

**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***

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

APRIL 23, 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 ("**CBTL**") was appointed trustee (the "**Trustee**") pursuant to Section 68(1) of the *Construction Lien Act* (Ontario) ("**CLA**"), of the lands and premises legally described in Schedule "A" of the Appointment Order comprised of, among other things, commercial and residential condominium units, and vacant land owned by Jade-Kennedy Development Corporation ("**JKDC**") and commonly known as South Unionville Square ("**SUSQ**") (the "**Property**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the Property, and take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property. In addition, the Trustee was authorized to complete the existing agreements of purchase and sale for the 18 pre-sold commercial units in Phase II of the Property and to sell the remaining units in Phases I and II of the Property and the vacant land comprising Phase III.
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 FIRST REPORT

4. The purpose of this first report of the Trustee (the "**First Report**") is to:
- (a) report to the Court on the activities of the Trustee since its appointment;
 - (b) provide the Court with a summary of the Trustee's receipts and disbursements for the period February 11, 2015 to April 10, 2015;
 - (c) request that the Court grant Orders:
 - (A) approving the First Report and the conduct and activities of the Trustee described therein;
 - (B) authorizing and empowering the Trustee to execute, issue and endorse documents of whatever nature in respect of the Property in the name and on behalf of Jade-Kennedy Residential Corporation ("**JKRC**"), and take all necessary steps in the name and on behalf of JKRC in respect of the Property, for any purpose pursuant to the Appointment Order;
 - (C) authorizing the Trustee to terminate or disclaim four (4) residential Agreements of Purchase and Sale that were entered into by JKRC with construction lien claimants prior to the commencement of this proceeding at a time when JKRC and JKDC were insolvent and for no cash consideration;

- (D) authorizing the Trustee to terminate or disclaim two (2) residential Agreements of Purchase and Sale that were entered into by JKRC on the eve of the Trustee's appointment for purchase prices that were substantially below the listing prices and at a time when JKRC and JKDC were insolvent;
- (E) vesting the right, title and interest of JKDC in the Terrace Unit (as defined below) to York Region Standard Condominium Corporation ("YRSCC") No. 1265 pursuant to the Condominium Declaration (as defined below), free and clear of all encumbrances and claims; and
- (F) approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to February 11, 2015 with respect to the Property.

TERMS OF REFERENCE

5. In preparing this First 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 (the "**MADY Group**"), and information received from other third-party sources (collectively, the "**Information**"). Certain of the information contained in this First 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 INFORMATION

6. The MADY Group is a diversified real estate development group with commercial and residential business operations across North America. JKDC was incorporated on January 30, 2008 for the purpose of being the registered owner and developer of the SUSQ project. JKDC is a party that is related to the MADY Group and is an Ontario corporation with its registered office located in Markham, Ontario.
7. The SUSQ project was developed and constructed in three phases:

Phase I

8. Phase I of the project was the development and construction of a T&T Supermarket and a commercial condominium project with units for retail, restaurant, office and medical services. In addition, there are more than 1,250 parking spaces for the supermarket and the commercial units.

9. Construction of Phase I was substantially completed on March 5, 2013 and the condominium declaration was registered on April 17, 2013 (the "**Condominium Declaration**"), when YRSCC No. 1228 was created. The turnover meeting was held on July 8, 2013.
10. There are 18 commercial units that are still to be sold by the Trustee ("**Phase I Commercial Units**").
11. YRSCC 1228 is managed by PH Property Management & Consulting Inc.

