

**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**

**SECOND SUPPLEMENT TO THE SIXTH REPORT TO THE COURT  
OF COLLINS BARROW TORONTO LIMITED AS CONSTRUCTION LIEN TRUSTEE  
OF SOUTH UNIONVILLE SQUARE**

**JUNE 28, 2016**

## INTRODUCTION AND PURPOSE OF THE SECOND SUPPLEMENTARY REPORT

1. By Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) dated February 11, 2015, Collins Barrow Toronto Limited (“**CBTL**”) was appointed Trustee pursuant to section 68(1) of the *Construction Lien Act* (Ontario), of the lands and premises legally described in Schedule “A” of the Appointment Order comprised of commercial and residential condominium units, parking and locker units, and vacant lands owned by Jade-Kennedy Development Corporation.
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>
4. The Trustee served and filed with the Court its Sixth Report dated March 15, 2016 (the “**Sixth Report**”) in connection with the Trustee’s motion returnable March 22, 2016 seeking, among other things, an order authorizing the Trustee to

distribute up to \$1.25 million from the net sale proceeds of the Vacant Lands to the second mortgagee Am-Stat, subject to the Trustee maintaining a reserve.

5. Prior to the hearing of the motion, a number of Construction Lien Claimants raised the issue of the possible historical integration of all of the lands owned by JKDC, including the Vacant Lands, and the impact such integration would have on the relief being sought by the Trustee with respect to the net sale proceeds of the Vacant Lands.
6. The Trustee's motion was heard by The Honourable Madam Justice Conway. As set out in the Court's Endorsement dated March 22, 2016, the Trustee's motion with respect to the proposed distribution of a portion of the net sale proceeds of the Vacant Lands was adjourned and the Trustee was required to provide any additional materials it could obtain with respect to the separateness of the Vacant Lands from the lands where the SUSQ Project is situated upon.
7. The Trustee served and filed with the Court a supplement to the Sixth Report dated March 31, 2016 (the "**First Supplementary Report**") to provide additional information to the Court with respect to the Vacant Lands and the SUSQ Project in accordance with the Court's Endorsement.
8. In response to the First Supplementary Report, two Construction Lien Claimants, Global Mechanical Ltd. ("**Global Mechanical**") and Guest Tile, served responding motion materials.

9. Global Mechanical opposed any distribution of the net sale proceeds of the Vacant Lands to Am-Stat prior to distributions being made to Construction Lien Claimants. Guest Tile took the position that the Trustee was misinterpreting the provisions of the *CLA* in statements made in the Sixth Report and the First Supplementary Report, and that the issue of distribution of holdback amounts to Construction Lien Claimants was still outstanding and should be dealt with.
10. Following the exchange of numerous e-mails amongst counsel on the service list regarding resolution of the outstanding issues, scheduled hearing dates have been adjourned and re-scheduled to allow for discussions to continue between the Trustee and the Construction Lien Claimants regarding outstanding holdback amounts, and between the Trustee and Laurentian with respect to Laurentian's first ranking charge over the Vacant Lands and the proposed distribution to Am-Stat.
11. The purpose of this second supplement to the Sixth Report of the Trustee (the "**Second Supplementary Report**") is to:
  - (a) report to the Court on matters related to the claims of Construction Lien Claimants;
  - (b) request that the Court grant an Order authorizing the Trustee to make distributions to certain Construction Lien Claimants of holdback amounts in the aggregate amount of \$1,302,099.13 pursuant to section 78(2) of the *CLA*, with the source of such funds, with one exception, being the net sale proceeds of the Phase II Commercial Units, and to hold amounts in

reserve with respect to the holdback claims of certain Construction Lien Claimants; and

- (c) request that the Court grant an Order establishing a procedure for the determination of the priority, if any, of the claims of the Construction Lien Claimants over the claims of Laurentian and Am-Stat to the net sale proceeds of the Property to amounts in excess of the basic ten per cent (10%) holdback.

