. 8 ON 58R-17849. CITY OF WATERLOO.  
Address WATERLOO

PIN 22417 - 0019 LT  
Description PT LT 217 PL 385, BEING PT. 7 ON 58R-17849. CITY OF WATERLOO.; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 PL 58R18309 AS IN WR844451  
Address WATERLOO

✓ PIN 22417 - 0122 LT  
Description PT LTS 218, 219, 220 & 266 PLAN 385 DESIGNATED AS PT 10 ON 58R17849, WATERLOO  
Address WATERLOO

PIN 22417 - 0123 LT  
Description PT LT 218 & 219 PLAN 385 DESIGNATED AS PT 9 ON 58R17849, WATERLOO  
Address WATERLOO

PIN 22417 - 0129 LT  
Description PT LT 1, PL 186 BEING PT 5 ON 58R-17849; CITY OF WATERLOO; CITY OF WATERLOO  
Address WATERLOO

PIN 22417 - 0133 LT  
Description PT LTS 217, 218, 219 & 267 PLAN 385 BEING PT 6 ON 58R17849; CITY OF WATERLOO; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2 PL 58R18309 AS IN WR844451; CITY OF WATERLOO  
Address WATERLOO

PIN 22417 - 0137 LT  
Description PART OF LOTS 219, 220, 221, 265 AND 266, PLAN 385, DESIGNATED AS PART 17 ON PLAN 58R-17849; WATERLOO.  
Address WATERLOO

✓ PIN 22417 - 0138 LT  
Description PT LTS 219, 265-267 PLAN 385 BEING PT 11 ON 58R17849, WATERLOO  
Address WATERLOO

PIN 22417 - 0145 LT  
Description PT LT 7 PL 186 BEING PT 2 ON 58R-17849; CITY OF WATERLOO  
Address WATERLOO

PIN 22417 - 0147 LT  
Description PT LT 6-7 PL 186 BEING PT 4 ON 58R-17849; CITY OF WATERLOO  
Address WATERLOO

PIN 22417 - 0139 LT  
Description PT LT 265 PLAN 385 BEING PTS 12,13,14 ON 58R-17849; WATERLOO  
Address WATERLOO

PIN 22417 - 0136 LT  
Description PART OF LOTS 221 AND 265, PLAN 385, DESIGNATED AS PARTS 15 AND 16 ON PLAN 58R-17849; WATERLOO.  
Address WATERLOO

CITY LANDS

**Consideration**

Consideration \$165,886.80

**Claimant(s)**

Name TURNER FLEISCHER ARCHITECTS INC.  
Address for Service c/o Giaholt LLP  
800-141 Adelaide Street West  
Toronto, Ontario  
M5H 3L5  
Attention: Ms. Andrea Lee

**Claimant(s)**

I, John Chow, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, John Chow, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner See Schedule. Name and address of person to whom lien claimant supplied services or materials Mady Development Corporation and One 55 Mady Ltd., both located at 8791 Woodbine Avenue, Suite #100, Markham, Ontario, L3R 0P4. Time within which services or materials were supplied from 2011/06/01 to 2014/11/28 Short description of services or materials that have been supplied Supply of architectural services for the design development, marketing and construction document phases of a residential condominium development. Contract price or subcontract price \$270,117.11, exclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$165,886.80, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Owners: 1) The Corporation of the City of Waterloo, 100 Regina Street South, PO Box 337, Station Waterloo, Waterloo, Ontario, N2J 4A8; 2) One 55 Mady Ltd., 8791 Woodbine Avenue, Suite #100, Markham, Ontario, L3R 0P4.

**Signed By**

Tara Sharkey	141 Adelaide St. W. Toronto M5H 3L5	acting for Applicant(s)	Signed 2015 01 08
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Tel 416-368-8280

Fax 416-368-3467

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

GLAHOLT LLP	141 Adelaide St. W. Toronto M5H 3L5	2015 01 08
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Tel 416-368-8280

Fax 416-368-3467

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Claimant Client File Number : 215/15

# APPENDIX “G”

# MARSHALLZEHR

- REAL ESTATE CAPITAL -

April 2, 2015

Collins Barrow Toronto Limited  
Trustee under the *Construction Lien Act*  
of the Property Known as 144 Park  
700-11 King Street West,  
Toronto, ON M5H 4C7

**Attention: Bryan Tannenbaum, FCPA, FCA, FCIRP**

Dear Bryan:

**Re: MarshallZehr Group Inc. (the "Lender") credit facility in favour of Collins Barrow Toronto Limited in its capacity as Trustee of the project commonly referred to as 144 Park (the "Borrower")**

The Lender is pleased to offer interim financing by way of the credit facility described in this letter agreement (the "Agreement") subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency.