Phase II

12. Phase II of the SUSQ project involved the development and construction of a 12-storey condominium-apartment tower, which contains 253 residential units, 21 commercial units located under the residential units ("**Phase II Commercial Units**"), and 312 parking units.
13. Phase II was constructed in two stages. The first stage was the development and construction of the residential units known as "The Residences at South Unionville Square". Construction was substantially complete on June 10, 2014 and the condominium declaration was registered on September 11, 2014, when YRSCC No. 1265 was created. The turnover meeting was held on November 17, 2014. YRSCC No. 1265 is managed by First Service Residential.
14. At the time of the Trustee's appointment, according to the books and records of JKDC, there were six residential units, six lockers and eight parking units still to be sold. However, as noted in further detail below, the Trustee determined that

sale agreements had been entered into for four of these residential units for no cash consideration, and sale agreements were entered into for the remaining two residential units on the eve of the Trustee's appointment at prices that were substantially below the listing prices. The Trustee is seeking the Court's authorization to terminate or disclaim these sale agreements and re-list the six residential units and related parking and lockers units for sale in addition to the two parking units that are available.

15. The second stage of the development and construction of Phase II was with respect to the Phase II Commercial Units. The Appointment Order authorized the Trustee to complete the existing sale agreements for 18 pre-sold Phase II Commercial Units that were scheduled to close February 17, 2015. Harris Sheaffer LLP ("**Harris Sheaffer**"), condominium law lawyers to JKDC and JKRC, assisted the Trustee in completing these transactions. The status of these closings is detailed below. In addition, there are three additional Phase II Commercial Units that were used as offices by JKDC that the Trustee has been authorized to sell.
16. On January 16, 2015, the registered owner of the land where the Phase II Commercial Units were located was transferred from JKDC to YRSCC 1228. In addition, the single parcel of land was divided into 21 separate parcels that comprise the Phase II Commercial Units. As a result of this amendment, the Phase II Commercial Units now form part of YRSCC 1228 and therefore are managed by PH Property Management & Consulting Inc.

Phase III

17. Phase III was to be the planned development and construction of thirteen (13) freehold townhomes and two (2) single detached homes on vacant lands owned by JKDC. The lands are just south of South Unionville Square, bordered by Helen Avenue to the south, South Unionville Avenue to the north, Kennedy Road, to the west and Garden Drive to the east.

THE TRUSTEE'S ACTIVITIES TO DATE

Steps taken by the Trustee

- 18. Since its appointment, the Trustee has:
 - (a) opened trust bank accounts at the Bank of Montreal;
 - (b) met with Harris Sheaffer to review closing documentation and any issues related to the 18 pre-sold Phase II Commercial Units that were scheduled to close February 17, 2015;
 - (c) met with the property manager and toured Phase II of the Property, photographing areas where issues had been raised by the purchasers of units scheduled to close February 17, 2015;
 - (d) toured Phases I and III of the Property with JKDC's Senior Service Manager, photographing areas where issues had been raised by the property managers;
 - (e) reviewed the existing insurance coverage provided by Northbridge General Insurance Company. The Trustee added certain unsold units that

were missing and added the Trustee as an additional named insured. The Trustee confirmed that JKDC has paid for the insurance through to December 31, 2015;

- (f) reviewed JKDC's master inventory list of units available for sale in Phases I and II and amended details based on additional information provided;
- (g) contacted utility companies to arrange for billings from February 11, 2015 going forward on unsold units to be sent to the Trustee;
- (h) requested updated accounts payable/holdback information as at February 11, 2015 segregated by Phases I, II and III;
- (i) responded to various enquiries from unsecured and other creditors;
- (j) responded to requests from MPAC;
- (k) reviewed closing documentation, coordinated the deposit of cheques, payment of legal fees and accounting as each of the pre-sold Phase II Commercial Units closed;
- (l) completed, signed and sent Trustee's Certificates to Harris Sheaffer for each unit that closed;
- (m) responded to enquiries from the property managers;
- (n) received numerous legal claims and updated the claims list;

- (o) reviewed ongoing cash requirements and invested funds on hand in term deposits;
- (p) commissioned an appraisal of the vacant lands (Phase III);
- (q) requested proposals from three realtor firms;
- (r) retained HRK Realty Services Ltd. ("**HRK**") and Aird & Berlis LLP to resolve an estimated \$1.0 million letter of credit issue;
- (s) devised a protocol with representatives of Tarion Warranty Corporation ("**Tarion**") to resolve valid warranty claims;
- (t) requested details of outstanding property taxes owing; and
- (u) posted the Appointment Order, Vesting Orders and other required documentation to the Trustee's website.

