

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

THE HONOURABLE MR. ) FRIDAY, THE 28<sup>th</sup> DAY  
)  
JUSTICE MCEWEN ) OF AUGUST, 2020

**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 Kiosk Unit 388)

**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 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 ATBPS Inc. (the “**Purchaser**”) dated August 4, 2020 and appended to the Twenty-Sixth Report of the Trustee dated August 25, 2020 (the “**Twenty-Sixth 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 virtually by Zoom videoconference due to the COVID-19 crisis.

**ON READING** the Motion Record of the Trustee, the Twenty-Sixth Report and on hearing the submissions of counsel for the Trustee, no one else appearing for any other person on the service list, although served as evidenced by the Affidavit of Lynda Christodoulou sworn August 26, 2020, 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 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.

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 upon the closing of the Transaction, the Trustee is authorized to distribute to York Region Standard Condominium Corporation No. 1228 ("**YRSCC No. 1228**") from the net sale proceeds of the Purchased Assets such amount as

confirmed by the Trustee to be validly secured by YRSCC No. 1228's registered condominium lien against the Purchased Assets.

7. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of 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.

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

  
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**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*,  
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**TRUSTEE’S CERTIFICATE**  
(re Kiosk Unit 388)

**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 August 28, 2020 (the “**Order**”), the Court approved the agreement of purchase and sale dated August 4, 2020 (the “**Sale Agreement**”) between the Trustee and ATBPS Inc. (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 Sale Agreement or the 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 September , 2020.

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

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

Name:

Title:

## Schedule B – Purchased Assets

<b>PIN</b>	<b>Property Description</b>
29759-0742 (LT)	Unit 388, Level 2, 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**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
YR1444874	2010/02/24	Charge	\$30,000,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1445330	2010/02/25	Postponement		Aviva Insurance Company of Canada	Laurentian Bank 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
YR1615474	2011/02/28	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1616918	2011/03/02	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1954841	2013/03/13	Postponement		Aviva Insurance Company of Canada	The Corporation of the Town of Markham
YR2062938	2013/11/20	Condo Lien	\$1,499	York Region Condominium Corporation No. 1228	

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
YR2195650	2014/10/01	Charge	\$3,600,000	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR2195651	2014/10/01	Charge	\$2,400,000	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR2234798	2014/12/19	Charge	\$8,000,000	Jade-Kennedy Development Corporation	MarshallZehr Group Inc.
YR2238316	2014/12/31	Construction Lien	\$10,826	Draglam Waste & Recycling Inc.	
YR2254502	2015/02/10	Certificate		Draglam Waste & Recycling Inc.	
YR2473513	2016/05/18	Transfer of Charge		Laurentian Bank of Canada	MarshallZehr Group Inc.

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

**(unaffected by the Approval and Vesting Order)**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
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 Finance	
YR686395	2005/08/18	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Finance	
YR694205	2005/08/31	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Finance	
YR753574	2005/12/21	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Finance	

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
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.
YR1895409	2012/10/05	No Sec Interest	\$2	Morenergy Capital Corporation	
YR1954840	2013/03/13	Notice		The Corporation of the City of Markham	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	

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
YR1970484	2013/04/29	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1228	
YR1975619	2013/05/10	Apl Annex Rest Cov		Jade-Kennedy Development Corporation	
YR2112686	2014/04/03	Condo Bylaw/98		York Region Standard Condominium Corporation No. 1228	
YR2131732	2014/05/27	APL (General)		York Region Standard Condominium Corporation No. 1228	
YR2238990	2015/01/05	Condo Amendment		Jade-Kennedy Development Corporation	
YR2250103	2015/01/30	No Chng Addr Condo		York Region Standard Condominium Corporation No. 1228	

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Court File No. CV15-10882-00CL

28 August 20

Order to go on an unopposed basis as per the draft filed and signed.  
The relief sought is fair and reasonable.



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

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER**  
(re Kiosk Unit 388)

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Court-appointed Trustee**