- 12. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Sixth Report or the First Supplementary Report.

#### **TERMS OF REFERENCE**

- 13. In preparing this Second Supplementary Report and making the comments herein, the Trustee has relied upon the Information. Certain of the information contained in this Second Supplementary 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.

## PROPERTY

14. As described in the Sixth Report, as of the date of the Trustee's appointment, there were:
- (a) Phase I - Twenty-two (22) unsold commercial/retail, kiosk and mall units, and four (4) unsold parking units that are only accessible to townhouse residents;
  - (b) Phase II Commercial – Twenty-one (21) commercial units, of which eighteen (18) were subject to agreements of purchase and sale;
  - (c) Phase II Residential – six (6) residential units, eight (8) parking units, and six locker units; and
  - (d) The Vacant Lands.
15. As of the date of this Second Supplementary Report, the Trustee has completed the sale of the following properties:
- (a) Phase I – three (3) Kiosks, with the Trustee receiving gross sale proceeds of \$88,504.70, and Unit 60, with the Trustee receiving gross sale proceeds of \$800,000;
  - (b) Phase II Commercial – sixteen (16) commercial units, with the Trustee receiving gross sale proceeds of \$3,717,421.84;
  - (c) Phase II Residential – three residential units, three parking units, and three locker units, with the Trustee receiving gross sale proceeds of

\$805,743.05 and paid \$26,953.27 in condominium fee arrears and related costs on closing; and

(d) Vacant Land – the Trustee received gross sale proceeds of \$1,750,489.

16. As a result, the following property remains to be realized by the Trustee:

(a) Phase I – eighteen commercial units and four parking units;

(b) Phase II Commercial – five (5) commercial units; and

(c) Phase II Residential – three residential units, five parking units and three locker units.

17. The Trustee has received an offer for residential unit 1216, along with a parking unit and a locker unit. The Trustee will be seeking the authorization of the Court to complete this offer in July, 2016.

18. In addition to the realized property listed above, through the efforts of the Trustee in dealing with beneficiaries under LCs issued by Laurentian to have outstanding work completed and the LCs released, the Trustee has been able to recover \$729,442.18 to date, as Laurentian was holding funds as cash collateral to secure outstanding LCs. The Trustee was required to pay \$231,742.62 to Laurentian in LC fees and costs to recover these funds.

19. As at the date of this Second Supplementary Report, there are seven LCs outstanding supported with cash collateral of \$2,255,786.52 held by the current LC provider, TD Bank. The Regional Municipality of York (“**York**”) reduced its two

remaining LCs to maintenance levels in the aggregate amount of \$81,367.20 in 2015 based on work completed by the Trustee. The five remaining LCs are with The Corporation of The City of Markham (“**Markham**”) totaling \$2,174,419.32, which are all outstanding with no reductions having been processed to date. On February 4, 2016, the Trustee sent Markham a request, together with documentation in support of work done by the Trustee, to reduce the outstanding LCs by \$1,151,890.35. A copy of the Trustee’s letter is attached hereto as **Appendix “A”**. The Trustee followed up on this request with a letter dated May 26, 2016, a copy of which is attached hereto as **Appendix “B”**. The Trustee intends to make a further reduction request to Markham in the amount of \$151,518.60 once certain landscaping work is completed, resulting in the Markham LCs being reduced to maintenance levels.<sup>1</sup>

## **CONSTRUCTION LIEN CLAIMS PROCESS**

20. As set out in greater detail in paragraphs 79 to 85 of the Sixth Report:
- (a) eighteen (18) Construction Lien Claimants registered nineteen (19) construction liens against the Property, as Global Mechanical has registered two construction liens;
  - (b) the Trustee was authorized by the Court to implement and administer the Construction Lien Claims Process;

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<sup>1</sup> Additional information with respect to the LCs can be found in paragraphs 45 – 62 of the Sixth Report.



