

**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**

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

MARCH 31, 2016

INTRODUCTION AND PURPOSE OF THE 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 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 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 to Am-Stat from the net sale proceeds of the Vacant Lands, subject to the Trustee maintaining a reserve.

5. 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 "**Endorsement**"), a copy of which is attached hereto as **Appendix "A"**, the Trustee's motion with respect to the proposed distribution of a portion of the net sale proceeds of the Vacant Lands was adjourned to April 15, 2016 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.
6. The dates set out in the Endorsement for parties to serve materials were extended, such that the Trustee is required to serve additional materials by March 31, 2016.
7. The purpose of this supplement to the Sixth Report (the "**Supplementary Report**") is 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. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Sixth Report.

TERMS OF REFERENCE

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

this 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.

THE SUSQ PROJECT AND THE VACANT LANDS

10. As has been previously reported to the Court, JKDC was the developer of the SUSQ Project on lands it owned in Markham, Ontario. The SUSQ Project is bordered by Kennedy Road to the west, South Unionville Avenue to the south, Unity Gardens Drive to the east, and Castan Avenue to the north. Attached hereto and marked as **Appendix “B”** is a copy of a 3D Google Map of the SUSQ Project and surrounding area retrieved from Google Maps on March 31, 2016.
11. The SUSQ Project consists of:
 - (a) one condominium corporation, YRSCC 1265, comprised of a 12-storey condominium-apartment tower containing 253 residential units and 312 parking units. The residential tower is locally known as “The Residences at South Unionville Square”, and municipally known at 8323 Kennedy Road, Markham, Ontario; and
 - (b) one condominium corporation, YRSCC 1228, comprised of:

- (i) 28 residential townhomes, municipally known as 66 – 120 Unity Gardens Drive, Markham, Ontario; and
 - (ii) a commercial complex locally known as “Langham Square” containing commercial/retail units, a T&T Grocery store, a mall known as “The Mall at Langham Square”, and restaurant and office units, municipally known as 8321, 8333 and 8339 Kennedy Road, and 28, 30 and 32 South Unionville Avenue; and
 - (iii) twenty one (21) commercial/retail/office units that were constructed at the same time as the residential tower, were included as part of YRSCC 1228, and are municipally known as 28 South Unionville Avenue.
12. As detailed in the Sixth Report, at the time of the Trustee’s appointment, JKDC was the registered owner of a number of unsold units in the SUSQ Project.
13. JKDC was also the registered owner of five (5) parcels of land located at the southwest corner of South Unionville Avenue and Unity Gardens Drive, and extending south to Helen Avenue.¹ These parcels of land are referred to as the Vacant Lands in the Sixth Report, and, while in close proximity to the SUSQ Project, are southeast of the SUSQ Project and separated from it by South Unionville Avenue and a roundabout.
14. The Vacant Lands are identified as follows:

¹ Based on information contained in a Committee of Adjustments Agenda dated March 19, 2014, the Vacant Lands that front South Unionville Avenue are municipally known as 39 – 59 South Unionville Avenue.

- (a) PIN 02963-2965 (LT), acquired by JKDC on April 16, 2008 (“**2965**”);
- (b) PIN 02963-2972 (LT), acquired by JKDC on April 16, 2008 (“**2972**”);
- (c) PIN 02963-3579 (LT), acquired by JKDC on April 16, 2008 (“**3579**”);
- (d) PIN 02963-3571 (LT), acquired by JKDC on May 10, 2012; and
- (e) PIN 02963-3587 (LT), acquired by JKDC on June 1, 2012.

15. As stated in the Sixth Report, the sale of the Vacant Lands by the Trustee to Primont was approved by the Court on May 29, 2015 and the sale transaction closed on June 12, 2015. Attached hereto and collectively marked as **Appendix “C”** are the parcel registers for the Vacant Lands obtained on May 15, 2015.

16. As noted in paragraphs 32, 33, and 72 of the Sixth Report, based on information received from the MADY Group, the Trustee understands that:

- (a) JKDC originally considered building townhomes and/or detached homes on the Vacant Lands, but subsequently decided to sell the Vacant Lands to Primont in November 2011;
- (b) there was no connection or common purpose between the SUSQ Project and the dwellings to be constructed on the Vacant Lands, and the eventual purchasers of such dwellings would have no special access to or use of the SUSQ Project; and

