



Court File No. CV15-10882-00CL

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

THE HONOURABLE MR.) MONDAY, THE 29th DAY
)
JUSTICE HAINEY) OF JANUARY, 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

(Phase II Commercial Unit)
(Unit 360, Level 1)

THIS MOTION made by RSM Canada Limited, in its capacity as Court-appointed trustee over the lands and premises owned by Jade-Kennedy Development Corporation (“JKDC”), appointed 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 between the Trustee and Carman’s Dining Club Inc. (the “Purchaser”) (the “Sale Agreement”) and appended to the Twenty-First Report of the Trustee dated January 16, 2018 (the “Twenty-First Report”), and vesting in the Purchaser the right, title and interest of JKDC in and to the assets described in the

Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-First Report and the Appendices thereto, 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 service of Christina Clark sworn January 18, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreements 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.

2. **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 JKDC's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto 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, condominium liens, certificates of action, executions (including, without limitation, execution numbers 14-0003158, 15-0000622 and 15-0000623), 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.

3. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of York Region 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 more particularly identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in Schedule "C" hereto.

4. **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.

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

6. **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 JKDC and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of JKDC;

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 JKDC and shall not be void or voidable by creditors of JKDC, 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.

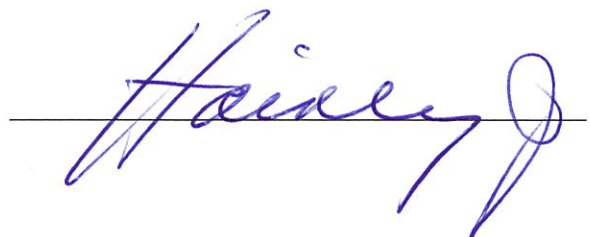
7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

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

JAN 29 2018

MB

DEB / PAR

A handwritten signature in blue ink, appearing to read "Hainey", is written over a horizontal line. The signature is stylized and includes a large loop at the end.

Schedule A – Form of Trustee’s Certificate

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SUPERIOR COURT OF JUSTICE
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**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
(Phase II Commercial Unit)
(Unit 360, Level 1)

RECITALS

A. Pursuant to an Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (the "**Court**") dated February 11, 2015, Collins Barrow Toronto Limited was appointed as trustee pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**") of certain property of Jade-Kennedy Development Corporation ("**JKDC**").

B. Pursuant to an Order of the Court dated January 29, 2018 (the "**Approval and Vesting Order**"), the Court approved the agreement of purchase and sale between the Trustee and Carman’s Dining Club Inc. (the "**Purchaser**") (the "**Sale Agreement**") and provided for the vesting in the Purchaser of JKDC’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; (ii) the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Trustee and the Purchaser; and (iii) 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 Sale Agreement or the Approval and Vesting Order.

THE TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Trustee and the Purchaser; 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].

**RSM CANADA LIMITED, in its capacity as
Court-appointed Trustee of the Property of
Jade-Kennedy Development Corporation and
not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

PIN	Property Description
29759-0839 (LT)	Unit 360, Level 1, York Region Standard Condominium Plan No. 1228 and its appurtenant interest; subject to easements as set out in Schedule A as in YR1966697 ; City of Markham

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

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR1149869	2008/04/16	Transfer	\$2,063,300	2022662 Ontario Inc.	Jade-Kennedy Development Corporation
YR1149870	2008/04/16	Transfer	\$6,492,700	2030445 Ontario Inc.	Jade-Kennedy Development Corporation
YR1444873	2010/02/24	Transfer	\$1,200,000	Dougson Investments Inc.	Jade-Kennedy Development Corporation
YR1444874	2010/02/24	Charge	\$30,000,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1495980	2010/06/15	Postponement		Aviva Insurance Company of Canada	The Corporation of The Town of Markham
YR1533099	2010/08/13	Postponement		Aviva Insurance Company of Canada	The Corporation of The Town of Markham
YR1616918	2011/03/02	Postponement		Aviva Insurance Company of Canada	The Corporation of The Town of Markham
YR1721683	2011/10/03	Charge	\$16,500,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1763873	2011/12/23	Charge	\$45,000,000	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR1763874	2011/12/23	No Assgn		Jade-Kennedy Development	Laurentian Bank

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
		Rent Gen		Corporation	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
YR1832081	2012/06/01	Notice	\$2	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR1954841	2013/03/13	Postponement		Aviva Insurance Company of Canada	The Corporation of The City of Markham
YR1954842	2013/03/13	Postponement		Aviva Insurance Company of Canada	The Corporation of The City of Markham
YR1954844	2013/03/13	Postponement		Laurentian Bank of Canada	The Corporation of The City of Markham
YR2029025	2013/09/04	Charge	\$10,000,000	Jade-Kennedy Development Corporation	Am-Stat Corporation
YR2222182	2014/11/27	Construction Lien	\$102,626	Global Mechanical Ltd.	
YR2222710	2014/11/28	Construction Lien	\$14,465	Global Fire Protection Ltd.	
YR2222713	2014/11/28	Construction Lien	\$195,012	Global Mechanical Ltd.	