- (c) there was no general contractor for the SUSQ Project and each of the Construction Lien Claimants contracted directly with JKDC as owner of the Property;
  - (d) as at the date of the Trustee's appointment, no funds were being held by JKDC with respect to the ten per cent (10%) basic holdback established under section 22 of the *CLA*; and
  - (e) a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that JKDC was required to retain under the *CLA*.
21. With the exception of Brody Wall System Ltd. ("**Brody Wall**"), which only registered its lien against certain of the Phase II residential units, and Sreen Painting Ltd. ("**Sreen**"), which only registered its lien against two parcels of the Vacant Lands, the remaining Construction Lien Claimants registered their liens against all or part of the Phase II Commercial Units.
22. In paragraphs 89 and 90 of the Sixth Report, the Trustee referred to the issue of whether the Construction Lien Claimants supplied services or materials with respect to the Phase II Commercial Units.
23. Following a further review of the history of the Property by Chaitons, the Trustee has been informed that, prior to the creation of the two condominium corporations, the lands where Phases I and II of the SUSQ Project are situated upon formed a single parcel of land.

24. As a result, the Trustee has been advised by Chaitons that the Construction Lien Claimants were entitled to register their construction liens against the Phase II Commercial Units, regardless of whether the lien claimants specifically supplied services or materials with respect to such units.
25. Based on numerous discussions and correspondence between Chaitons and counsel to Construction Lien Claimants, a review of JKDC's books and records, and discussions with former employees of the MADY group, the Trustee proposes to distribute the following amounts to the following Construction Lien Claimants in priority to the claims of mortgagees on account of the deficiency in the holdbacks, and such amounts shall be distributed from the net sale proceeds of the Phase II Commercial Units, other than with respect to Brody Wall, where the source of the funds will be the net sale proceeds from the sale of Phase II residential units:

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>HOLDBACK AMOUNT</b>
Aluminium Window Design Installations Inc.	\$184,338.59
Brody Wall System Ltd.	\$45,781.90
CRS Contractors Rental Supply General Partner Inc.	\$24,748.92
Dircam Electric Limited	\$349,539.13
Draglam Waste & Recycling Inc.	\$10,825.95
Frendel Kitchens Limited	\$48,292.92
Global Fire Protection Ltd.	\$14,464.88
Global Mechanical Ltd. – Phase I	\$87,661.90

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>HOLDBACK AMOUNT</b>
Global Mechanical Ltd. – Phase II	\$87,802.18
Global Precast Inc.	\$83,874.96
Great Pyramid Aluminum Ltd.	\$11,795.85
Guest Tile Inc.	\$142,095.24
Imperial Trim Supply Ltd.	\$141,698.75
MJC Contracting 2014 Inc.	\$8,964.79
Procan Inc.	\$1,197.80
Triumph Roofing and Sheet Metal Inc.	\$59,015.37
<b>TOTAL</b>	<b>\$1,302,099.13</b>

26. The holdback amounts listed above for CRS Contractors Rental Supply General Partner Inc. (“**CRS**”), Dircam Electric Limited (“**Dircam**”), and Imperial Trim Supply Ltd. (“**Imperial**”) are the holdback amounts as determined by the Trustee from a review of JKDC’s books and records. Each of these Construction Lien Claimants submitted higher holdback amounts in connection with their respective construction lien claims. Chaitons has informed counsel to the claimants that the Trustee will continue hold the difference between the two holdback amounts in a reserve so that the parties may continue to discuss and complete a reconciliation of the claims. With respect to the claims of CRS, Dircam and Imperial, the amounts to be held in reserve are respectively \$12,774.42, \$35,171.56 and \$17,444.11.

