

Court File No. CV15-10843-00CL

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

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

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

**SIXTH REPORT OF THE TRUSTEE**

**November 30, 2015**

## INTRODUCTION AND PURPOSE OF THE SIXTH REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) (the “**CLA**”) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.
  
2. The purpose of this Sixth Report of the Trustee (the “**Sixth Report**”) is to request that the Court grant an Order:
  - (a) authorizing the Trustee to engage Mint Realty Inc. Brokerage (“**Mint Realty**”) to market the Remaining Units (as defined below) on the terms of the Mint Realty Proposal (as defined below), including advertising and soliciting offers in respect of the Remaining Units;
  
  - (b) authorizing the Trustee to sell, convey, or transfer the Remaining Units without the approval of the Court if the purchase price is at least within 95% of the listing price for the applicable residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property or its assignee to the sale price;
  
  - (c) authorizing the Trustee to make distributions to construction lien claimants of holdback amounts in the aggregate amount of \$315,038.40 from the net sale

proceeds of the Property being held by the Trustee pursuant to the Order of the Honourable Mr. Justice Newbould dated August 5, 2015 (the “**Reserve**”);

- (d) authorizing the Trustee to continue to hold in the Reserve the aggregate amount of \$363,138.53 in respect of holdback amounts claimed by three (3) construction lien claimants (694643 Ontario Limited cob as O’Connor Electric (“**O’Connor Electric**”), Clonard Group Inc. (“**Clonard**”), and Screen Painting Ltd. (“**Sereen**”)) pending further Order of the Court;
- (e) authorizing the Trustee to distribute the balance of the funds in the Reserve to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and
- (f) authorizing the Trustee to make further distributions of the net sale proceeds of the Property to the Bank or its assignee up to the amount of the Bank’s secured indebtedness without further Court order.

### **TERMS OF REFERENCE**

3. In preparing this Sixth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park, discussions with management and employees of 144 Park and other companies within the MADY group of companies, and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Sixth Report may refer to, or is based on, the Information. As the Information has been provided by 144 Park, lien claimants 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.

## **144 PARK PROJECT**

### **Background**

4. As has been previously reported to the Court, the Property was acquired by 144 Park in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 148 residential units and 1 guest unit (the “**144 Park Project**”).
5. 144 Park sought the appointment of the Trustee in January 2015 as it was insolvent and was not in a position to:
  - (a) take the necessary steps to have the condominium declaration finalized and registered;
  - (b) complete the sale transactions for the residential units that had been pre-sold; and
  - (c) complete the marketing and sale of the unsold residential units.
6. Pursuant to the Appointment Order, the Trustee was authorized and empowered to, among other things:
  - (a) act as receiver and manager of the Property;
  - (b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and

- (c) complete the existing agreements of purchase and sale for the pre-sold residential units and related parking units and storage units that form part of the Property.
7. As of the date of the Trustee's appointment, 144 Park had entered into agreements of purchase and sale ("**Sale Agreements**") with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers.
  8. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of the Honourable Mr. Justice McEwen dated April 29, 2015.
  9. As a result, there were 128 units that were the subject of Sale Agreements with 144 Park, and 20 unsold units (collectively, the "**Unsold Units**").
  10. The Appointment Order did not authorize or empower the Trustee to market or sell the Unsold Units.
  11. Pursuant to the Order of Justice Newbould dated August 5, 2015 (the "**August 5<sup>th</sup> Order**"), the Trustee was authorized to engage Mint Realty to market any or all of the Unsold Units on the terms of Mint Realty's proposal (the "**Mint Realty Proposal**"), including advertising and soliciting offers in respect of the Unsold Units or any part or parts thereof. The August 5<sup>th</sup> Order also authorized the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee

has obtained the written consent of the first mortgagee of the Property or its assignee. A copy of the August 5<sup>th</sup> Order is attached hereto as **Appendix "B"**.

**Sold Units**

12. As noted above, there were 128 units that were subject to Sale Agreements that the Trustee was authorized to take steps to close pursuant to the Appointment Order (the **"Sold Units"**).
  
13. As of the date of this Sixth Report, the Trustee has closed the sale of 107 of the 128 Sold Units. Two more Sold Units are scheduled to close on November 30, 2015. Assuming that such sale transactions close, as of December 1, 2015, the Trustee will have closed the sale of 109 of the 128 Sold Units. The remaining 19 Sold Units are as follows:
  - (a) six (6) units<sup>1</sup> that were the subject of the Trustee's motion for advice and directions with respect to parking matters that was heard by this Court on October 27, 2015. As a result of the Court's Endorsement dated November 2, 2015 that concluded the Court did not authorize the Trustee to terminate these sale transactions, counsel to the Trustee has been in contact with counsel to these purchasers to schedule the closing of these sale transactions;
  
  - (b) three (3) units<sup>2</sup> that were impacted by the parking motion. Counsel to the Trustee has been in contact with counsel to these purchasers to schedule the closing of these sale transactions;

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<sup>1</sup> Units 105, 1201, 1504, 1701, 1804 and 1901

<sup>2</sup> Units 604, 704 and 903

- (c) unit 1802, where the Trustee is in the process of completing required construction of the unit that 144 Park agreed to complete prior to closing, to the point where the purchaser has agreed to close the transaction and finish the remaining construction on his own. A closing date is in the process of being finalized;
- (d) two (2) units<sup>3</sup> where the purchaser has commenced an application seeking to terminate the sale transactions. The purchaser's application was originally commenced in Kitchener and has been transferred to this Court. A hearing date has yet to be scheduled by the parties;
- (e) two (2) units<sup>4</sup> where the Trustee terminated the Sale Agreements due to purchaser defaults;
- (f) four units<sup>5</sup> where the Trustee and the purchasers have agreed to terminate the Sale Agreements in accordance with the terms of the Order of Justice Newbould dated October 16, 2015 (the "**October 16<sup>th</sup> Order**"), a copy of which is attached hereto as **Appendix "C"**,<sup>6</sup> and
- (g) unit 1310, where the Trustee and the purchaser are discussing whether the parties will agree to terminate the Sale Agreement in accordance with the October 16<sup>th</sup> Order.

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<sup>3</sup> Units 1407 and 1408

<sup>4</sup> Units 610 and 1009

<sup>5</sup> Units 609, 1102, 1801 and 1902

<sup>6</sup> These purchasers have agreed to vacate the units by November 30, 2015 (other than 1801, which will vacate the unit by December 31, 2015) and will be entitled to reimbursement of certain deposit and upgrade monies that were insured by Aviva Insurance Company of Canada.

### **Remaining Units**

14. As noted above, there are six (6) units where Sale Agreements have been terminated by the Trustee due to purchaser defaults or terminated on consent of the parties. There may be three (3) additional units terminated on consent of the parties or pursuant to Court Order (collectively, the “**Remaining Units**”).
  
15. To the extent that the Sale Agreements for the Remaining Units have been or will be terminated, the Trustee is requesting that the Court authorize it to engage and retain Mint Realty to market and sell the Remaining Units in the same manner and pursuant to the same terms that the Trustee has retained Mint Realty to date to market and sell the Unsold Units pursuant to the August 5<sup>th</sup> Order and the Mint Realty Proposal.

### **CONSTRUCTION LIEN CLAIMS PROCESS**

#### **Construction Liens**

16. Construction liens had been registered against the Property in a total amount of approximately \$4.3 million. Attached as **Appendix “D”** is a chart that sets out the twenty (20) parties (collectively, the “**Construction Lien Claimants**”) that registered twenty one (21) construction liens against the Property, and the amount of their respective liens.<sup>7</sup>
  
17. Pursuant to the August 5<sup>th</sup> Order, the Trustee was authorized and directed to retain \$5.4 million from net sale proceeds of the Property in an interest bearing trust account in respect of construction lien claims pending further order of the Court. This amount

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<sup>7</sup> Adlers Main Tile & Carpet Co. Ltd. registered two construction liens and has, through its counsel, confirmed to the Trustee’s counsel that the first registered lien is subsumed by the second registered lien.



represents approximately 125% of the total face value amounts of the registered construction liens.

18. Pursuant to the Order (re Construction Lien Claims Process) of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015 (the “**Claims Process Order**”), the Trustee is to implement and administer a construction lien claims process (the “**Claims Process**”). A copy of the Claims Process Order is attached hereto as **Appendix “E”**.
19. The Claims Process Order authorized and directed the Trustee to make recommendations to the Court regarding the determination of holdback(s) and priorities with respect to the improvement and the Property, including priorities with respect to any proceeds of sale of the Property.
20. As has been previously reported, as of the date of the Trustee’s appointment, there were no funds being held by 144 Park or the Bank with respect to holdback amounts.
21. The Trustee has received documentation with respect to the construction liens of each of the Construction Lien Claimants. The Trustee and its counsel, Chaitons LLP (“**Chaitons**”), have reviewed the claims filed by the Construction Lien Claimants pursuant to the Claims Process. The Trustee has discussed the quantum of each claim with former employees of 144 Park to confirm whether the amounts claimed by the Construction Lien Claimants were consistent with the amounts set out in 144 Park’s books and records.