Status of Phase II Commercial Units Scheduled to Close February 17, 2015

19. The Appointment Order authorized the Trustee to complete the existing agreements of purchase and sale for the 18 pre-sold Phase II Commercial Units.
20. These units were scheduled to close on February 17, 2015. However, due to various issues raised by the purchasers, only four units closed on that day. The Trustee worked with the various purchasers, JKDC and Harris Sheaffer to resolve a majority of the outstanding issues.

21. As a result, sales of 16 of the 18 units have been completed. As set out in **Appendix "B"** attached hereto, the Trustee has received net closing proceeds before fees and costs in the sum of \$3,657,291.18.
22. In connection with the sale of the 16 Phase II Commercial Units noted above, JKDC has undertaken to pay 2014 and 2015 property taxes. The purchaser in turn paid JKDC for its share of 2014 property taxes (for the period from the occupancy date to December 31, 2014) and for all of 2015 property taxes on closing. The Trustee is in the process of remitting the amounts it received from the purchasers to the Corporation of the City of Markham ("**City of Markham**").
23. The purchasers of the remaining two units (Unit 92 and Unit 93) were unable to close their sales and therefore default letters were issued. The time periods in the default letters have now expired and as a result these transactions have been formally terminated. The Trustee intends to re-list these units for sale.

Statement of Receipts and Disbursements

24. Attached hereto as **Appendix "C"** is a copy of the Trustee's Statement of Receipts and Disbursements from February 11 to April 10, 2015. As indicated, the net cash on hand in the Trustee's general account totals \$3,583,619.76. This balance does not take into account unpaid Trustee and legal fees.
25. The Trustee has funded operations and expenses to date with the net proceeds from the sale of the 16 Phase I Commercial Units.

HST

26. The Trustee determined that two HST accounts were set up with Canada Revenue Agency ("**CRA**") with respect to the SUSQ project: an account for residential unit sales in the name of JKRC, which is discussed in greater detail below, and a JKDC account for all other sales.
27. The Trustee determined that JKDC filed its HST returns monthly. Commencing in December 2014, JKDC started filing its activity under the HST number of David Mady Investments Inc. ("**DMII**"), as the beneficial owner of JKDC. JKDC management advised the Trustee that starting in 2014, CRA required bare trustee companies, such as JKDC, to file activity under their beneficial owner's HST number.
28. The Trustee discussed this issue with a representative from Collins Barrow Toronto's tax group ("**CBT Tax**"). Based on a review of the agreements in place between JKDC and DMII, CBT Tax confirmed that in accordance with CRA Notice No. 284, a copy of which is attached hereto as **Appendix "D"**, JKDC should be filing its activities under DMII's HST number, commencing in 2014.
29. The Trustee closed JKDC's Business Number sub account RT0001 and opened up sub- account RT0002. The Trustee will file JKDC's returns under RT0002 from February 11, 2015 going forward.
30. JKRC had its own HST account number and was set up to file on an annual basis, with its first return due March 31, 2015 for activities for 2014. The Trustee contacted Harris Sheaffer, who advised that HST collected on units closed was

assigned to JKRC; however, Harris Sheaffer wired all funds collected (including HST) to a JKDC bank account as instructed by JKDC management. Harris Sheaffer further advised that JKDC held title as a nominee and JKRC signed agreements as a nominee of DMII as the beneficial owner of the Property.

31. Based on the agreement between JKRC and DMII and in accordance with CRA Notice No. 24, CBT Tax has confirmed that JKRC should be filing its activities under DMII's HST number, commencing in 2014.
32. The Trustee has closed JKRC's Business Number sub account RT0001. The Trustee intends to file all HST activity under JKDC's RT0002 from February 11, 2015 going forward.