27. The Trustee also continues to have discussions with the remaining Construction Lien Claimants, being 2050491 Ontario Inc. o/a The Downsview Group

(“**Downsview Group**”), Sereen and Skyway Canada Limited (“**Skyway**”). The Trustee will hold the holdback amounts in a reserve so that the parties may continue to discuss and complete a reconciliation of the claim. With respect to the claims of Downsview and Skyway, the amounts to be held in reserve are respectively \$199,756.53 and \$10,446.86. With respect to Sereen, they have not particularized a holdback amount to date. However, the Trustee will hold the entire amount of their claim, being \$200,000, in reserve.

28. The Trustee will report to the service list and the Court with respect to all outstanding holdback matters in July, 2016.
29. At this time, the Trustee is proposing to distribute holdback amounts to the Construction Lien Claimants identified in the chart set out in paragraph 25. The Trustee is seeking the authorization of the Court to make such interim distributions.

#### **AM-STAT**

30. As detailed in paragraphs 70 – 78 of the Sixth Report, Am-stat registered a charge/mortgage against, among others, title to the Vacant Lands. As of February 1, 2016, Am-Stat claimed that it was owed \$5,727,026.36 by JKDC as at that date.
31. Chaitons provided its opinion to the Trustee that, subject to usual assumptions and qualifications, the Am-Stat charge/mortgage was valid and enforceable against the Vacant Lands and its proceeds.

32. Based on information and documentation provided by Am-Stat to the Trustee and Chaitons, the Trustee understands that Am-Stat advanced \$10.0 million to JKDC and a related company, Milliken Development Corporation, in September 2013. Attached hereto as **Appendix "C"** is a copy of a Trust Statement dated September 5, 2013.
33. Based on information obtained from employees of the MADY Group, the Am-Stat loan was predominately used to repay \$5.46 million to Jade-Jolie Corporation ("**Jade-Jolie**"), a corporation controlled by certain third parties that provided lands for the SUSQ project. Jade-Jolie had registered a charge/mortgage against certain of the Property.
34. With respect to the remaining net loan proceeds of \$4.188 million under the Am-Stat loan, they were paid to D. Mady Investments Inc. as the shareholder of JKDC and were used by the MADY Group for its other developments.

#### **PRIORITY RESOLUTION PROCESS**

35. As has previously been reported to the Court, Laurentian and Am-Stat have registered charges against portions of the Property.
36. In the event that the Court approves the distributions to Construction Lien Claimants as detailed above, there will be sufficient net sale proceeds available to be distributed to Laurentian and/or Am-Stat as mortgagees.

37. At this time, it is unclear as to whether any Construction Lien Claimant intends to assert priority over the claims of Laurentian and/or Am-Stat to the net sale proceeds of the Property in amounts in excess of the holdback amounts.
38. As a result, the Trustee requests that the Court grant an order establishing a procedure that will require Laurentian and Am-Stat to file affidavits setting out particulars with respect to the loans made to JKDC and provide an opportunity to Construction Lien Claimants to assert priority over the claims of Laurentian and Am-Stat. If no Construction Lien Claimant asserts priority, they will be barred from asserting a claim in priority to Laurentian and Am-Stat for an amount in excess of the basic holdback.<sup>2</sup>
39. A similar process was successfully utilized in another proceeding where CBTL was appointed by the Court as *CLA* trustee and a number of Construction Lien Claimants were also involved in that proceeding and did not oppose the establishment of the priority resolution process.

#### **TRUSTEE'S REQUEST TO THE COURT**

40. Based on the foregoing, the Trustee respectfully requests that the Court grant the relief set out in paragraph 11 above.

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<sup>2</sup> Am-Stat has already served such an affidavit sworn by Philip Meretsky on June 13, 2016.

All of which is respectfully submitted to this Court as of this 28<sup>th</sup> day of June, 2016.

**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, FCPA, FCA, FCIRP, LIT  
President

# **APPENDIX “A”**



February 4, 2016

**VIA EMAIL & COURIER**

Ms. Catherine Conrad, City Solicitor  
The Corporation of the City of Markham  
Markham Civic Centre  
101 Town Centre Boulevard  
Markham, ON  
L3R 9W3

Dear Ms. Conrad:

**Re: In the Matter of the *Construction Lien Act* Proceeding of  
Jade-Kennedy Development Corporation (“JKDC”)**

As you are aware, Collins Barrow Toronto Limited is the Court Appointed Trustee under the Construction Lien Act of JKDC.