22. Based on such review, it has been determined that each of the Construction Lien Claimants entered into a contract directly with 144 Park, and there was no general contractor with respect to the 144 Park Project.
23. The Trustee has been advised by Chaitons that, pursuant to section 22 of the *CLA*, 144 Park as owner of the Property was required to maintain a holdback for each Construction Lien Claimant of ten per cent (10%) of the price of services and materials as they were actually supplied.
24. The Trustee has also been advised by Chaitons that, pursuant to section 78(2) of the *CLA*, a properly perfected construction lien has priority over mortgages to the extent of any deficiency in the holdbacks that 144 Park was required to retain under the *CLA*. As there were no funds being held by 144 Park, the deficiency in the holdbacks is the entire amount of the holdbacks.

#### **Distributions from the Reserve**

25. As was previously reported by the Trustee in its Fifth Report to the Court dated October 13, 2015 (the "**Fifth Report**"), agreement had been reached with nine (9) of the 20 Construction Lien Claimants that had properly perfected construction lien claims as to the quantum of the holdbacks. A copy of the Fifth Report (without appendices) is attached hereto as **Appendix "F"**.
26. As a result, the Trustee brought a motion returnable October 16, 2015 to obtain an order authorizing it to distribute the aggregate amount of \$932,948.74 from funds in the Reserve to the following 9 Construction Lien Claimants:

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>AGREED TO OUTSTANDING HOLDBACK AMOUNT</b>
Global Fire Protection Ltd.	\$ 85,645.54
J & I Gaweda Construction Limited	103,632.60
T.I.C. Contracting Ltd.	292,217.30
Global Precast Inc.	115,179.62
2050491 Ontario Inc. o/a The Downsview Group	54,202.46
Weston Flooring Limited	468,639.79
Great Pyramid Aluminum Ltd.	9,410.75
DKS Stone Fabrication & Design Inc.	42,087.16
Aluminum Window Design Installations Inc.	161,933.52
<b>TOTAL</b>	<b>\$932,948.74</b>

27. Pursuant to the October 16<sup>th</sup> Order, the Trustee was authorized to distribute the \$932,948.74 to the 9 Construction Lien Claimants. The Trustee has distributed such amounts in accordance with the Order.

28. As a result of the distribution, the Reserve, which originally was in the amount of \$5.4 million, is now in the amount of \$4,472,242.62 inclusive of accrued interest as of November 26, 2015.

#### **Additional Distributions from the Reserve**

29. As set out in the Fifth Report, the Trustee required additional time to complete discussions with the remaining 11 Construction Lien Claimants regarding the quantum of their holdbacks.

30. Based on extensive discussions and correspondence between Chaitons and counsel to Construction Lien Claimants, a review of 144 Park's books and records, discussions with 144 Park management and employees, nine (9) of the remaining 11 Construction Lien Claimants have properly perfected construction lien claims and the quantum of their

holdbacks has been agreed to or not disputed as of the date of this Sixth Report for a total amount of \$315,038.40:

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>AGREED TO OUTSTANDING HOLDBACK AMOUNT</b>
Bast Home Comfort Inc.	\$ 10,182.84
Frendel Kitchens Limited	24,471.54
Sam Tortola Enterprises Inc.	10,400.86
CRS Contractors Rental Supply General Partner Inc.	15,869.50
Hammerschlag & Joffe Inc.	13,721.79
Adlers Main Tile & Carpet Co. Ltd.	86,000.00
Brody Wall System Ltd.	26,000.00
Skyway Canada Ltd.	4,257.84
Clonard Group Inc.	124,134.03
<b>TOTAL</b>	<b><u>\$315,038.40</u></b>

31. Discussions continue with the three remaining (3) Construction Lien Claimants (O'Connor Electric, Clonard, and Sereen) concerning the quantum of their holdback amounts, as discussed below.
32. With respect to Clonard, based on 144 Park's books and records, the holdback amount should be \$124,134.03. Clonard has provided documentation in support of its claim that the holdback amount should be \$158,173.33, resulting in a difference of \$34,039.30.
33. The Trustee continues to review the documentation provided by Clonard. At this time, the parties have agreed that the Trustee will seek Court authority to distribute \$124,134.03 to Clonard, and retain \$34,039.30 in the Reserve pending further Order of the Court.
34. With respect to the claim of O'Connor Electric, the parties continue to discuss matters related to its claim. O'Connor Electric has claimed that it is entitled to a holdback

amount of \$254,350.23. The parties have agreed that the Trustee will retain this amount in the Reserve pending further Order of the Court.

35. With respect to the claim of Sreen, the parties continue to discuss matters related to its claim. Sreen has claimed that it is entitled to a holdback amount of \$74,749.00. The Trustee will retain this amount in the Reserve pending further Order of the Court.
36. As a result, the Trustee is requesting that the Court grant an order authorizing it to:
  - (a) distribute the aggregate amount of \$315,038.40 from the Reserve to the 9 Construction Lien Claimants listed above on account of holdback amounts; and
  - (b) retain the aggregate amount of \$363,138.53<sup>8</sup> in the Reserve pending further Order of the Court in connection with the claims of Clonard, O'Connor Electric and Sreen;
  - (c) distribute the balance of the funds in the Reserve in the amount of \$3,794,065.69 plus additional interest accrued to date of distribution to the Bank.

**Priorities between the Bank and the Construction Lien Claimants**

37. As noted above, the Trustee was advised by Chaitons that the Construction Lien Claimants were entitled to payment of the deficiency in the holdback amounts from the net sale proceeds of the Property in priority to the claims of the mortgagees pursuant to section 78(2) of the *CLA*.

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<sup>8</sup> Calculated by adding the holdback amounts claimed by O'Connor Electric (\$254,350.23) and Sreen (\$74,749) and the disputed amount of the holdback amount claimed by Clonard (\$34,039.30).

38. In accordance with the Claims Process Order, the Trustee is to provide recommendations to the Court regarding priorities with respect to any proceeds of the sale of the Property.
39. At the request of counsel to certain of the Construction Lien Claimants, the Trustee made available documentation related to the 144 Park Project, such as appraisals, construction draw worksheets, and progress draw reports.
40. The Trustee has been advised by Chaitons that, based on its review of all documentation and information available to it to date, its view is that the Construction Lien Claimants are only entitled to the deficiency in their holdback amounts in priority to the claims of the Bank as first building mortgagee on the basis of section 78(2) of the *CLA*.
41. In a letter dated November 13, 2015, Chaitons wrote to counsel to the Construction Lien Claimants and set out its view as to the priority between the Bank as building mortgagee and the Construction Lien Claimants. In the letter, Chaitons requested that counsel provide their comments on the holdback and priority determinations set out in the letter. A copy of the November 13, 2015 letter is attached hereto as **Appendix "G"**.
42. One issue raised in the letter concerned the final advance made by the Bank to 144 Park on October 24, 2014, as the first construction lien was registered against the Property on that date.
43. At the request of the Trustee, the Bank delivered the Affidavit of Nicole Yap sworn November 18, 2015 that provides documentary support that the funds advance by the Bank on October 24, 2014 was advanced prior to the registration of the first construction

lien. A copy of the Affidavit was provided to counsel to the Construction Lien Claimants and is attached hereto as **Appendix "H"**.

44. The Trustee has been informed that, as of the date of this Sixth Report, no Construction Lien Claimant has challenged or objected to Chaitons' view as to the extent of the priority of the Bank's mortgage over the Construction Lien Claimants (other than with respect to the deficiency in the holdbacks).

#### **DISTRIBUTION TO LBC FROM NET SALE PROCEEDS**

45. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of approximately \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank, the Bank has the first ranking building mortgage against the Property.
46. The Trustee obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first building mortgage against the Property.
47. Pursuant to the August 5<sup>th</sup> Order, the Trustee was authorized to distribute \$14 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$14 million to the Bank.
48. Pursuant to the October 16<sup>th</sup> Order, the Trustee was authorized to distribute up to \$6 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$4.5 million to the Bank.

49. The Trustee has been informed that, as of November 23, 2015, the Bank was owed approximately \$22,059,111 in connection with the credit facilities it extended to 144 Park and secured by the Bank's mortgage.
50. The Trustee is requesting that the Court authorize it to make future distributions to the Bank or its assignee from the net sale proceeds of the Property up to the amount owed to the Bank without further Court order.

