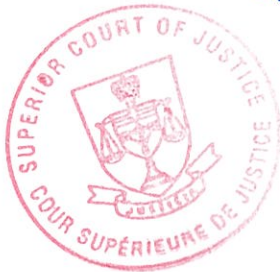


**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) TUESDAY, THE 22nd DAY
)
JUSTICE **CONWAY**) OF MARCH, 2016



**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**

ORDER

(re Replacement Letters of Credit)

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises owned by Jade-Kennedy Development Corporation, appointed 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 Sixth Report of the Trustee dated March 15, 2016 (the "**Sixth Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee, and those other parties listed on the Counsel Slip, no one else appearing for any other person on

the service list, although properly served as appears from the affidavit of service of Lynn Lee sworn March 16, 2016, filed,

1. **THIS COURT ORDERS AND DECLARES** that the execution of the Letter of Credit Indemnity Agreement between the Trustee and The Toronto-Dominion Bank (“**TD Bank**”) dated February 29, 2016 that was executed by the Trustee on March 11, 2016, and the letter agreement between the Trustee and TD Bank dated February 26, 2016 that was accepted by the Trustee on March 11, 2016 (collectively, the “**Letters of Credit Documents**”), in the forms attached as Appendix “D” to the Sixth Report, is hereby authorized and approved, with such minor amendments as the Trustee considers appropriate. The Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable in connection with the issuance of the Replacement Letters of Credit (as defined in the Sixth Report).

2. **THIS COURT ORDERS** that, in this Order, each of the following letters of credit issued by Laurentian Bank of Canada (“**Laurentian**”) shall be referred to as an “**LBC LC**”:

- (a) LC600796 in favour of the City of Markham the amount of \$1,589,573.21;
- (b) LC601607 in favour of the City of Markham in the amount of \$20,000.00;
- (c) LC601065 in favour of the City of Markham in the amount of \$83,950.00;
- (d) LC601064 in favour of the City of Markham in the amount of \$455,896.11;
- (e) LC601113 in favour of the City of Markham in the amount of \$25,000.00;

(f) LC601070 in favour of the Regional Municipality of York in the amount of \$27,367.20; and

(g) LC600579 in favour of the Regional Municipality of York in the amount of \$54,000.00.

3. **THIS COURT ORDERS** that, upon satisfaction of the escrow conditions for release of the monies held by Laurentian as cash collateral with respect to the LBC LC (the "**LBC LC Cash Collateral**") as set out in an escrow agreement to be entered into by Laurentian, TD Bank, the Trustee, the City of Markham, the Regional Municipality of York, and Chaitons LLP as escrow agent, Laurentian shall pay to the Trustee all LBC LC Cash Collateral, subject to the right of Laurentian to deduct from the LBC LC Cash Collateral any unpaid fees, including reasonable legal fees and disbursements, incurred or chargeable by Laurentian with respect to the LBC LCs.

4. **THIS COURT ORDERS AND DECLARES** that upon payment of the net amount of the LBC LC Cash Collateral by Laurentian to the Trustee in accordance with paragraph 3 hereof, Laurentian shall be forever released and discharged from any and all rights, claims, obligations and liabilities of any kind that any person now has or may hereafter have against Laurentian in connection with the LBC LC Cash Collateral or the subject LBC LC.

5. **THIS COURT ORDERS** that, subject to paragraph 6 hereof, the Cash Collateral (as defined in the Sixth Report) shall be and is hereby charged by way of a fixed and specific charge in favour of TD Bank (the "**TD Bank Charge**") as security for the obligations of the Trustee to TD Bank under the Letters of Credit Documents in priority to all security interests (whether contractual, statutory or otherwise), trusts or deemed trusts (whether contractual, statutory or

otherwise), liens, construction liens, executions, mortgages, charges, and encumbrances, statutory or otherwise, in favour of any person, including the Administration Charge and the Trustee's Borrowings Charge granted in this proceeding pursuant to the Order of The Honourable Mr. Justice Pattillo dated February 11, 2015.

6. **THIS COURT ORDERS** that the TD Bank Charge shall come into force and effect and be valid and enforceable upon the release of the Replacement Letters of Credit from escrow.

7. **THIS COURT ORDERS** that, following the release of the Replacement Letters of Credit from escrow, the priorities of the TD Bank Charge, the Administration Charge and the Trustee's Borrowings Charge, as among them, with respect to the Cash Collateral shall be as follows:

- (a) First – TD Bank Charge;
- (b) Second – Administration Charge; and
- (c) Third – Trustee's Borrowings Charge.

8. **THIS COURT ORDERS** that, following the release of the Replacement Letters of Credit from escrow, the filing, registration or perfection of the TD Bank Charge shall not be required, and that the TD Bank Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the TD Bank Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that any obligation or liability that the Trustee incurs in connection with the indemnity granted in favour of TD Bank under the Letters of Credit Documents shall be secured by the Administration Charge.



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MAR 22 2016


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
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Court File No. CV15-10882-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(re Replacement Letters of Credit)

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