As Trustee, we are writing to formally request that The Corporation of the City of Markham (“Markham”) agree to a \$1,151,890.35 reduction to the quantum of Letters of Credit (“LCs”) required to be provided to Markham by Laurentian Bank of Canada (“Laurentian”). The reasons for this request are set out in this letter and are detailed in the attached Appendix “A”.

Since our appointment as Trustee, we have had discussions and corresponded with representatives of Markham’s legal department in order to understand the requirements to release the LCs as expeditiously as possible for the benefit of the creditors of JKDC. The Trustee determined that it was in the best interests of the creditors to retain third party consultants to oversee the completion and certification of the work required to reduce/release the LCs down to the maintenance levels (where appropriate).

The Trustee retained Masongsong Associates Engineering Limited (“Masongsong”) to oversee the works (as recommended by representatives of Markham), MHBC Planning as the landscape architectural consultants, and several trades to complete the required landscaping and engineering work in accordance with the Site Plan Control Agreement, the Construction Agreement and the Shoring Agreement in place between Markham and JKDC. We also ensured that that the works were certified, statutory declarations were completed, substantial completion notices were issued, proof of publication of notice was obtained and that the 45 day lien period had expired. Particulars of the work undertaken and paid for by the Trustee are set out below.

The breakdown of our reduction request of **\$1,151,890.35** is set out below:

**a) Engineering/Public Works**

Monies are held under both the Site Plan Control Agreement and the Construction Agreement. The amounts presently held for engineering/public works total \$1,480,484.32, as follows:

LC S600796: Engineering of \$50,000.00 and \$974,588.21; and  
LC S601064: Public Works of \$455,896.11.

We attach as Appendix "B" Masongsong's calculation that, based on work completed as of this date, \$827,023.47 is required to be held which would allow a reduction of \$653,460.85 in the amount of the required LC.

In support of this reduction request, we attach, as Appendix "C", the Statutory Declaration including Parcel Abstracts, Proof of Publication dated December 14, 2015 and the Certificate of Substantial Performance dated December 7, 2015 for the works carried out by D. Crupi & Sons Ltd.

**b) Landscaping**

Monies are held under the Site Plan Control Agreement. The amount presently held for Landscaping under LC S600796 is \$518,485.00

We attach, as Appendix "D", a copy of the email sent to the Trustee on December 8, 2015 by Ms. Cathie Jeffery of Markham's legal department, wherein Ms. Jeffery advises that she has asked finance to reduce the LC to 20% of the total amount. This results in a reduction of \$414,788.00 in the amount of the required LC. To date, there has been no reduction in this letter of credit and we therefore request that reduction.

**c) Street Tree Planting**

Monies are held under the Construction Agreement. The amount presently held for Street Tree Planting under LC S601065 is \$83,950.00.

We attach, as Appendix "E", Masongsong's calculation that, based on work completed as of this date, \$25,308.50 is required to be held which would allow a reduction of \$58,641.50 in the amount of the required LC.

In support of this reduction request, we attach, as Appendix "F", a Certificate of Conformance from Mr. N. Miele of MHBC Planning for this project, a Statutory Declaration from 1247198 Ontario Inc o/a Pronto General Contractors and a Statutory Declaration from Pro-Land Landscape Construction Inc.

**d) Amendment to Site Plan Agreement**

Monies are held under the Amendment to Site Plan Control Agreement. The amount presently held under LC S601113 is \$25,000.00, which is comprised of \$5,000.00 for "Waste Management" and \$20,000.00 for "Engineering".

We attach as Appendix "G", a copy of the January 8, 2016 email from Mr. Michael Dipasquale of Markham, to Ms. Colleen Delaney of the Trustee's office advising that the waste management conditions have been met and this portion of the LC can be released.