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

51. Based on the foregoing, the Trustee respectfully requests that the Court issue an Order:
  - (a) authorizing the Trustee to engage Mint Realty to market the Remaining Units on the terms of the Mint Realty Proposal;
  - (b) authorizing the Trustee to sell, convey, or transfer the Remaining Units without the approval of the Court if the purchase price is at least within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property or its assignee to the sale price;
  - (c) authorizing the Trustee to make distributions to Construction Lien Claimants with respect to holdback amounts in the aggregate amount of \$315,038.40 from funds in the Reserve;
  - (d) authorizing the Trustee to continue to hold in the Reserve the amount of \$363,138.53 in respect of the holdback amounts claimed by Clonard, O'Connor Electric and Screen pending further Order of the Court;



- (e) authorizing the Trustee to distribute the balance of the Reserve to the Bank; and
- (f) authorizing the Trustee to make further distributions of the net sale proceeds of the Property to the Bank or its assignee up to the amount of the Bank's secured indebtedness without further Court order.

All of which is respectfully submitted to this Court as of this 30<sup>th</sup> day of November, 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 Puklicz Affidavit);

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

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

- (i) complete and register the condominium declaration and final Plan of Condominium 30CDM-13406, and any related documents, on title to the Property, and do whatever else is necessary in order to cause the registration of the proposed condominium thereon. For clarity, the foregoing shall include, without limitation:
  - (A) finalizing all outstanding draft plan conditions, including all required documentation, to the extent applicable;
  - (B) submitting the declaration and plan of condominium (i.e. the description) to the applicable approval authorities for final approval;
  - (C) executing the declaration and the plan of condominium (mylar) and cause same to be registered in the appropriate Land Registry Office (the "LRO"); and
  - (D) arranging for delivery of architectural and structural plans to the LRO;
- (j) Upon the registration of the condominium and creation of the resultant condominium corporation (the "**Condominium Corporation**"), the Trustee is authorized to operate the Condominium Corporation in accordance with and

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

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

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

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



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

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

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE**

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE TRUSTEE**

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

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE TRUSTEE**

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

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

**CONTINUATION OF SERVICES**

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

### TRUSTEE TO HOLD FUNDS

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

### EMPLOYEES

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

### PIPEDA

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

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

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

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

### LIMITATION ON THE TRUSTEE'S LIABILITY

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

### ACCOUNTS

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

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

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

### **BORROWING POWERS**

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

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



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

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

#### **RETENTION OF LAWYERS**

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

#### **SERVICE AND NOTICE**

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

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

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

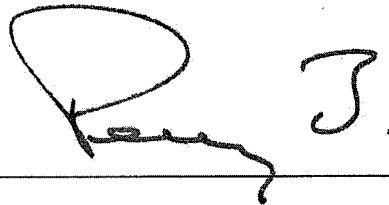
30. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof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

**GENERAL**

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

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

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



A handwritten signature in black ink, appearing to be "R. J.", written above a horizontal line.

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

JAN 23 2015



Handwritten initials "MB" in black ink.

**SCHEDULE "A"**

PIN 22417-0135 (LT)

LRO # 58

Property Description:

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

PIN 22417-0134 (LT)

LRO # 58

Property Description:

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

## SCHEDULE "B"

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

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

**SCHEDULE "C"**

**TRUSTEE CERTIFICATE**

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

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

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

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

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

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

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

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

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

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

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

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



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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**  
(appointment of a trustee)

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

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

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

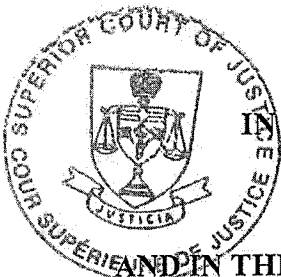
**Sam Rappos (LSUC #51399S)**  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

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

# **APPENDIX “B”**

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

THE HONOURABLE MR. ) WEDNESDAY, THE 5<sup>th</sup> DAY  
)  
JUSTICE NEWBOULD ) OF AUGUST, 2015



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

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

**ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited (“**CBTL**”), in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario (the “**Property**”) pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**Trustee**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Trustee dated July 30, 2015 (the “**Third Report**”) and the Appendices thereto, including the Second Report of the Trustee dated June 23, 2015 (the “**Second Report**”), the Affidavit of Maya Poliak sworn July 30, 2015 (the “**Poliak**”

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

### **SERVICE**

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

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

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

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

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

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

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

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

#### **SEALING**

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

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

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

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

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

#### **APPROVAL OF FEES AND DISBURSEMENTS**

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

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

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

#### **UNSOLD UNITS**

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

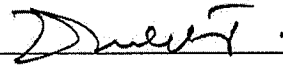
13. **THIS COURT ORDERS** that the Trustee is authorized to sell, convey or transfer the Unsold Units or any part of parts thereof without approval of the Court if:

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

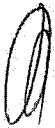
otherwise with approval of the Court.

**NELCO**

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



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



**AUG 0 5 2015**

**SCHEDULE "A"**

Court File No. CV15-10843-00CL

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

THE HONOURABLE ) WEDNESDAY, THE 5<sup>TH</sup> DAY  
)  
JUSTICE ) OF AUGUST, 2015

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

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

**VESTING ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "Trustee") for an order vesting in \_\_\_\_\_ (the "Purchaser") the right, title and interest of 144 Park Ltd. (the "Debtor") in and to the property described in **Schedule "B"** hereto (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.



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

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

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

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

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

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

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

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

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

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

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

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

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Schedule "A" – Form of Trustee's Certificate

Court File No. CV15-10843-00CL

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

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

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

**TRUSTEE'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice dated January 22, 2015, Collins Barrow Toronto Limited was appointed as trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

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

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

**THE TRUSTEE CERTIFIES** the following:

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

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

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

Name:

Title:

**Schedule "B" – Purchased Assets**

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

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

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



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

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

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

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

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

**(unaffected by the Vesting Order)**

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

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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**

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

**Harvey Chaiton (LSUC #21592F)**  
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**Sam Rappos (LSUC #51399S)**  
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E-mail: samr@chaitons.com

**Lawyers for the Trustee**

# APPENDIX “C”

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

THE HONOURABLE MR. ) FRIDAY, THE 16<sup>th</sup> DAY  
)  
JUSTICE NEWBOULD ) OF OCTOBER, 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**

(re Interim Distributions and Ancillary Matters)

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario (the "**Property**") pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fifth Report of the Trustee dated October 13, 2015 (the "**Fifth Report**") and the Appendices thereto, including the Affidavit of Sam Rappos sworn October 13,



2015 (the “**Rappos Affidavit**”) and the Affidavit of Bryan Tannenbaum sworn October 13, 2015 (the “**Tannenbaum Affidavit**”), and on hearing the submissions of counsel for the Trustee and other counsel listed on the Counsel Slip, no one else from the service list appearing although duly served as appears from the affidavit of service of Lynn Lee sworn October 14, 2015, filed,

**SERVICE**

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

**DISTRIBUTION TO LAURENTIAN BANK OF CANADA**

2. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to make an interim distribution(s) of up to \$6 million to Laurentian Bank of Canada.

**DISTRIBUTION TO CONSTRUCTION LIEN CLAIMANTS**

3. **THIS COURT ORDERS** that the Trustee is authorized to make distributions in the aggregate sum of \$932,948.74 to those construction lien claimants, and in the amounts referenced, listed in **Schedule “A”** hereto, on account of the entitlements of such construction lien claimants for the deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* (Ontario).


4. **THIS COURT ORDERS** that the funds to be distributed by the Trustee pursuant to paragraph 3 hereof shall be withdrawn from the \$5.4 million being held by the Trustee in an interest bearing account pursuant to paragraph 8 of the Order of Mr. Justice Newbould dated August 5, 2015.