Vacant Land and Primont

33. The Trustee understands that JKDC entered into a Sale Agreement with Primont Homes (Harmony) Inc. ("**Primont**") on November 24, 2011 with respect to the vacant land that was to be developed for Phase III (the "**Primont APS**"). The agreement required JKDC to provide significant servicing, grading and other work to the land within a certain timeline. Several extensions to deadline for completion of the work by JKDC were granted, as provided for in the Primont APS, and at the date of the Trustee's appointment, the final extension was set to expire on March 31, 2015.
34. As the Trustee was not in a position to complete the servicing required under the Primont APS, Chaitons LLP ("**Chaitons**"), counsel to the Trustee, notified

Primont's lawyer that the Trustee intended to terminate the sale and return the deposit to Primont, as is provided for in the Primont APS.

35. Primont, through its lawyer, has informed the Trustee that it wishes to seek a Court order to have the Primont APS specifically performed. A hearing date to consider this matter has been set for May 15, 2015.

Realtors

36. The Trustee requested proposals from three (3) realtor firms that have extensive experience with properties similar to the Property and in the same geographic area. Based on the responses, the Trustee decided to request a proposal from the agent at Tradeworld Realty Inc. ("**Tradeworld**"), who had the existing listing arrangement with JKDC. This agent was very responsive, demonstrated an in depth knowledge of the Property and expressed a keen interest in working with the Trustee going forward. This agent presented some offers to the Trustee before a listing agreement had been signed.
37. The Trustee understands that Tradeworld alleges that it is owed approximately \$2.0 million in commission arrears; however the agent indicated that Tradeworld was prepared to sign an agreement whereby the previous commissions could not be offset against any sales proceeds going forward.
38. At this time the Trustee is negotiating with Tradeworld on the terms of such an agreement and hopes to have the agreement finalized and the remaining units listed as soon as possible.

JKRC

39. Following its appointment, the Trustee became aware that the vendor under sale agreements for residential units is JKRC, notwithstanding that JKDC is the registered owner of the property. Additionally, the Trustee has been informed by Harris Sheaffer that JKRC is the entity registered with Tarion for warranty coverage and this registration needs to be renewed on an annual basis. Tarion has confirmed that the Trustee can take over JKRC's registration.
40. Harris Sheaffer has also advised the Trustee that it is common practice to have this structure (i.e. vendor and registered owner are separate legal entities) for condominium sales.
41. According to the corporate legal structure for the MADY Group, JKRC is a separate legal entity, wholly owned by the same MADY Group entity that owns JKDC. However, JKRC was not an applicant in the proceeding appointing CBTL as Trustee and JKRC is not referred to in the Appointment Order. Accordingly, the Trustee has no power or authority over or in respect of JKRC.
42. The Trustee has been informed by JKRC management that JKRC is a single purpose entity that was established solely for the purpose set out above, and has no other business and no assets.
43. So that the Trustee can complete its mandate under the Appointment Order with respect to the Property, the Trustee needs to be able to execute, issue and endorse documents of whatever nature in respect of the Property in the name and on behalf of JKRC, and take all necessary steps in the name of and on

behalf of JKRC in respect of the Property, for any purpose pursuant to the Appointment Order.

44. In the event that such authority is granted by the Court, all net sale proceeds with respect to the sale of residential units, lockers and parking units will be paid to the Trustee.

Repairs and Maintenance Issues

45. The residential units are covered by Tarion warranty protections under the Ontario *New Home Warranties Plan Act* ("**ONHWP Act**"). The warranty obligations covered by Tarion fall into three categories: delayed occupancy claims, common element deficiencies and unit specific deficiencies. Once deficiencies are reported to Tarion, they are investigated and if determined to be valid, Tarion pays and collects reimbursement from the trust funds held by Westmount, agent for the Tarion bond issuer, Aviva. Tarion charges penalties to JKRC for any claims its pays.
46. The Trustee retained Mr. A. Hanoman, JKDC's former Senior Service Manager, on an as needed consultant basis to assist with reviewing and making recommendations regarding maintenance and repair issues and Tarion deficiency claims.
47. The Trustee has now made arrangements to be given 30-45 days to rectify deficiencies reported and validated by Tarion before Tarion steps in to pay. Mr. Hanoman has provided the Trustee with a report detailing potential claims and is

working with the Trustee to make arrangements to have valid claims rectified before Tarion becomes involved.

