

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF THE 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**

**FOURTH REPORT TO THE COURT OF COLLINS BARROW TORONTO LIMITED  
IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE**

**OCTOBER 8, 2015**

## INTRODUCTION

1. By Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 11, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited was appointed trustee (the "**Trustee**") pursuant to Section 68(1) of the *Construction Lien Act* (Ontario), of the lands and premises legally described in Schedule "A" to the Appointment Order and owned by Jade-Kennedy Development Corporation ("**JKDC**") (collectively, the "**Property**"). A copy of the Appointment Order is attached hereto and marked as **Appendix "A"**.
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the Property, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, market any or all of the Property, and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. Publicly available information relating to this proceeding has been posted on the Trustee's website, which can be found at:

<http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>

## PURPOSE OF THE FOURTH REPORT

4. The purpose of this Fourth Report of the Trustee (the "**Fourth Report**") is to request that the Court:

- (a) grant an Order approving the sale by the Trustee of Phase I commercial units 73, 74 and 75, located on level 1 (collectively, the “**Kiosk Units**”), to 2408373 Ontario Inc. (the “**Kiosk Units Purchaser**”) pursuant to an agreement of purchase and sale between the Trustee and Mou Chen dated August 31, 2015, as assigned by Mou Chen to the Kiosk Units Purchaser, and vesting the Kiosk Units in the Kiosk Units Purchaser free and clear of all claims and encumbrances; and
  
- (b) grant an Order approving the sale by the Trustee of Phase I commercial unit 60, level 1 (“**Unit 60**”) to 2345297 Ontario Inc. (the “**Unit 60 Purchaser**”) pursuant to the agreement of purchase and sale between the Trustee and the Unit 60 Purchaser dated August 28, 2015, and vesting Unit 60 in the Unit 60 Purchaser free and clear of all claims and encumbrances.

## **TERMS OF REFERENCE**

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

reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

## **BACKGROUND**

6. Pursuant to paragraph 2 of the Appointment Order, the Trustee was appointed with respect to the Property, which was described in Schedule "A" to the Appointment Order. The description of the Property on Schedule "A" included the following property:

- (a) "PIN 29759-0060 (LT) – Unit 60, 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";
  - (b) "PIN 29759-0073 (LT) – Unit 73, 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";
  - (c) "PIN 29759-0074 (LT) – Unit 74, 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";
- and

- (d) "PIN 29759-0075 (LT) – Unit 75, 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".
7. The property listed in paragraph 6(a) is referred to herein as Unit 60. A copy of the parcel register for Unit 60 is attached hereto and marked as **Appendix "B"**.
8. The properties listed in paragraphs 6(b) through (d) are referred to herein as the Kiosk Units. Copies of the parcel registers for the Kiosk Units are collectively attached hereto and marked as **Appendix "C"**.
9. The Kiosk Units are each approximately 31 gross square feet in size, and are located on level 1 of the shopping mall known as "The Mall at South Unionville Square". As of the date of the Trustee's appointment on February 11, 2015, none of the Kiosk Units were subject to an agreement of purchase and sale.
10. Unit 60 is approximately 1,784 gross square feet in size and is the largest commercial unit available for sale by the Trustee. It is located on level 1 of The Mall at South Unionville Square in a high traffic area.
11. Pursuant to an agreement of purchase and sale dated June 8, 2009, JKDC agreed to sell Unit 60 to Runquan Jiang. Mr. Jiang commenced an action against JKDC in May 2013 seeking, among other things, a declaration that he was entitled to rescind the agreement. Unit 60 was re-listed for sale in June 2013 and no offers other than the one received from the Unit 60 Purchaser were received by JKDC or the Trustee.

## **SALE TRANSACTIONS**

12. Pursuant to paragraphs 3(k) through (m) of the Appointment Order, the Trustee was authorized by the Court to market the Property, sell the Property with the approval of the Court, and to apply for vesting orders necessary to convey the Property free and clear of all claims and encumbrances affecting the Property.
13. Pursuant to paragraph 3(d) of the Appointment Order, the Trustee was authorized by the Court to engage agents to assist with the exercise of the Trustee's powers and duties.
14. As previously reported to the Court, the Trustee has retained TradeWorld Realty Inc. ("**TradeWorld**") to list all unsold Property for sale, pursuant to a listing agreement dated May 4, 2015. The Kiosk Units and Unit 60 were included as property to be listed by TradeWorld.
15. The Trustee retained Harris Sheaffer LLP, condominium lawyers to JKDC, to prepare a draft agreement of purchase and sale that could be used by the Trustee in connection with any sale transactions for the unsold Property.