**APPROVAL OF FEES AND DISBURSEMENTS**

5. **THIS COURT ORDERS** that the fees and disbursements of the Trustee for the period July 1, 2015 to August 31, 2015, as described in the Fifth Report and the Tannenbaum Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Trustee, Chaitons LLP, for the period June 26, 2015 to August 31, 2015, as described in the Fifth Report and the Rappos Affidavit, are hereby approved.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:  
OCT 16 2015



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**SCHEDULE "A"**

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>AGREED TO OUTSTANDING HOLDBACK AMOUNT</b>
Global Fire Protection Ltd.	85,645.54
J & I Gaweda Construction Limited	103,632.60
T.I.C. Contracting Ltd.	292,217.30
Global Precast Inc.	115,179.62
2050491 Ontario Inc. o/a The Downsview Group	54,202.46
Weston Flooring Limited	68,639.79
Great Pyramid Aluminum Ltd.	9,410.75
DKS Stone Fabrication & Design Inc.	42,087.16
Aluminum Window Design Installations Inc.	161,933.52

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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**  
(re Interim Distributions and  
Ancillary Matters)

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

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Lawyers for the Trustee

# **APPENDIX “D”**

**APPENDIX "D" – CONSTRUCTION LIEN CLAIMS**

<b>Lien Claimant</b>	<b>Instrument No.</b>	<b>Registration Date</b>	<b>Amount</b>
Global Fire Protection Ltd.	WR847447	10/24/2014	\$ 301,592.04
694643 Ontario Limited cob as O'Connor Electric	WR849030	10/31/2014	88,882.72
J & I Gaweda Construction Limited	WR854810	12/1/2014	537,285.80
Bast Home Comfort Inc.	WR854978	12/2/2014	26,889.48
Frendel Kitchens Limited	WR856756	12/11/2014	328,259.71
T.I.C. Contracting Ltd.	WR857239	12/12/2014	436,313.73
Global Precast Inc.	WR857322	12/15/2014	188,393.19
2050491 Ontario Inc. o/a The Downsview Group	WR857462	12/15/ 2014	110,715.72
Sam Tortola Enterprises Inc.	WR857468	12/15/2014	104,008.59
CRS Contractors Rental Supply General Partner Inc.	WR857793	12/16/2014	15,869.50
Adlers Main Tile & Carpet Co. Ltd.	WR857850	12/16/2014	83,436.17
Hammerschlag & Joffe Inc.	WR858748	12/19/2014	46,043.26
Sereen Painting Ltd.	WR858991	12/22/2014	345,952.00
Weston Flooring Limited	WR859188	12/23/2014	176,771.34
Great Pyramid Aluminum Ltd.	WR859941	12/30/ 2014	32,380.71
Adlers Main Tile & Carpet Co. Ltd.	WR860525	1/5/2015	139,287.39
Brody Wall System Ltd.	WR863291	1/21/2015	113,327.50
Skyway Canada Ltd.	WR863658	1/23/2015	4,257.84
DKS Stone Fabrication & Design Inc.	WR863814	1/23/2015	210,189.60
Clonard Group Inc.	WR864339	1/24/2015	752,632.01
Aluminum Window Design Installations Inc.	WR864655	1/29/2015	260,446.93
<b>TOTAL</b>			<b><u>\$4,302,935.23</u></b>

# **APPENDIX “E”**



Court File No. CV15-10843-00CL

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

THE HONOURABLE Mr. )  
 )  
JUSTICE Wilton-Siegel )

THURSDAY, THE 23<sup>rd</sup> DAY *Handwritten mark*

OF APRIL, 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**

(re Construction Lien Claims Process)

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and legally described in **Schedule "A"** attached hereto (the "**Property**"), pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Trustee dated April 17, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and counsel for those other



parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn April 20, 2015, filed,

### **CLAIMS PROCESS**

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

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

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

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

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

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

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

#### **DETERMINATION OF CLAIMS**

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

#### **DISPUTE NOTICE AND APPEALS**

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

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

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

#### **CLAIMS BAR PROVISIONS**

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

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

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

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

**NOTICES AND COMMUNICATION**

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

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

**COLLINS BARROW TORONTO LIMITED**

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

- with a copy to -

**CHAITONS LLP**

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

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



**SCHEDULE "A"**

PIN 22417-0135 (LT)

LRO # 58

Property Description:

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

PIN 22417-0134 (LT)

LRO # 58

Property Description:

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

**SCHEDULE "B"**

**Dispute Notice Re: 144 Park Ltd.**

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

Name of Creditor: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Authorized Signing Officer: \_\_\_\_\_

Date: \_\_\_\_\_

(Please print name) \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Facsimile Number: ( ) \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

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

**COLLINS BARROW TORONTO LIMITED**

11 King St. West Suite 700, Box 27

Toronto, ON M5H 4C7

Attention: Arif Dhanani

Email: andhanani@collinsbarrow.com

- with a copy to -



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

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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**  
(re Construction Lien Claims Process)

**CHATTONS LLP**  
5000 Yonge Street, 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**

# **APPENDIX “F”**

Court File No. CV15-10843-00CL

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

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

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

**FIFTH REPORT OF THE TRUSTEE**

**October 13, 2015**

## INTRODUCTION AND PURPOSE OF THE FIFTH REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated January 22, 2015 (the “Appointment Order”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) (the “CLA”) trustee (the “Trustee”) with respect to certain lands and premises owned by 144 Park Ltd. (“144”) and known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “Property”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.
  
2. The purpose of this Fifth Report of the Trustee (the “Fifth Report”) is to:
  - (a) report to the Court on the Trustee’s activities since July 30, 2015, being the date of the Trustee’s Third Report to the Court (the “Third Report”), a copy of which (without appendices) is attached hereto and marked as **Appendix “B”**;
  
  - (b) request that the Court grant an Order (or Orders):
    - (i) approving a sale-leaseback transaction entered into by the Trustee, for and on behalf of 144, and 81 Capital Inc. (“81 Capital”) with respect to the heating, ventilation and air conditioning system (“HVAC System”) that has been installed at the 144 Park Project (as defined below), authorizing, *nunc pro tunc*, the execution by the Trustee of all documents related to the transaction, and vesting in 81 Capital the right, title and interest of 144 in the HVAC System free and clear of any and all claims and encumbrances;

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

### TERMS OF REFERENCE

3. In preparing this Fifth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144, discussions with management and employees of 144 and other companies within the MADY group of companies, and information received from third-party sources (collectively, the “Information”). Certain of the information contained in this Fifth Report may refer to, or is based on, the Information. As the Information has been provided by 144 or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise

attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

#### **TRUSTEE'S ACTIVITIES SINCE THE THIRD REPORT**

4. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the Third Report:

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

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

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



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

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

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

#### **HVAC AND 81 CAPITAL**

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

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

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

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

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

#### **CONSTRUCTION LIEN CLAIMS PROCESS**

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

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

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

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

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

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

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

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

#### **DISTRIBUTION TO LBC**

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



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

**FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL**

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

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

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

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

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

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

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

Per: 

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

Title: President

I have the authority to bind the corporation

# **APPENDIX “G”**



REPLY TO: HARVEY G. CHAITON  
FILE NO.: 56868  
DIRECT: 416-218-1129  
FAX: 416-218-1849  
EMAIL: harvey@chaitons.com

**WITHOUT PREJUDICE**

November 13, 2015

**VIA EMAIL TO THE PARTIES LISTED IN SCHEDULE "A"**

**Re: 144 Park Ltd. ("144 Park")**

Dear Sirs/Mesdames,

Pursuant to the Construction Lien Claims Process Order dated April 23, 2015 (the "**Claims Process Order**"), the Trustee was directed to implement and administer the construction lien claims process (the "**Claims Process**"), and was authorized and directed to make recommendations to the Court regarding the determination of holdbacks and priorities. A copy of the Claims Process Order can be found at the Trustee's website:

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

**Background**

144 Park acquired the lands on September 1, 2011 for the purpose of constructing a 19-story residential condominium tower. As has previously been disclosed, the appraised value of the lands was \$57,100,000 as of November 22, 2011. A copy of the appraisal was made available to all counsel that wished to have access to it.

Laurentian Bank of Canada ("**Laurentian**") provided construction financing to 144 Park and registered a mortgage in the principal amount of \$40 million against the lands on May 25, 2012. Laurentian advanced approximately \$38.8 million to 144 Park, as set out in the enclosed Certificate of Advance dated October 27, 2014.

Lien claims were registered against the lands by twenty (20) lien claimants. The aggregate face amount of the liens total approximately \$4.3 million.

The Trustee understands that all lien claimants entered into contracts directly with 144 Park as owner and there was no general contractor for the 144 Park Project.

**Claims Process**

Pursuant to the Claims Process Order, lien claimants were required to produce documentation in support of their lien claims to the Trustee. The Trustee requested additional documentation where the information provided was incomplete. Given the passage of time, the Trustee has assumed that it has now been provided with all available relevant documentation.



### **Holdback Amounts and Priorities**

The Trustee has considered the issue of the priorities between the lien claimants and Laurentian as first ranking mortgagee of the property. We thought it would be appropriate to share the Trustee's determination as to the priorities with counsel to the lien claimants at this time, and prior to the Trustee serving its report, so that counsel may provide their views on the analysis prior to the Trustee finalizing and serving its motion materials seeking approval of its recommendations with respect to holdback amounts, priorities and authorization to make a further distribution of sale proceeds.

In making its determination concerning holdback amounts and the relative priorities of the lien claimants and mortgagees, the Trustee has also reviewed the books and records of 144 Park and spoken with its management and employees.