We attach as Appendix "H", a copy of the Certificate from Masongsong certifying that the water, sanitary and storm service connections on Castan Avenue have been capped.

We therefore request that the LC in the amount of \$25,000.00 be released in its entirety.

**Work to be Completed**

Attached hereto as Appendix "I" is a letter dated January 28, 2016 from Masongsong which details the work currently outstanding and which will be completed in the spring of 2016. As indicated in the letter, \$11,100.00 is outstanding for "engineering" and \$14,960.00 is outstanding for "street trees".

With respect to the outstanding work to be completed in front of the Primont Homes ("Primont") subdivision, the Trustee's lawyer has confirmed with Primont's lawyer that Primont has entered into agreements to complete all works within the municipal right of way fronting its property and that Primont has posted security for this with Markham. We therefore have removed these works from our calculations with respect to the letters of credit.

It is our intention to complete all outstanding works in the Spring of 2016 and to proceed to "Acceptance for Maintenance" as soon as possible thereafter. The Trustee is in the process of obtaining LCs to cover all maintenance amounts going forward and will provide an update once arrangements are finalized.

**Summary**

In summary, the Trustee is requesting that the quantum of LC's required to be provided to Markham in respect of JKDC be reduced by \$1,151,890.35 as follows:

<b>Description</b>	<b>Proposed Reduction</b>
a) Engineering/Public Works	\$653,460.85
b) Landscaping	414,788.00
c) Street Tree Planting	58,641.50
d) Amendment to Site Plan Agreement	<u>25,000.00</u>
Total LC Reductions	<b><u>\$1,151,890.35</u></b>

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As is demonstrated in this letter and as discussed on an ongoing basis with Markham, the Trustee has worked with its consultants to fulfil JKDC's requirements and obligations and has provided to Markham the documentation required pursuant to agreements entered into between Markham and JKDC.

As of the date of this letter, only LC 601069 has been released which has resulted in \$15,000 being received by the Trustee on November 20, 2015.

We trust that the information herein provides you with the information you require to approve the requested reduction in the quantum of LC's to be posted with Markham. Should you have any questions or require any further information, please contact us and we will endeavour to respond to your request as soon as possible.

We look forward to your positive response to our request.

Yours truly,

**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 or corporate capacity.



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

cc: T. Masongsong

# **APPENDIX “B”**

May 26, 2016

**VIA EMAIL**

Ms. Catherine Conrad, City Solicitor  
The Corporation of the City of Markham  
Markham Civic Centre  
101 Town Centre Boulevard  
Markham, ON  
L3R 9W3

Dear Ms. Conrad:

**Re: In the Matter of the *Construction Lien Act* Proceeding of  
Jade-Kennedy Development Corporation ("JKDC")**

We are following up on our letter dated February 4, 2016 to The Corporation of the City of Markham to request a reduction of \$1,151,890.35 from the outstanding Letters of Credit ("LCs"). A copy of our letter is attached for your convenience.

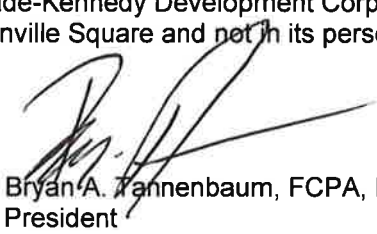
Our consultants, Masongsong Engineering Associates Ltd., advise us that we have fulfilled all requirements under the various agreements related to this LC reduction request. Can you kindly confirm that this is the case (and if not, provide specifics) and advise as to when we can expect to receive confirmation of the LC reductions.

Your immediate attention would be appreciated. Thank you.