- Facility:** Demand non-revolving loan of up to \$500,000 (the "Facility").
- Purpose:** The purpose of the Facility is to fund the costs of the construction lien proceeding of 144 Park
- Term:** The earliest of (i) demand; and (ii) 3 months from the date of the initial advance (the "Term").
- Facility Advances:** Available by way of up to four Canadian Dollar direct advances to the Borrower to be evidenced by a Receiver's Certificate in a form satisfactory to the Lender each in the minimum amount of \$125,000.
- Interest Rate and Fees:**
- Interest: Annual rate of 12% calculated on the daily outstanding balance of the Facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments.
- Facility Fee: A facility fee of 5% (\$25,000) of the original authorized amount hereunder shall be payable to the Lender, which payment by the Trustee shall be subject to Court approval.
- Expenses: The Borrower shall be responsible for all reasonable costs, fees and expenses incurred by the Lender in connection with the negotiation, preparation and administration of this Agreement and the enforcement of the Security (as hereinafter defined) including, without limitation, all court attendances in connection therewith. All such fees and expenses shall be added to the Facility and secured by the Security.

- Security:** All debts, liabilities, and obligations of the Borrower under the Facility shall be secured by the Receiver's Borrowing Charge as defined in the Appointment Order (the "Order") of the Honourable Justice Penny dated January 22, 2015, over all of the Property (as defined in the Order) (the "Security").
- Payments:** Without limiting the right of the Lender to at any time demand repayment and subject to and in addition to the requirement for repayment in full pursuant to this Agreement, interest only at the aforesaid rate, calculated daily and compounded and added to the Facility monthly on the last Business Day of each and every month during the Term.
- Prepayment:** The Facility can be repaid in whole or in part at any time without any fee or penalty upon 2 Business Days written notice to the Lender.
- Conditions Precedent:** The availability of the Facility is subject to and conditional upon the following conditions: receipt of a Trustee Certificate in a form satisfactory to the Lender including a condition that the Borrower shall not issue any further Trustee Certificates without the prior written consent of the Lender in its sole discretion unless such Trustee Certificates are subordinate to those of the Lender in which case no consent shall be required.
- Remedies:** In the event that the Facility is not paid in full at the end of the Term, the Lender may exercise all rights and remedies available to it.
- General:** Non-Merger: The provisions of this Agreement shall not merge with any of the Security, but shall continue in full force and effect for the benefit of the parties hereto. In the event of an inconsistency between this Agreement and any of the Facility and security documentation, including the Security, the provisions of this Agreement shall prevail.
- Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Security granted or to be granted hereunder.
- Severability: If any provisions of this Agreement is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Agreement.
- Marketing: The Lender shall be permitted to use the name of the Borrower and the amount of the Facility for advertising purposes.
- Governing Law: This Agreement and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.
- Counterparts: This Agreement, the Security and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall

constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment and Syndication: This Agreement when accepted and any commitment to advance, if issued, and the Security in furtherance thereof may be assigned by the Lender, or monies required to be advanced may be syndicated by the Lender from time to time. For greater certainty, the Lender may assign or grant participation in all or part of this Agreement or in the Facility made hereunder without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Agreement, any such transfer or assignment being null and void insofar as the Lender is concerned and rendering any balance then outstanding under the Facility immediately due and payable at the option of the Lender.

Time: Time shall be of the essence in all provisions of this Agreement.

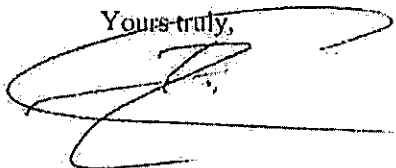
Whole Agreement, Amendments and Waiver: This Agreement, the Security and any other written agreement delivered pursuant to or referred to in this Agreement constitute the whole and entire agreement between the parties in respect of the Facility. There are no verbal agreements, undertakings or representations in connection with the Facility. No amendment or waiver of any provision of this Agreement will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under any of the Security shall operate as a waiver thereon. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Agreement and the Security or the Lender's rights thereunder.

**Expiration:** This Agreement must be accepted by the Borrower by no later than 5:00 pm on April 7, after which this Agreement will expire.

If the terms and conditions of this Agreement are acceptable to you, please sign in the space indicated below and return the signed copy of this Agreement to us.

We thank you for allowing us the opportunity to provide you with this Agreement.

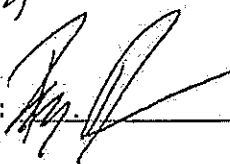
Yours truly,



**ACCEPTANCE**

The undersigned hereby accepts this Agreement this 3 day of April, 2015.

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





**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

**MOTION RECORD**  
(returnable April 23, 2015)

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

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

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

**Lawyers for the Trustee**