### **Prior Holdback Distributions**

Pursuant to the Order dated August 5, 2015, the Court authorized and directed the Trustee to retain \$5.4 million in respect of lien claims pending further order of the Court. This amount is approximately 125% of the total amount of liens registered against the 144 Park Project.

The Trustee made distributions to nine (9) of the twenty (20) lien claimants in the aggregate amount of \$932,948.74 on account of their priority over the mortgagees to the extent of the deficiencies in holdbacks pursuant to the Order dated October 16, 2015.

As a result of the distributions, the Trustee continues to hold approximately \$4.47 million.

### **Remaining Holdback Distributions**

With respect to the remaining eleven (11) lien claimants that have not received holdback distributions to date, the Trustee has corresponded with counsel to each claimant with a view to coming to an agreement on the holdback amounts. Enclosed as **Schedule "A"** is a chart that sets out the holdback amounts that the Trustee is prepared to accept based on its discussions with counsel or its review of available information and applicable law.

The Trustee intends to bring a motion during the week of November 30, 2015 or as soon as possible thereafter to seek authorization to distribute holdback amounts to lien claimants in satisfaction of their holdback claims in priority to Laurentian.

### **Priorities**

The Trustee has determined that the lien claimants have priority over the mortgage of Laurentian only to the extent of the deficiency in the basic holdback, pursuant to section 78(2) of the *Construction Lien Act* (the "**CLA**").

Sections 78(3) and (4) of the *CLA* do not apply in the circumstances, as both sections apply to mortgages "that were registered prior to the time when the first lien arose". The Laurentian mortgage was registered in May 2012. Based on the information received in the



Claims Process, the first lien arose sometime in 2010. Hammerschlag & Joffe Inc. is a lien claimant that supplied electrical consulting services to 144 Park. In its lien it claims to have started providing services on December 1, 2010. It also provided copies of paid invoices to the Trustee dated June 30, 2010, December 31, 2010, and April 15, May 18 and July 31, 2011 for printing expenses. Additionally, CRS Contractors Rental Supply General Partner Inc. is a lien claimant that supplied rental equipment to 144 Park. In its lien it claims to have started providing services on November 1, 2011.

Section 78(5) of the *CLA* is applicable and supports the position that the lien claimants only have priority over Laurentian's mortgage to the extent of the deficiency in the holdbacks.

Section 78(6) of the *CLA* states that a mortgage registered after the time when the first lien arose has priority over the liens to the extent of any advance made in respect of the mortgage, unless:

- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or
- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien

We have no information to suggest that paragraph (b) is applicable. The first lien was registered against the property by Global Fire Protection on October 24, 2014 at 3:03 pm.

We have made inquiries of Laurentian's counsel and they have confirmed that the advance made by Laurentian to 144 Park on October 24, 2014 was made prior to the registration of the lien of Global Fire Protection. We have asked that a representative of Laurentian swear an affidavit concerning the timing of the last advance.

Assuming Laurentian's last advance was made prior to the registration of the lien by Global Fire Protection, it is the Trustee's view, as noted above, that the lien claimants only have priority over Laurentian's mortgage to the extent of any deficiencies in the basic holdbacks. To the knowledge of the Trustee, Laurentian did not retain any holdbacks from the advances it made to 144 Park.

#### **Next Steps**

As indicated above, we wish to bring a motion during the week of November 30, 2015 or as soon as possible thereafter to seek an order authorizing the Trustee to distribute approximately \$3.7 million to Laurentian from the funds held by the Trustee, an order to distribute the agreed upon holdback amounts to lien claimants, and to retain funds with respect to any holdback amounts that are still in dispute.

We ask that counsel contact us early next week to advise whether you have any objections or disagreement with the above analysis and the basis for such views before we finalize the motion materials.



Yours truly,  
CHAITONS LLP

A handwritten signature in black ink, appearing to read "Harvey G. Chaiton". The signature is fluid and cursive, written over a white background.

Harvey G. Chaiton  
PARTNER

Encl.

cc: Collins Barrow Toronto Limited



Schedule "A"

<p><b>A. CONTE PROFESSIONAL CORPORATION</b> 242 Applewood Crescent, Unit 12, 2<sup>nd</sup> Floor Concord, ON L4K 4E5</p> <p><b>Antonio Conte</b> Tel: (416) 947-0208 Fax: (866) 543-3165 Email: a.conte@contelaw.ca</p> <p><b>Lawyers for Global Fire Protection Ltd.</b></p>	<p><b>PALLET VALO LLP</b> 77 City Centre Drive, West Tower, Suite 300 Mississauga, ON L5B 1M5</p> <p><b>Anna Esposito</b> Tel: (905) 273-3022 x 260 Fax: (905) 273-6920 Email: aesposito@pallettvalo.com</p> <p><b>Lawyers for Adlers Main Tile &amp; Carpet Co. Ltd. and 694643 Ontario Limited</b></p>
<p><b>KOSKIE MINSKY LLP</b> 20 Queen Street West, Suite 900, Box 52 Toronto, ON M5H 3R3</p> <p><b>Jeffrey Long</b> Tel: (416) 595-2125 Fax: (416) 204-2892 Email: jlong@kmlaw.ca</p> <p><b>Lawyers for J &amp; I Gaweda Construction Limited</b></p>	<p><b>PETKER &amp; ASSOCIATES</b> 295 Weber St. N. Waterloo, ON N2J 3H8</p> <p><b>Jarvis Postnikoff</b> Tel: (519) 886-1204 Fax: (519) 886-5674 Email: jarvis@petkerlaw.com</p> <p><b>Lawyer for Bast Home Comfort Inc.</b></p>
<p><b>PARENTE, BOREAN LLP</b> 3883 Highway 7, Suite 207 Woodbridge, ON L4L 6C1</p> <p><b>Gerard Borean</b> Tel: (905) 850-6066 Fax: (905) 850-6069 Email: gborean@parenteborean.com</p> <p><b>Lawyers for Frenel Kitchens Limited</b></p>	<p><b>CHODOLA REYNOLDS BINDER</b> 720 Walker Road Windsor, ON N8Y 2N3</p> <p><b>Robert Reynolds</b> Tel: (519) 254-6433 Fax: (519) 254-7990 Email: reynolds@crblaw.ca</p> <p><b>Lawyers for T.I.C. Contracting Ltd.</b></p>
<p><b>BARRY S. GREENBERG</b> 7626A Yonge Street Thornhill, ON L4J 1V9 Tel: (905) 886-9535 Ext. 27 Fax: (905) 886-9540 Email: bsgreenberg@rogers.com</p> <p><b>Lawyers for Weston Flooring Limited</b></p>	<p><b>CLARKS LLP</b> 1200 Canada Building , 374 Ouellette Avenue Windsor, ON N9A 1A8</p> <p><b>John Clark</b> Tel: (519) 254-4990 Fax: (519) 254-2294 Email: jtclark@clarkslaw.com</p> <p><b>Lawyers for Sam Tortoloa Enterprises Inc.</b></p>

<p><b>DOOLEY LUCENTI</b> 10 Checkley Street Barrie, ON L4N 1W1</p> <p><b>Eric Gionet</b> Tel: (705) 792-7963 Fax: (705) 792-7964 Email: egionet@dllaw.ca</p> <p><b>Lawyers for CRS Contractors Rental Supply General Partner Inc.</b></p>	<p><b>BISCEGLIA &amp; ASSOCIATES</b> 200-7941 Jane St. Concord, ON L4K 4L6</p> <p><b>Emillio Bisceglia</b> Tel: (905) 695-3100 Fax: (905) 695-5201 Email: ebisceglia@lawtoronto.com</p> <p><b>Lawyers for Hammerschlag &amp; Joffe Inc.</b></p>
<p><b>SIMPSONWIGLE LAW LLP</b> 1 Hunter Street East, Suite 200 Hamilton, ON L8N 3W1</p> <p><b>Derek Schmuck</b> Tel: (905) 528-8411 x 363 Fax: (905) 528-9008 Email: schmuckd@simpsonwigle.com</p> <p><b>Lawyers for Sreen Painting Ltd.</b></p>	<p><b>ECCLESTON LLP</b> Toronto Dominion Bank Tower, Ste. 4020, 66 Wellington St. W. PO Box 230, Stn. Toronto Dom. Toronto, ON M5K 1J3</p> <p><b>Ken Eccleston and Maurizio Artale</b> Tel: (416) 504-3364 / (416) 913-2043 Fax: (416) 504-2686 Email: ken@ecclestonllp.com / Maurizio@ecclestonllp.com</p> <p><b>Lawyers for Skyway Canada Limited</b></p>
<p><b>LEVINE, SHERKIN, BOUSSIDAN</b> 300-23 Lesmill Rd. North York, ON M3B 3P6</p> <p><b>Jeremy Sacks</b> Tel: (416) 224-2400 Fax: (416) 224-2408 Email: Jeremy@lsblaw.com</p> <p><b>Lawyes for Great Pyramid Aluminum Ltd.</b></p>	<p><b>HAMMOND FLESIAS</b> 3800 Steeles Ave. West, Suite 300 Woodbridge, ON L4L 4G9</p> <p><b>Richard Hammond</b> Tel: (905) 850-8550 Fax: (905) 850-9998 Email: rhammond@hammond flesias.com</p> <p><b>Lawyers for Brody Wall System Ltd.</b></p>
<p><b>MILLER THOMSON LLP</b> 60 Columbia Way, Suite 600 Markham, ON L3R 0C9</p> <p><b>Enzo Di Iorio / Riccardo Del Vecchio</b> Tel: (905) 415-6711 / (905) 415-6764 Fax: (905) 415-6777 Email: ediiorio@millerthomson.com / rdelvecchio@millerthomson.com</p> <p><b>Lawyers for Global Precast Inc. and 2050491 Ontario Inc. o/a The Downsview Group</b></p>	<p><b>RUBIN &amp; CHRISTIE LLP</b> 219 Finch Avenue West - 2nd Floor Toronto, ON M2R 1M2</p> <p><b>David Rubin</b> Tel: (416) 361-0900 Fax: (416) 361-3459 Email: drubin@rubinchristie.ca</p> <p><b>Lawyers for DKS Stone Fabrication &amp; Design Inc.</b></p>