Turner Fleischer

48. The Trustee understands that certain clearance certificates are required by Tarion in order for a final completion letter for the residential condominium to be issued. One of the outstanding clearance certificates is from the architectural firm, Turner Fleischer Architects Inc. ("**Turner Fleischer**"). The Trustee contacted Turner Fleischer to request this certificate and was advised that they would not proceed to do any further work to issue the requested certificate until outstanding arrears were paid in full.
49. Turner Fleischer claims they are owed \$41,233.02 as compared to \$41,430.77 according to JKDC's records and they will not accept a lower amount.
50. As the Trustee requires the clearance certificate from Turner Fleischer to obtain the final completion letter from Tarion, it intends to pay the outstanding arrears claimed by Turner Fleischer.

TERMINATION OR DISCLAIMER OF RESIDENTIAL SALE AGREEMENTS

Units Sold For No Consideration

51. Pursuant to an agreement of purchase and sale dated December 9, 2014, as amended (the "**827 APS**"), Brody Wall System Ltd. ("**Brody**") agreed to purchase Unit 827 ("**Unit 1503**") in the SUSQ project from JKRC. The 827 APS lists a purchase price of \$230,000. A copy of the 827 APS with all schedules and amendments is attached as **Appendix "E"**.

52. Pursuant to an agreement of purchase and sale dated October 3, 2014, as amended (the "**1216 APS**"), Diri-Kipli Corp. ("**Diri-Kipli**") agreed to purchase Unit 1216 ("**Unit 1216**") in the SUSQ project from JKRC. The 827 APS lists a purchase price of \$265,000. A copy of the 1216 APS with all schedules and amendments is attached as **Appendix "F"**.
53. Pursuant to an agreement of purchase and sale dated April 29, 2014, as amended (the "**1521 APS**"), Dircam Properties Limited ("**Dircam**") agreed to purchase Unit 1521 ("**Unit 1521**") in the SUSQ project from JKRC. The 1521 APS lists a purchase price of \$274,900. A copy of the 1521 APS with all schedules and amendments is attached as **Appendix "G"**.
54. Pursuant to an agreement of purchase and sale dated October 3, 2014, as amended (the "**1527 APS**", and together with the 827 APS, the 1216 APS and the 1521 APS, the "**Lien Claimant Sale Agreements**"), Diri-Kipli agreed to purchase Unit 1527 ("**Unit 1527**", and together with Unit 827, Unit 1216 and Unit 1521, the "**Residential Units**") in the SUSQ project from JKRC. The 1527 APS lists a purchase price of \$265,000. A copy of the 1527 APS with all schedules and amendments is attached as **Appendix "H"**.
55. Schedule "X" to each of the Lien Claimant Sale Agreements provides that the consideration for the purchase of the Residential Units is the partial satisfaction of the indebtedness of JKDC to Brody, Diri-Kipli and Dircam respectively. As a result, no cash consideration is contemplated in the Lien Claimant Sale Agreements.