- (c) other than certain road works performed by a trade, no services or materials were supplied to the Vacant Lands by the contractors that supplied services and/or materials to the SUSQ Project.
17. The Trustee has been informed by Charles Mady, the president of JKDC, that South Unionville Avenue had already been constructed at the time JKDC started purchasing the Vacant Lands in April 2008.
18. A number of the Construction Lien Claimants registered construction liens against title to the Vacant Lands, notwithstanding that they supplied no services or materials to the Vacant Lands. The Trustee understands that certain Construction Lien Claimants have questioned whether the Vacant Lands and the lands where the SUSQ Project is situated upon were at one time part of the same parcel of land, and/or the Vacant Lands were “enjoyed” with the SUSQ Project lands, and thus entitle them to lien the Vacant Lands.
19. Based on the information obtained by Chaitons, the Trustee understands that the Vacant Lands have been and continue to be separated from the SUSQ Project lands by South Unionville Avenue, and the lands that comprise the portions of South Unionville Avenue that separate the SUSQ Project from the Vacant Lands, with one exception, were owned by third parties and conveyed to the City of Markham and were not owned by JKDC.
20. Attached hereto and marked as **Appendix “D”** is a copy of a ServiceOntario Property Map Index. As set out in the map, the beginning of the SUSQ Project is referenced as “Condo Block 29759” and is located in the northwest corner of the

map and is on the north side of South Unionville Avenue. Directly beneath the SUSQ Project is South Unionville Avenue, and the Vacant Lands are highlighted in blue and located on the south side of South Unionville Avenue.

21. The portions of South Unionville Avenue that separate the SUSQ Project and the Vacant Lands, going west to east, are identified as follows on the map:

- (a) PIN 02963-3387 (LT), which was owned by Dougson Investments Inc. and transferred to The Corporation of the Town of Markham on January 28, 2010;
- (b) PIN 02963-3463 (LT) (which includes the portion of Unity Gardens Drive that runs south of South Unionville Avenue), which was owned by JKDC and transferred to The Corporation of the Town of Markham on March 2, 2011;
- (c) PIN 02963-3396 (LT), which was owned by Remo Chiavatti Limited and transferred to The Corporation of the Town of Markham on April 13, 2005;
- (d) PIN 02963-3390 (LT), which was owned by Abdul Jabbar and transferred to The Corporation of the Town of Markham on February 3, 2010;
- (e) PIN 02963-2970 (LT), which was owned by Remo Chiavatti Limited and transferred to The Corporation of the Town of Markham on April 13, 2005; and

- (f) PIN 02963-2964 (LT), which was owned by Remo Chiavatti Limited and transferred to The Corporation of the Town of Markham on April 13, 2005.
22. As can be seen from the ServiceOntario Property Map Index, other than the portion of South Unionville Avenue that serves as the intersection of Unity Gardens Drive and South Unionville Avenue, the lands that form South Unionville Avenue and separate the SUSQ Project from the Vacant Lands were owned by third parties unrelated to JKDC and transferred to The Corporation of the Town of Markham.
23. Additionally, Chaitons has reviewed copies of the Site Plan Control Agreement made as of July 16, 2010 between JKDC, The Corporation of the Town of Markham, and The Regional Municipality of York (the "**Site Plan Control Agreement**"), and the Amending Agreement dated February 8, 2012 (the "**Amending Agreement**"), copies of which are respectively attached hereto as **Appendix "E"** and **"F"**.
24. The Site Plan Control Agreement and the Amending Agreement were registered on three of the five parcels of the Vacant Lands, being PINs 2965, 2972 and 3579. It is unclear as to the reason why the agreements were registered on title to these parcels, since the Site Plan Control Agreement states that it is with respect to "a proposal for the construction of a mixed use development consisting of a 25,804 m² commercial area and 28 residential townhouses" and lands "municipally known as 8323, 8333 and 8339 Kennedy Road, 28 South Unionville

Avenue and 66 to 120 Unity Avenue”, which is the SUSQ Project described above, and contains no reference to any development on the Vacant Lands.


25. The Amending Agreement deals with an amendment to the Site Plan Control Agreement that states that it was entered into “in order to permit Phase 2 of the development consisting of a 12 storey mixed use building with grade level retail and residential apartments above containing 253 dwelling units”. Again, there is no reference to any development on the Vacant Lands.
26. Additionally, the Trustee understands that, as of the date of the Trustee’s appointment, no site plan agreement had been entered into by JKDC and the City of Markham, and as a result, there was a hold provision on the zoning status of the Vacant Lands until such time as a site plan agreement was entered into.
27. The Trustee further understands that the hold provisions on the zoning status of the Vacant Lands was lifted on December 15, 2015 as a result of Primont entering into a site plan agreement with the City for the Vacant Lands. Attached hereto and marked as **Appendix “G”** is a copy of By-law 2015-171 and the related Explanatory Note.
28. The Trustee respectfully submits that the information set out above provides further support to the position that the SUSQ Project and the Vacant Lands were separate and distinct from one another and the Vacant Lands were in no way connected to, had a common purpose with, or enjoyed with the SUSQ Project.

All of which is respectfully submitted to this Court as of this 31st day of March, 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