<p><b>SIMMONS DA SILVA LLP</b> Suite 200; 201 County Court Blvd Brampton, ON L6W 4L2</p> <p><b>Pathik Baxi</b> Tel: (905) 861-2822 Fax: (905) 457-5641 E-mail: pathik@sdsllawfirm.com</p> <p><b>Lawyers for Clonard Group Inc.</b></p>	<p><b>CAPO, SGRO LLP</b> 400-7050 Weston Rd. Woodbridge, ON L4L 8G7</p> <p><b>Gregory Hemsworth</b> Tel: (905) 850-7000 Fax: (905) 850-7050 Email: ghemsworth@cslp.ca</p> <p><b>Lawyers for Aluminum Window Design Installations Inc.</b></p>
<p><b>THORNTON GROUT FINNIGAN LLP</b> Ste. 3200, 100 Wellington St. W. PO Box 329, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>Grant Moffat / Asim Iqbal</b> Tel: (416) 304-0599 / (416) 304-0595 Fax: (416) 304-1313 Email: gmoffat@tgf.ca / aiqbal@tgf.ca</p> <p><b>Lawyers for Laurentian Bank of Canada</b></p>	

**CERTIFICATE OF ADVANCE**  
(Construction Loan)

**TO:** LAURENTIAN BANK OF CANADA

**AND TO:** GOLDMAN SLOAN NASH & HABER LLP, Its solicitors

**RE:** Laurentian Bank of Canada (the "Lender")  
loan to 144 Park Ltd. (the "Borrower")  
142, 144 and 148 Park Street and 21 Allen Street West, Waterloo (the "Property")  
Mortgage Reference no. 1423771.

THE UNDERSIGNED, being an officer or director of the Borrower, certifies that:

1. This Certificate is made in connection with an advance of the above-noted loan (the "Loan") in the maximum principal amount of THIRTY-EIGHT MILLION, FORTY-FOUR THOUSAND DOLLARS (\$38,044,000.00) made by the Lender to the Borrower.
2. The following amounts were advanced on account of the Loan on the following dates:

<u>AMOUNT OF GROSS ADVANCES</u>	<u>ADVANCE DATES</u>
\$1,097,202.00	May 25, 2012
\$1,861,776.00	June 8, 2012
Letters of Credit \$260,295.28	June 20, 2012
\$221,776.00	July 9, 2012
\$792,636.00	August 10, 2012
\$880,976.00	September 11, 2012
\$1,098,120.00	October 16, 2012
\$1,128,868.00	November 19, 2012
\$1,484,573.00	December 20, 2012
\$1,197,623.00	January 31, 2013
\$1,266,484.00	February 27, 2013
\$1,567,879.00	April 2, 2013
\$1,787,371.00	April 29, 2013
\$2,468,857.00	May 14, 2013
\$1,984,593.00	June 11, 2013
\$2,477,801.00	July 10, 2013
\$2,578,208.00	August 7, 2013
\$1,625,542.00	September 17, 2013
\$1,163,516.00	October 10, 2013
\$1,218,943.00	December 3, 2013
\$1,339,790.00	December 20, 2013
\$223,130.00	January 27, 2014
\$911,897.00	February 14, 2014
\$1,284,502.00	March 14, 2014
\$1,095,598.00	April 10, 2014
\$360,277.00	June 10, 2014
\$881,030.00	July 8, 2014
\$3,600,000.00	October 8, 2014
\$1,239,373.00	October 24, 2014

and accordingly, the sum of \$38,798,741.28 (which includes \$260,295.28 in issued Letters of Credit) has been accounted for or received by or on behalf of the Borrower and there is no defence, offset or counterclaim with respect to such amount.

3. All net proceeds of the Loan advanced to date, as herein acknowledged, have and shall be utilized only for one or more of the following purposes:
  - (a) acquiring the Property;
  - (b) paying the costs of any construction, erection, installation or improvement on or to the Property or any alteration, addition or repair to, or any demolition or removal of, any building, structure, works or other improvements on the Property (collectively the "Improvements");
  - (c) paying any other costs approved by the Lender with respect to the Property or the Improvements; and,
  - (d) repaying any loan, the proceeds of which were utilized for any of the purposes expressed in subparagraphs 3 (a), (b) and (c) hereof.

4. All buildings, structures and other improvements on the Property whether above or below ground level are within the boundaries of the Property and are in compliance with the building and zoning regulations of all authorities having jurisdiction.
5. All hard and soft costs incurred and payable with respect to the Improvements have been paid in full as of the date of the immediately preceding advance of the Loan.
6. There have been no notices of non-compliance received from any governmental body which may have any authority over the Property or the development thereof.
7. The Borrower is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and all regulations thereunder, and the security given pursuant to the Loan in favour of the Lender does not constitute all or substantially all of the:
  - (a) Inventory;
  - (b) accounts receivable; or,
  - (c) other property,that was acquired for, or is used in relation to, a business carried on by the Borrower.
8. The warranties and representations contained in the letter of commitment with respect to the Loan are true and accurate as of the date of this Certificate.
9. I have carefully reviewed the appropriate records of the Borrower and have made such inquiries and investigations as are necessary so as to enable me to make all of the statements and declarations set out herein.
10. This Certificate is intended and shall serve as a full estoppel as against the Borrower with respect to the facts stated herein.

DATED this 27<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Charles Mady



**SCHEDULE "A"**

<b>LIEN CLAIMANT</b>	<b>HOLDBACK AMOUNT</b>
O'Connor Electric	\$88,882.72
Bast Home Comfort	\$10,182.84
Frendel	\$24,471.54
Sam Tortola	\$10,400.86
CRS Contractors	\$15,869.50
Hammerschlag	\$13,721.79
Sereen Painting	\$0
Adlers	\$84,500
Brody Wall	\$24,000
Skyway	\$4,257.84
Clonard	\$124,134.03
<b>TOTAL</b>	<b>\$400,421.12</b>



**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 NICOLE YAP**

I, **NICOLE YAP**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Law Clerk with Goldman Sloan Nash & Haber LLP ("**GSNH**"), counsel to Laurentian Bank of Canada (the "**Bank**") regarding advances made by the Bank to 144 Park Ltd. ("**144 Park**") under credit facilities made available pursuant to an Offer of Financing dated March 7, 2012 (the "**Offer of Financing**"), including the advance made on October 24, 2014 in the amount of \$987,715.00 (the "**October 24 Advance**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Attached as **Exhibit "A"** is a copy of the letter GSHN received from the Bank (the "**Advance Letter**") regarding the October 24 Advance. The Advance Letter confirmed that, subject to certain escrow conditions, the Bank had deposited the sum of \$989,023.00 into GSNH's trust account for the purposes of completing the October 24 Advance. The escrow conditions included, among others, (i) making appropriate sub-searches, and (ii) retaining amounts from the October 24 Advance for legal and other costs.