56. Brody is a construction contractor that performed work on the SUSQ project and other MADY Group projects. According to the books and records of JKDC, Brody is owed \$81,529. Brody registered a construction lien against the Property on January 21, 2015 in the amount of \$82,529, a copy of which is attached as **Appendix "I"**.
57. Dircam is a construction contractor that performed work on the SUSQ project. According to the books and records of JKDC, Dircam is owed \$579,661.85. Dircam registered a construction lien against the Property on December 30, 2014 in the amount of \$822,796.98, a copy of which is attached as **Appendix "J"**.
58. Under the 1216 APS and the 1527 APS, Dircam assigned part of its debt to Diri-Kipli.
59. In the Trustee's view, the sale of the Residential Units to Brody, Diri-Kipli and Dircam pursuant to the Lien Claimant Sale Agreement, if completed, would result in the lien claimants obtaining an unjust preference over other creditors of JKDC. The Trustee is advised by its counsel that under the *CLA*, a conveyance of property to a party that has a lien claim over the property is void against all other lien claimants. As a result the Trustee is seeking the Court's authorization to terminate or disclaim the Lien Claimant Sale Agreements.
60. In the event that the Court authorizes the Trustee to terminate or disclaim the Lien Claimant Sale Agreements, the Trustee intends to market the Residential Units for sale in order to realize the maximum value for all stakeholders.

Units Sold Below Fair Market Value

61. On February 23, 2015, the Trustee was informed by Harris Sheaffer that they had received documentation for the sale of two (2) residential units that were entered into by JKRC on February 9, 2015 and scheduled to close on March 16, 2015. These units were not on the list of pre-sold units that the Trustee was authorized to close pursuant to the Appointment Order, and the Trustee was not previously aware of these sales.
62. The sale agreements for the two residential units in question are as follows:
- (a) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Roger James Dol for the sale of Unit 218 ("**Unit 218**") for the purchase price of \$200,000 and a deposit of \$5,000 (the "**Unit 218 APS**"), a copy of which is attached hereto as **Appendix "K"**; and
 - (b) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Anna Gayle Andrew for the sale of Unit 117 ("**Unit 117**") for the purchase price of \$200,000 and a deposit of \$5,000 (the "**Unit 117 APS**"), a copy of which is attached hereto as **Appendix "L"**.
63. Based on discussions with representatives of JKDC, the Trustee understands that Unit 117 had previously been listed for sale for \$270,900 and Unit 218 had been listed for sale for \$271,900.
64. The Trustee:

- (a) has been informed by MADY Group management that the spouse of Anna Andrew is a former employee of JKRC, and Roger James Dol is a friend or acquaintance of the Andrews;
 - (b) was approached by a realtor that indicated that they could bring forward an offer for Unit 117 at an amount that was materially higher than the purchase price under the Unit 117 APS; and
 - (c) has been informed by a realtor that the last sales of similar residential units took place in the Fall of 2014 at substantially higher prices.
65. Chaitons, as counsel to the Trustee, sent letters to the purchasers dated March 12, 2015, and informed the Purchasers that the Sale Agreements did not represent fair market value for the units and that the Trustee would be seeking Court authorization to terminate the sale agreements. Copies of these letters are attached as **Appendix "M"** hereto.
66. Chaitons has been informed that the purchasers have retained counsel and intend to oppose any motion by the Trustee to terminate the agreements and will seek an order compelling the Trustee to complete the sale agreements.
67. Given the facts set out above, and given that the sale agreements were executed by JKRC at a time when JKRC and JKDC were insolvent and only two days prior to the hearing of JKDC's application for the appointment of the Trustee, the Trustee is of the view that such transactions, if completed, would constitute improvident sales at amounts materially below fair market value and would be

prejudicial to the mortgagees and the lien claimants that have the economic interest in the property.

68. As a result the Trustee is seeking the Court's authorization to terminate or disclaim the sale agreements. In the event that the Court authorizes the Trustee to terminate or disclaim the sale agreements, the Trustee intends to market the units for sale in order to realize the maximum value for all stakeholders.

TRANSFER OF THE TERRACE UNIT TO YRSCC 1228

69. Subsequent to its appointment, the Trustee was informed that in addition to the Property that is subject to the Appointment Order, JKDC is also owner of land and premises in the SUSQ project bearing PIN 29759-0749, a copy of which is attached hereto as **Appendix "N"**.
70. The Trustee has been advised that this property represents Unit 1 on Level 3 of the residential condominium tower and is an outdoor terrace unit intended for use by the residential unit owners (the "**Terrace Unit**").
71. Pursuant to Article 4.8 of the Condominium Declaration, JKDC is to transfer title to the Terrace Unit to YRSCC 1265 after it has been registered. The Trustee has been informed by Harris Sheaffer that this transfer has not occurred to date.
72. As a result, the Trustee is requesting that the Court grant an order vesting title to the Terrace Unit to YRSCC 1265 free and clear of all encumbrances and claims, in accordance with the Condominium Declaration.