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR2230304	2014/12/11	Construction Lien	\$226,447	Freudel Kitchens Limited	
YR2232092	2014/12/15	Construction Lien	\$501,133	2050491 Ontario Inc.	
YR2233490	2014/12/17	Construction Lien	\$132,902	Global Precast Inc.	
YR2235281	2014/12/19	Construction Lien	\$249,916	Guest Tile Inc	
YR2236748	2014/12/24	Construction Lien	\$81,519	Triumph Roofing & Sheet Metal Inc.	
YR2237716	2014/12/30	Construction Lien	\$822,797	Dircam Electric Limited	
YR2237952	2014/12/30	Construction Lien	\$62,154	Great Pyramid Aluminum Ltd.	
YR2238316	2014/12/31	Construction Lien	\$10,826	Draglam Waste & Recycling Inc.	
YR2238636	2015/01/02	Construction Lien	\$11,978	Procan Inc.	
YR2240570	2015/01/08	Construction Lien	\$37,604	CRS Contractors Rental Supply General Partner Inc.	
YR2242380	2015/01/13	Certificate		Freudel Kitchens Limited	Jade-Kennedy Development Corporation, Mady Development Corporation, Mady

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
					Contract Division (2009) Ltd., Mady Contract Division Ltd., D. Mady Investments Inc., Aviva Insurance Company of Canada, Laurentian Bank of Canada, Am-Stat Corporation
YR2248368	2015/01/27	Construction Lien	\$601,566	Imperial Trim Supply Ltd.	
YR2248401	2015/01/27	Certificate		Global Mechanical Ltd.	Jade-Kennedy Development Corporation, Aviva Insurance Company of Canada, Laurentian Bank of Canada, Am-Stat Corporation
YR2248965	2015/01/28	Certificate		Guest Tile Inc.	Jade-Kennedy Development Corporation, Aviva Insurance Company of Canada, Laurentian Bank of Canada, Am-Stat Corporation
YR2249452	2015/01/29	Construction Lien	\$333,239	Aluminium Window Design Installations Inc.	
YR2251585	2015/02/03	Certificate		Triumph Roofing & Sheet Metal	

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
				Inc.	
YR2253220	2015/02/06	Certificate		Dircam Electric Limited	Jade-Kennedy Development Corporation, 81 Capital Inc., Am-Stat Corporation, Laurentian Bank of Canada, Aviva Insurance Company of Canada
YR2254098	2015/02/10	Construction Lien	\$89,648	MJC Contracting 2014 Inc.	
YR2254630	2015/02/11	Certificate		Great Pyramid Aluminum Ltd.	81 Capital Inc., Am-Stat Corporation, Laurentian Bank of Canada, Aviva Insurance Company of Canada
YR2264794	2015/03/09	Certificate		Imperial Trim Supply Ltd.	Jade-Kennedy Development Corporation, Mady Contract Division Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., D. Mady Investments Inc., Aviva Insurance Company of Canada, Laurentian Bank of Canada, Am-Stat Corporation

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR2265185	2015/03/10	Certificate		Aluminium Window Design Installations Inc.	Ontario Superior Court of Justice
YR2265420	2015/03/11	Condo Lien/98	\$1,993	York Region Standard Condominium Corporation No. 1228	
YR2271382	2015/03/27	Certificate		MJC Contracting 2014 Inc.	Jade-Kennedy Development Corporation, Her Majesty the Queen in Right of Ontario as Represented by the Ministry of Transportation, The Regional Municipality of York, City of Markham, Aviva Insurance Company of Canada, Laurentian Bank of Canada, Am-Stat Corporation, 1475398 Ontario Inc., BMW Group Financial Services Canada, A Division of BMW Canada Inc., BMW Canada Inc.

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

(unaffected by the Approval and Vesting Order)

Reg. Num.	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	

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
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
YR1657121	2011/06/02	Transfer Easement	\$2	Jade-Kennedy Development Corporation	Rogers Communications Inc.
YR1699150	2011/08/22	APL (General)		T. & T. Supermarket Inc.	Jade-Kennedy Development Corporation
YR1895409	2012/10/05	No Sec Interest	\$2	Morenergy Capital Corporation	
YR1928490	2012/12/21	APL Absolute Title		Jade-Kennedy Development Corporation	
65R34162	2013/03/05	Plan Reference			
YR1954840	2013/03/13	Notice		The Corporation of The City of Markham	Jade-Kennedy Development Corporation

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR1962278	2013/04/04	Transfer Rel&Aband	\$1	Jade-Kennedy Development Corporation	Jade-Kennedy Development Corporation
YRCP1228	2013/04/17	Standard Condo Plan			
YR1966697	2013/04/17	Condo Declaration		Jade-Kennedy Development Corporation	
YR1970477	2013/04/29	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1228	
YR1970484	2013/04/29	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1228	
YR2112686	2014/04/03	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1228	
YR2238990	2015/01/05	Condo Amendment		Jade-Kennedy Development Corporation	
YR2250114	2015/01/30	No Chng Addr Condo		York Region Standard Condominium Corporation No. 1228	

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER
(Phase II Commercial Unit)
(Units 360, Level 1)

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