3. Pursuant to an irrevocable direction from 144 Park to the Bank and GSNH, 144 Park directed the net loan proceeds of the October 24 Advance to Mady Development Corporation. A copy of the irrevocable direction is attached as **Exhibit "B"**.
4. I performed a sub-search of the Property on October 24, 2014 at 9:37 a.m. A copy of the sub-search is attached as **Exhibit "C"**. The sub-search revealed no constructions liens registered that would have priority over the October 24 Advance.
5. After satisfying the remaining escrow conditions, I initiated a wire transfer for \$987,715.00 from GSNH's trust account to Mady Development Corporation's bank account with the Royal Bank of Canada. Attached as **Exhibit "D"** is a copy of the Payment Detail Report (the '**Wire Transfer Receipt**'). According to the Wire Transfer Receipt, the October 24 Advance appears to have been confirmed at 10:54 a.m. on October 24, 2014.
6. Attached as **Exhibit "E"** is a copy a letter from GSNH to the Bank confirming, *inter alia*, completion of the October 24 Advance (the "**Confirmation Letter**").
7. The Confirmation Letter included a Statement of Advance confirming that, after certain deductions as set out therein, \$987,715.00 was paid to 144 Park.

SWORN BEFORE ME at the City of  
Toronto on November 18, 2015



Commissioner for Taking Affidavits



NICOLE YAP

Cheryl Elizabeth Cochrane, a Commissioner, etc.,  
Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
Barristers and Solicitors. Expires April 4, 2017.

# TAB A

This is Exhibit "A" to the Affidavit of  
Nicole Yap sworn before me  
this 18 day of November, 2015.

*De Cochrane*

A Commissioner, etc.



eryl Elizabeth Cochrane, a Commissioner, etc.,  
Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
Barristers and Solicitors. Expires April 4, 2017.

October 24, 2014

Goldman, Sloan, Nash and Haber LLP  
480 University Avenue  
Suite 1600  
Toronto, Ontario  
M5G 1V2

Sent Via Email

cc: [peter.catalano@bnc.ca](mailto:peter.catalano@bnc.ca)  
[margaret.rosa@bnc.ca](mailto:margaret.rosa@bnc.ca)  
[zami.salaria@bnc.ca](mailto:zami.salaria@bnc.ca)

Attention: Walter Traub/Nicole Yap

Dear Sir/Madam:

Re: Mortgage No.: 1423771.1  
Property Address: 142, 144, & 148 Park St. and 21 Allen St., Waterloo, Ontario  
Mortgagor (s): 144 Park Ltd.

Advance No. 28

We have today, deposited a sum of \$ 989,023.00 into your Trust Account Number #842-0901345-01 with Laurentian Bank. Appendix 'A' is enclosed herewith showing the details of the advance.

**ESCROW CONDITIONS:**

- a) Prior to releasing this advance, please make sub-searches and otherwise ensure that there are no liens, executions, encumbrances or any interest, which might rank in priority to such advances. Please arrange with prior lien holders, encumbrances or others having prior interests in order that our Mortgage shall be registered in priority to their interests.
- b) Any Tax bills issued and unpaid at the time of advance must be paid in full from proceeds of advance. Please advise what the tax roll number is so that we can update our records.
  - Please note we require written confirmation that a) and b) have been complied with prior to the advance of funds. We ask that you please fax or e-mail this confirmation directly to our office at the coordinates below.
- c) Mortgage must be registered prior to releasing proceeds of advance.
- d) Legal and other costs incurred in connection with this transaction must be retained from proceeds of advance. Bank will not be responsible for any costs incurred.
- e) Ensure that there are no title defects and that our Mortgage must be a good and valid First Charge free of all liens, charges and executions.

\\842\Re Legal Services\Advances\2013\ON\1423771.1.doc

Real Estate Financing  
130 Adelaide Street West, Suite 300, Toronto, ON M5H 3P5  
Phone: (416) 865-5601 Fax: (416) 947-7415  
E-mail: [842RELegalServices@laurentianbank.ca](mailto:842RELegalServices@laurentianbank.ca)

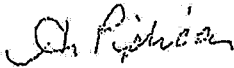
This message, which may contain confidential information, is strictly reserved for the person or company it is addressed to. If this message was transmitted to you by error, please advise the sender as soon as possible or destroy this message.

- f) Ensure that all the terms and conditions of our letter of commitment along with our requirements in our letter of instructions have been satisfied.
- g) The net proceeds of the advance (after deductions) are to be transferred from your Trust account (842-0901345-01) to the Borrower's account with RBC Royal Bank (003- 07922-1051341). Please fax or e-mail your authorization to the coordinates below when you are ready to release the funds to the Borrower. Please note that Authorized Signatures are required to transfer funds from the Solicitor's Trust account.
- h) Please ensure that a copy of this letter along with the Statement of Advance is provided to the Solicitor acting for the Borrower and a copy of the Statement of Advance is sent to Laurentian Bank.

Please note that if, for any reason you are unable to proceed with the advance, funds must be returned to our office. Interest will be calculated from date of cheque and will be retained from next advance.

We thank you for your assistance with the completion of this advance.

Yours truly,  
LAURENTIAN BANK OF CANADA



Anna M. Piplica  
Funding Officer

Encl.

\\842\Re Legal Services\Advances\2013\ON\1423771.1.doc

Real Estate Financing  
130 Adelaide Street West, Suite 300, Toronto, ON M5H 3P5  
Phone: (416) 865-5601 Fax: (416) 947-7415  
E-mail: [842RELegalServices@laurentianbank.ca](mailto:842RELegalServices@laurentianbank.ca)

This message, which may contain confidential information, is strictly reserved for the person or company it is addressed to. If this message was transmitted to you by error, please advise the sender as soon as possible or destroy this message.



October 24, 2014

APPENDIX A

Loan No: 1423771.1  
Security: 21 Allen St; 142, 144, and 148  
Park St.  
Waterloo, ON

Advance Schedule

Date of Advance: October 24, 2014

<u>Gross Advance:</u>	\$1,239,373.00
Add: Refundable Amount:	\$0.00
<u>Deductions</u>	
Accrued Interest:	\$0.00
Payments Due:	\$0.00
Tax Withheld:	\$0.00
<u>Fees and Other</u>	
Advance	\$175.00
Line of Credit	\$250,000.00
Third Party Fee	\$175.00
<u>Net Advance:</u>	\$989,023.00

E. & O. E.

Special Instructions

This advance schedule is subject to the Escrow Conditions outlined in our covering letter.

# TAB B

THIS IS LAID ON \_\_\_\_\_ TO the Affidavit of  
Nicole Yap sworn before me  
this 18<sup>th</sup> day of November, 2015.  
Cheryl Elizabeth Cochrane  
A Commissioner, etc.

**RE-DIRECTION RE: ADVANCES**  
Cheryl Elizabeth Cochrane, a Commissioner, etc.,  
Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
Barristers and Solicitors. Expires April 4, 2017.

TO: LAURENTIAN BANK OF CANADA  
AND TO: GOLDMAN SLOAN NASH & HABER LLP, its solicitors  
RE: Laurentian Bank of Canada (the "Lender")  
loan to 144 Park Ltd. (the "Borrower")  
142, 144 and 148 Park Street and 21 Allen Street West, Waterloo (the "Property")  
Mortgage Reference no. 1423771.1

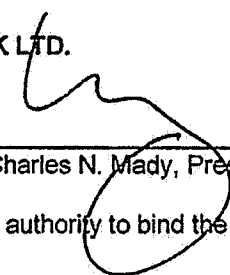
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THE UNDERSIGNED hereby authorizes and directs you to pay the net loan proceeds of all future advances under the above-noted loan transaction to MADY DEVELOPMENT CORPORATION.

AND FOR SO DOING this shall be your good, sufficient and irrevocable authority.

DATED this        day of October, 2014.

144 PARK LTD.

Per:   
Charles N. Mady, President

I have the authority to bind the corporation.

# TAB C



This is Exhibit C to the Affidavit of Nicole Yap sworn before me this 15<sup>th</sup> day of November, 2016.  
COCA WENZEL  
 A Commissioner, etc.