### **The Kiosk Units**

16. Based on the advice and recommendation of TradeWorld, the Kiosk Units were listed at a price of \$29,000 each, based on the value of comparable units in the marketplace.
17. The Trustee received an offer for the Kiosk Units on August 26, 2015. This offer was for the asking price (\$29,000 each for a total of \$87,000), with a November

23, 2015 closing date. After some negotiations, the closing date was subsequently changed to October 20, 2015, and an agreement of purchase and sale was agreed to by the Trustee and Mou Chen on August 31, 2015, subject to Court approval. A copy of the agreement of purchase and sale is attached hereto and marked as **Appendix "D"**.

18. Mou Chen subsequently assigned the agreement to the Kiosk Units Purchaser pursuant to an assignment agreement dated October 7, 2015, a copy of which is attached hereto and marked as **Appendix "E"**.
19. The Kiosk Units are subject to the following encumbrances:
  - (a) a \$30 million charge in favour of Aviva Insurance Company of Canada ("**Aviva**");
  - (b) a condominium lien in favour of York Region Standard Condominium Corporation No. 1228 ("**YRSCC 1228**"); and
  - (c) construction liens in favour of Guest Tile Inc. ("**Guest Tile**") and Draglam Waste & Recycling Inc. ("**Draglam**").
20. In the event that the sale transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further Order of the Court.
21. The Trustee believes that the Kiosk Units have been fairly and properly exposed to the market through the listing by TradeWorld and recommends that the sale transaction with the Kiosk Units Purchaser be approved by the Court as:

- (a) the purchase price is in the amount of the listing price for the units; and
- (b) the transaction is the only firm offer received by the Trustee for the Kiosk Units and is unconditional other than with respect to Court approval.

## **UNIT 60**

- 22. Based on the advice and recommendation of TradeWorld, Unit 60 was listed at a price of \$849,900, based on the value of comparable units in the marketplace. Since its appointment, the Trustee has been funding the ongoing costs for this unit as follows: (i) 2015 property taxes of \$10,362.63; and (ii) monthly common area fees of \$1,819.25.
- 23. As referred to above, Unit 60 was sold, pre-construction, to Mr. Jiang in June 2009. The purchase price was \$825,800 based on a gross square footage of 1,877 or \$439.96 per square foot. When the building was completed, there was a change in the size to 1,784 gross square feet.
- 24. The Trustee first received an offer for this unit from the Unit 60 Purchaser on July 24, 2015. After ongoing discussions and negotiations, an agreement of purchase and sale was entered into with this purchaser on September 16, 2015, for a purchase price of \$800,000 or \$448.43 per square foot. This offer contains conditions for financing and the Unit 60 Purchaser receiving approval to operate a restaurant. A copy of the agreement of purchase and sale is attached hereto and marked as **Appendix "F"**.



25. The purchase price is comparable to other similar units that have been sold, such as the unit adjacent to Unit 60, which is 1,877 gross square feet and sold in 2009 for \$813,328 or \$433.31 per square foot.
26. The sale transaction is subject to a number of conditions to be complete by the purchaser, is scheduled to close on October 30, 2015, and is subject to Court approval.
27. Unit 60 is subject to the following encumbrances:
  - (a) a \$30 million charge in favour of Aviva;
  - (b) a condominium lien in favour of YRSCC 1228;
  - (c) a \$3.6 million charge in favour of Laurentian Bank of Canada ("**LBC**");
  - (d) a \$2.4 million charge in favour of LBC;
  - (e) an \$8.0 million charge in favour of MarshallZehr Group Inc.; and
  - (f) construction liens in favour of Guest Tile and Draglam.
28. In the event that the sale transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further Order of the Court.
29. The Trustee believes that Unit 60 has been fairly and properly exposed to the market through the listing by TradeWorld and recommends that the sale transaction with the Unit 60 Purchaser be approved by the Court as the offer

from the Unit 60 Purchaser is the only offer that has been received by TradeWorld.

**TRUSTEE'S REQUEST TO THE COURT**

30. The Trustee requests that the Court grants orders:
- (a) approving the sale by the Trustee of the Kiosk Units to the Kiosk Units Purchaser, and vesting the Kiosk Units in the Kiosk Units Purchaser free and clear of all claims and encumbrances; and
  - (b) approving the sale by the Trustee of Unit 60 to the Unit 60 Purchaser, and vesting Unit 60 in the Unit 60 Purchaser free and clear of all claims and encumbrances.

All of which is respectfully submitted to this Court as of this 8<sup>th</sup> day of October, 2015.

**COLLINS BARROW TORONTO LIMITED**

In its capacity as Trustee under the *Construction Lien Act* of Jade-Kennedy Development Corporation as owner of South Unionville Square and not in its personal capacity

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

  
Bryan A. Tannenbaum  
President