

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



THE HONOURABLE Mr.)

MONDAY, THE 16th DAY

JUSTICE McEwen)

OF JULY, 2018

**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
JADE-KENNEDY DEVELOPMENT CORPORATION
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

APPROVAL AND VESTING ORDER
(re Parking Unit 178)

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed trustee over the lands and premises owned by Jade-Kennedy Development Corporation (the "**Debtor**") pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Trustee and Samuel S. Luk (the "**Purchaser**") dated June 27, 2018 and appended to the Twenty-Third Report of the Trustee dated July 10, 2018 (the "**Twenty-Third Report**"), and vesting in the

Purchaser the Debtor's right, title and interest 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 Motion Record of the Trustee, the Twenty-Third Report and on hearing the submissions of counsel for the Trustee, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Christina Clark sworn July 11, 2018, filed:

1. **THIS COURT ORDERS** that the time for service of the Trustee's notice of motion and motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Trustee is hereby authorized and approved, with such minor amendments as the Trustee may deem necessary. The Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **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 the Debtor'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 Pattillo dated February 11, 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) 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.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) 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 Real Property all of the Claims listed in Schedule C hereto.

5. **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.

6. **THIS COURT ORDERS** that, from and after the delivery of the Trustee's Certificate, the Trustee is authorized to distribute the amount of \$3,800, from the net proceeds from the sale of the Purchased Assets, to York Region Standard Condominium Corporation No. 1265 on accounts of its lien registered against the Purchased Assets under the *Condominium Act, 1998* (Ontario).

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

8. **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.

9. **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.

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

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

JUL 16 2018

PER / PAR: 

Schedule A – Form of Trustee’s Certificate

Court File No. CV15-10882-00CL

**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
JADE-KENNEDY DEVELOPMENT CORPORATION
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
(re Parking Unit 178)

RECITALS

A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice dated February 11, 2015, Collins Barrow Toronto Limited was appointed as trustee over the lands and premises owned by Jade-Kennedy Development Corporation (the “**Debtor**”) 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 July 16, 2018 (the “**Order**”), the Court approved the agreement of purchase and sale dated June 27, 2018 (the “**Sale Agreement**”) between the Trustee and Samuel S. Luk (the “**Purchaser**”) and 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) that 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 Order or the Sale Agreement.

THE TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Trustee has received the Purchase Price for the Purchased Assets; and
2. The Transaction has been completed to the satisfaction of the Trustee.
3. This Certificate was delivered by the Trustee at _____ [TIME] on July 16, 2018.

**RSM CANADA LIMITED,
in its capacity as Trustee of the Property, and
not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

PIN 29796-0429

Property Description: Unit 178, level B, York Region Standard Condominium Plan No. 1265 and its appurtenant interest; subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham

Schedule C – Claims to be deleted and expunged from title to Real Property

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
YR1721683	2011/10/03	Charge	\$16,500,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1763902	2011/12/23	No Assgn Rent Spec		Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR1764062	2011/12/23	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1928490	2012/12/21	APL Absolute Title		Jade-Kennedy Development Corporation	
YR1954842	2013/03/13	Postponement		Aviva Insurance Company of Canada	The Corporation of the City of Markham
YR1962278	2013/04/04	Transfer Rel & Aband	\$1	Jade-Kennedy Development Corporation	Jade-Kennedy Development Corporation
YR2029025	2013/09/04	Charge	\$10,000,000	Jade-Kennedy Development Corporation	Am-Stat Corporation
YR2238221	2014/12/31	Condo Lien/98	\$144	York Region Standard Condominium Corporation No. 1265	
YR2238316	2014/12/31	Construction Lien	\$10,826	Draglam Waste & Recycling Inc.	
YR2254502	2015/02/10	Certificate		Draglam Waste & Recycling Inc.	

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
MA31145	1951/07/26	Bylaw		The Corporation of the Township of Markham	
YR686388	2005/08/18	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport	
YR686395	2005/08/18	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport	
YR694205	2005/08/31	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport	
YR753574	2005/12/21	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport	
YR1445332	2010/02/25	Notice of Lease	\$2	Jade-Kennedy Development Corporation	T. & T. Supermarket Inc.
YR1495979	2010/06/15	Notice	\$2	The Corporation of the Town of Markham	Jade-Kennedy Development Corporation
YR1499090	2010/06/18	Notice		The Corporation of the Town of Markham	Jade-Kennedy Development Corporation
YR1616829	2011/03/02	Notice	\$2	The Corporation of the Town of Markham	Jade-Kennedy Development Corporation, The Regional Municipality of York

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
YR1657121	2011/06/02	Transfer Easement	\$2	Jade-Kennedy Development Corporation	Rogers Communication Inc.
YR1699150	2011/08/22	APL (General)		T & T Supermarket Inc.	Jade-Kennedy Development Corporation
YR1954840	2013/03/13	Notice		The Corporation of the City of Markham	Jade-Kennedy Development Corporation
YRCP1265	2014/09/11	Standard Condo Plan			
YR2185723	2014/09/11	Condo Declaration		Jade-Kennedy Development Corporation	
YR2192411	2014/09/26	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1265	
YR2192414	2014/09/26	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1265	
YR2192417	2014/09/26	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1265	
YR2192427	2014/09/26	Notice Agreement		York Region Standard Condominium Corporation No. 1265	Jade-Kennedy Development Corporation
YR2192433	2014/09/26	Notice Agreement		Jade-Kennedy Development Corporation	York Region Standard Condominium Corporation No. 1265
YR2216478	2014/11/17	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1265	
YR2230492	2014/12/11	No Sec Interest	\$2	81 Capital Inc.	

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Court File No. CV15-10882-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER
(re Parking Unit 178)

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Court-appointed Trustee