Yours truly,

**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 or corporate capacity.



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

cc: T. Masongsong

February 4, 2016

**VIA EMAIL & COURIER**

Ms. Catherine Conrad, City Solicitor  
The Corporation of the City of Markham  
Markham Civic Centre  
101 Town Centre Boulevard  
Markham, ON  
L3R 9W3

Dear Ms. Conrad:

**Re: In the Matter of the *Construction Lien Act* Proceeding of  
Jade-Kennedy Development Corporation ("JKDC")**

As you are aware, Collins Barrow Toronto Limited is the Court Appointed Trustee under the Construction Lien Act of JKDC.

As Trustee, we are writing to formally request that The Corporation of the City of Markham ("Markham") agree to a \$1,151,890.35 reduction to the quantum of Letters of Credit ("LCs") required to be provided to Markham by Laurentian Bank of Canada ("Laurentian"). The reasons for this request are set out in this letter and are detailed in the attached Appendix "A".

Since our appointment as Trustee, we have had discussions and corresponded with representatives of Markham's legal department in order to understand the requirements to release the LCs as expeditiously as possible for the benefit of the creditors of JKDC. The Trustee determined that it was in the best interests of the creditors to retain third party consultants to oversee the completion and certification of the work required to reduce/release the LCs down to the maintenance levels (where appropriate).

The Trustee retained Masongsong Associates Engineering Limited ("Masongsong") to oversee the works (as recommended by representatives of Markham), MHBC Planning as the landscape architectural consultants, and several trades to complete the required landscaping and engineering work in accordance with the Site Plan Control Agreement, the Construction Agreement and the Shoring Agreement in place between Markham and JKDC. We also ensured that that the works were certified, statutory declarations were completed, substantial completion notices were issued, proof of publication of notice was obtained and that the 45 day lien period had expired. Particulars of the work undertaken and paid for by the Trustee are set out below.

The breakdown of our reduction request of **\$1,151,890.35** is set out below:

**a) Engineering/Public Works**

Monies are held under both the Site Plan Control Agreement and the Construction Agreement. The amounts presently held for engineering/public works total \$1,480,484.32, as follows:

LC S600796: Engineering of \$50,000.00 and \$974,588.21; and  
LC S601064: Public Works of \$455,896.11.

We attach as Appendix "B" Masongsong's calculation that, based on work completed as of this date, \$827,023.47 is required to be held which would allow a reduction of \$653,460.85 in the amount of the required LC.

In support of this reduction request, we attach, as Appendix "C", the Statutory Declaration including Parcel Abstracts, Proof of Publication dated December 14, 2015 and the Certificate of Substantial Performance dated December 7, 2015 for the works carried out by D. Crupi & Sons Ltd.

**b) Landscaping**

Monies are held under the Site Plan Control Agreement. The amount presently held for Landscaping under LC S600796 is \$518,485.00

We attach, as Appendix "D", a copy of the email sent to the Trustee on December 8, 2015 by Ms. Cathie Jeffery of Markham's legal department, wherein Ms. Jeffery advises that she has asked finance to reduce the LC to 20% of the total amount. This results in a reduction of \$414,788.00 in the amount of the required LC. To date, there has been no reduction in this letter of credit and we therefore request that reduction.

**c) Street Tree Planting**

Monies are held under the Construction Agreement. The amount presently held for Street Tree Planting under LC S601065 is \$83,950.00.

We attach, as Appendix "E", Masongsong's calculation that, based on work completed as of this date, \$25,308.50 is required to be held which would allow a reduction of \$58,641.50 in the amount of the required LC.

In support of this reduction request, we attach, as Appendix "F", a Certificate of Conformance from Mr. N. Miele of MHBC Planning for this project, a Statutory Declaration from 1247198 Ontario Inc o/a Pronto General Contractors and a Statutory Declaration from Pro-Land Landscape Construction Inc.

**d) Amendment to Site Plan Agreement**

Monies are held under the Amendment to Site Plan Control Agreement. The amount presently held under LC S601113 is \$25,000.00, which is comprised of \$5,000.00 for "Waste Management" and \$20,000.00 for "Engineering".