Cheryl Elizabeth Cochrane, a Commissioner, etc.,  
 Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
 Barristers and Solicitors. Expires April 4, 2017.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND REGISTRY OFFICE #58

22417-0134 (LT)

PAGE 1 OF 2

PREPARED FOR Nicoletap ON 2013/10/24 AT 09:37:44

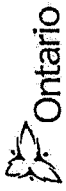
\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON 588-17836; SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO  
 PLANNING ACT CONSENT IN 1356494. FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2013/06/13. INSTRUMENT WR759234.  
 RECEIPT: RE-ENTRY FROM 22417-0131  
 CAPACITY SHARE ROWR

PROPERTY REMARKS: ESTATE/DUAL/ESTER. FEE SIMPLE LT ABSOLUTE PLUS OWNERS' NAMES 144 PARK LTD.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2013/06/13 **				
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
WR611290	2011/05/02	NOTICE	\$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2180038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR623222	2011/07/07	NOTICE	\$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR639367	2011/09/01	TRANSFER	\$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
WR639368	2011/09/01	CHARGE	\$8,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR639369	2011/09/01	CHARGE	\$3,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/11/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660381	2011/12/13	CHARGE	\$2,887,696	144 PARK LTD.	HARSHALLZEHR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	\$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR690395	2012/05/25	CHARGE	\$40,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690396	2012/05/25	NO ASSGN REVT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690416	2012/05/25	POSTPONEMENT		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND  
REGISTRY  
OFFICE #58

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

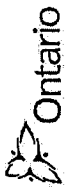
PAGE 2 OF 2  
PREPARED FOR NicolcTap  
ON 2014/10/24 AT 09:37:44

22417-0134 (UT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
WR690422	2012/05/25	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
		REMARKS: WR660369 TO WR690395				
WR690423	2012/05/25	POSTPONEMENT		MARSHALLZEH GROUP INC.	LAURENTIAN BANK OF CANADA	C
		REMARKS: WR660361 TO WR690395				
58R17836	2013/06/13	PLAN REFERENCE		144 PARK LTD.		C
WR759234	2013/06/13	APL ABSOLUTE TITLE				C
58R18116	2014/02/07	PLAN REFERENCE				C

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #58



22417-0115 (LT)

PAGE 1 OF 2  
PREPARED FOR Nicoletyap  
ON 2014/10/24 AT 09:38:30

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

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

PLANNING ACT CONSENT IN DOCUMENT WR611292. FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2013/06/13, INSTRUMENT WR759234.

DIN CREATION DATE:  
2013/06/13

RECENTLY:  
RE-ENTRY FROM 22417-0132

CAPACITY SHARE  
FORM

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHED
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2013/06/13 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
**		PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FOREFEITURE **				
**		TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **				
WR611290	2011/05/02	NOTICE	\$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2184038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR625222	2011/07/07	NOTICE	\$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR639367	2011/09/01	TRANSFER	\$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
WR639368	2011/09/01	CHARGE	\$8,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR639369	2011/09/01	CHARGE	\$3,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/11/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660381	2011/12/13	CHARGE	\$2,887,696	144 PARK LTD.	MARSHALLZEHR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	\$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR650395	2012/05/25	CHARGE	\$40,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR650396	2012/05/25	NO ASSGN RENT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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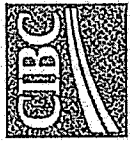
22417-0135 (LTV)

CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT • SUBJECT TO RESERVATIONS IN CROWN GRANT •

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CRED
WR690416	2012/05/25	POSTPONEMENT REMARKS: WR639359 TO WR690395		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C
WR690422	2012/05/25	POSTPONEMENT REMARKS: WR639358 TO WR690395		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
WR690423	2012/05/25	POSTPONEMENT REMARKS: WR660391 TO WR690395		MARSHALLZEHR GROUP INC.	LAURENTIAN BANK OF CANADA	C
58R17836	2013/06/13	PLAN REFERENCE		144 PARK LTD.		C
WR759234	2013/06/13	APL ABSOLUTE TITLE				C
58R18116	2014/02/07	PLAN REFERENCE				C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

# TAB D



# Payment Detail Report

### Payment Summary

Payment ID: 3290246  
 Payment Type: Wire - International  
 Status: Bank Confirmed  
 Template:  
 Value Date: 24-Oct-2014  
 Tran Date: 24-Oct-2014  
 Credit Amount: CAD 987,715.00  
 Debit Amount: CAD 987,715.00  
 Exchange Rate:  
 Contract ID:  
 Customer Ref: 120110  
 Routing Method:  
 Charges: BEN

### Debit Account

Number: 047026640117  
 Name: Goldman Sloan Nash and Haber LLP  
 Type: DEP  
 Bank: Canadian Imperial Bank of Commerce  
 Originator  
 Name: GOLDMAN SLOAN NASH & HABER LLP  
 ID:  
 Address: 1600-480 UNIVERSITY AVE  
 TORONTO ON M5G 1V2 CA

### Instructions to Beneficiary

144 Park Advance

### Beneficiary

Name: Mady Development Corporation  
 Account: 1051341  
 Address: 8791 Woodbine Avenue  
 Suite 100  
 Markham, ON L3R 0P4 CA  
 Beneficiary Bank  
 ID: CA 000307922  
 Name: ROYAL BANK OF CANADA  
 Address: 245 QUELLETTE AVE  
 245 QUELLETTE AVE  
 WINDSOR CA

### First Intermediary Bank

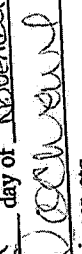
ID: SWIFT ROYCCAT2XXX  
 Name: ROYAL BANK OF CANADA  
 Address: 180 WELLINGTON STREET WEST  
 PAYMENT CENTRE - TORONTO  
 TORONTO CA

### Audit Information

6 Signatures Entered:	User ID	User Group	Timestamp
Entered:	91195046	00031845	24-Oct-2014 10:34AM
Modified:			
Repaired:			
Approved 1:	99583623	00031845	24-Oct-2014 10:46AM
Approved 2:	99583623	00031845	24-Oct-2014 10:46AM
Approved 3:	99583623	00031845	24-Oct-2014 10:46AM
Approved 4:	91209235	00031845	24-Oct-2014 10:54AM
Approved 5:	91209235	00031845	24-Oct-2014 10:54AM
Approved 6:	91209235	00031845	24-Oct-2014 10:54AM

### Settlement Information

Extracted:  
 Bank Confirmed: 290246  
 Bank Rejected:  
 24/10/14 10:54:22AM

This is Exhibit "D" to the Affidavit of  
 Nicole Top sworn before me  
 this 15th day of November, 2015.  
  
 A Commissioner, etc.

Cheryl Elizabeth Cochrane, a Commissioner, etc.,  
 Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
 Barristers and Solicitors. Expires April 4, 2017.

# TAB E

This is Exhibit "E" to the Affidavit of  
Nicole Yap sworn before me  
this 15<sup>th</sup> day of November, 2015.

Walter M. Traub

A Commissioner, etc.



GOLDMAN SLOAN NASH & HABER LLP  
BARRISTERS & SOLICITORS

Cheryl Elizabeth Cochrane, a Commissioner, etc.,  
Province of Ontario, for Goldman Sloan Nash & Haber LLP,  
Barristers and Solicitors. Expires April 4, 2017.

WALTER M. TRAUB  
Direct Dial: 416-597-3378  
E-mail: traub@gsnh.com

Law Clerk: Nicole Yap  
Tel: 416-597-6479  
Email: yap@gsnh.com

Our File No.: 120110

*dedicated to your success*

October 24, 2014

Laurentian Bank of Canada  
Real Estate Financing, Legal Services  
130 Adelaide St. West, Suite 300  
Toronto, Ontario M5H 3P5

Dear Sirs:

**RE: Laurentian Bank of Canada and National Bank of Canada (collectively the "Lenders")  
Loan to 144 Park Ltd (the "Borrower") as guaranteed by D. Mady Investments Inc., D. Mady  
Holdings Inc. and Charles Mady (collectively the "Guarantors")  
142, 144 and 148 Park Street and 21 Allen Street, Waterloo (collectively the "Property")  
Mortgage Reference No. 1423771.1**

We confirm completion on today's date of the twenty-eighth advance under the above-noted loan transaction in accordance with the Bank's instruction reflected in an email from Walter Traub of even date. With respect to our usual searches, we wish to confirm as follows:

1. There have been no changes in registered ownership of the property from that as reported to you in our Final Report.
2. There were no outstanding liens or other encumbrances except as previously reported or advised to you in our Final Report.
3. There were no outstanding executions against the Borrower, Beneficial Owners and/or Guarantors in this loan transaction.
4. We confirm that the 2014 realty taxes have been paid in full.

We enclose herewith a copy of our letter to the Borrower's Counsel together with all enclosures listed therein.

In accordance with your instructions and a Re-Direction received from the Borrower we confirm that we are wiring the net advance proceeds to the RBC Royal Bank account held in the name of Mady Development Corporation.

Trusting that the foregoing is satisfactory, we remain,

Yours truly,

**GOLDMAN SLOAN NASH & HABER LLP**

Per: 

Walter M. Traub

WMT/ny  
Encls.

480 University Ave|Suite 1600|Toronto, ON Canada|M5G 1V2|T 416-597-9922|F 416-597-3370|T-Free 1-877-597-9922|www.gsnh.com





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

Court File No.: CV15-10843-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**AFFIDAVIT OF NICOLE YAP**

**Thornton Groat Finnigan LLP**  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
TD West Tower, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**Grant Moffat / Asim Iqbal**  
Email: [gmoffat@tgfc.ca](mailto:gmoffat@tgfc.ca) / [aiqbal@tgfc.ca](mailto:aiqbal@tgfc.ca)  
Tel: (416) 304-1616  
Fax: (416) 304-1313  
Lawyers for Laurentian Bank of Canada