We attach as Appendix "G", a copy of the January 8, 2016 email from Mr. Michael Dipasquale of Markham, to Ms. Colleen Delaney of the Trustee's office advising that the waste management conditions have been met and this portion of the LC can be released.

We attach as Appendix "H", a copy of the Certificate from Masongsong certifying that the water, sanitary and storm service connections on Castan Avenue have been capped.

We therefore request that the LC in the amount of \$25,000.00 be released in its entirety.

**Work to be Completed**

Attached hereto as Appendix "I" is a letter dated January 28, 2016 from Masongsong which details the work currently outstanding and which will be completed in the spring of 2016. As indicated in the letter, \$11,100.00 is outstanding for "engineering" and \$14,960.00 is outstanding for "street trees".

With respect to the outstanding work to be completed in front of the Primont Homes ("Primont") subdivision, the Trustee's lawyer has confirmed with Primont's lawyer that Primont has entered into agreements to complete all works within the municipal right of way fronting its property and that Primont has posted security for this with Markham. We therefore have removed these works from our calculations with respect to the letters of credit.

It is our intention to complete all outstanding works in the Spring of 2016 and to proceed to "Acceptance for Maintenance" as soon as possible thereafter. The Trustee is in the process of obtaining LCs to cover all maintenance amounts going forward and will provide an update once arrangements are finalized.

**Summary**

In summary, the Trustee is requesting that the quantum of LC's required to be provided to Markham in respect of JKDC be reduced by \$1,151 890.35 as follows:

<b>Description</b>	<b>Proposed Reduction</b>
a) Engineering/Public Works	\$653,460.85
b) Landscaping	414,788.00
c) Street Tree Planting	58,641.50
d) Amendment to Site Plan Agreement	<u>25,000.00</u>
Total LC Reductions	<b><u>\$1,151,890.35</u></b>

\*\*\*\*\*

As is demonstrated in this letter and as discussed on an ongoing basis with Markham, the Trustee has worked with its consultants to fulfil JKDC's requirements and obligations and has provided to Markham the documentation required pursuant to agreements entered into between Markham and JKDC.

As of the date of this letter, only LC 601069 has been released which has resulted in \$15,000 being received by the Trustee on November 20, 2015.

We trust that the information herein provides you with the information you require to approve the requested reduction in the quantum of LC's to be posted with Markham. Should you have any questions or require any further information, please contact us and we will endeavour to respond to your request as soon as possible.

We look forward to your positive response to our request.

Yours truly,

**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 or corporate capacity.



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

cc: T. Masongsong

# **APPENDIX “C”**

File 003399  
September 5, 2013

Re: Am-Stat Corporation loan to Jade-Kennedy Development Corporation, Milliken Development Corporation et al. – 8321 and 8323 Kennedy Road (The Residences at South Unionville Square) and Northeast Quadrant of Steeles Avenue East and Old Kennedy Road, Markham, Ontario

**TRUST STATEMENT**

<b><u>RECEIVED</u></b> gross loan proceeds		\$10,000,000.00
<b><u>PAID TO:</u></b>		
Jolie-Jade Corporation, to repay the balance due under the Promissory Note	\$5,457,399.20	
Am-Stat Corporation re: finder's fee	\$226,000.00	
Meretsky Law Firm, in payment of its invoice #4990	39,048.13	
<b><u>RETAINED IN TRUST</u></b>		
Accrued interest from September 5, 2013 (Interest Adjustment Date) to September 30, 2013	86,666.67	
Mortgage discharge fee regarding discharge of three Charges YR1988652 and YR1963671 and SUSQ Phase 2 unregistered mortgage	2,000.00	
On account of unbilled disbursements (subject to further accounting hereafter)	886.00	
<b><u>NET LOAN PROCEEDS</u></b> paid to D. Mady Investments Inc.	4,188,000.00	
	<u>\$10,000,000.00</u>	<u>\$10,000,000.00</u>
E. & O.E.		