CLAIMS AGAINST THE PROPERTY

73. As at March 31, 2015, 19 construction liens, totalling approximately \$3.77 million had been registered across the Property with respect to services and materials supplied to the Property.

74. The following mortgages have also been registered against the Property:

| | Phase I Commercial | Phase II Residential | Phase II Commercial | Phase III Vacant Land |
|--------------------|--|-----------------------------|--|--------------------------|
| Aviva | \$30.0 million | \$16.5 million | i)\$30.0 million ii)\$16.5 million ¹ | N/A |
| Laurentian Bank | \$3.6 million ² \$2.4 million ³ | \$45.0 million ⁴ | \$45.0 million | \$45.0 million |
| MarshallZehr | \$8.0 million ⁵ | N/A | N/A | N/A |
| Am-Stat | N/A | \$10.0 million | \$10.0 million | \$10.0 million |

Aviva

75. Aviva's charge/mortgage is in connection with deposit facilities and a Tarion Bond required to satisfy and secure obligations under the *ONHWP Act*. JKRC

¹ Two separate mortgages have been registered.

² Mortgage is with respect to is over 19 of 27 units

³ *Ibid.*

⁴ Mortgage is with respect to all but three of the units.

⁵ *Supra* note 1.

also entered into an indemnity agreement to indemnify Aviva from any losses or claims it may suffer in connection with the issuance of the bond.

76. Westmount Guarantee is the General Agent for Aviva regarding Tarion, and in an email dated March 12, 2015, advised the Trustee of the following security held by Aviva:

- (a) \$250,000 Tarion Bond outstanding for the residential units in Phase I;
- (b) \$5,060,000 Tarion Bond outstanding for the residential units in Phase II;
- (c) Collateral mortgage registered on the unsold/unclosed commercial units, currently in first position on some units, in second on others;
- (d) Collateral mortgage registered on the unsold/unclosed residential units, currently in first position; and
- (e) approximately \$800,000 is held in a trust account as security against the outstanding bonds.

77. Westmount also advises that Tarion has started to pay claims and will look to recover under the Tarion Bonds. Specifically, they propose to use the cash security they hold to pay claims first and then look to their mortgage security to cover any claims, unpaid fees, premiums and legal costs above the \$800,000 of cash security held in trust. The Trustee's protocol with Tarion is intended to minimize draws against the cash security is detailed below.

Laurentian Bank

78. The Trustee is advised that JKDC has fully repaid Laurentian Bank ("**Laurentian**") in connection with the \$45.0 million charge from net sale proceeds from the sale of residential units in Phase II. In addition, the \$3.6 million and \$2.4 million Laurentian charges are collateral mortgages that secure obligations of 144 Park Ltd. ("**144 Park**"), a related MADY Group company, under a bridge loan facility from September 2014.
79. JKDC was required to post letters of credit ("**LCs**") which were supported by cash collateral. LCs were issued by Laurentian in favour of the City of Markham and The Regional Municipality of York ("**York Region**") relating to obligations JKDC had with respect to completing certain works pursuant to site plan and construction agreements.
80. The Trustee was advised that Laurentian is holding approximately \$5.0 million in cash collateral in connection with LCs related to the above- noted obligations.
81. The Trustee obtained copies of the LCs from Laurentian's legal counsel and determined that \$3,038,273.54 was outstanding as compared to management's estimate of \$5.0 million. The primary difference relates to an LC that was drawn on for \$2,077,408.07 by the City of Markham on January 21, 2015 pursuant to an agreement related to JKDC's obligation for "cash-in-lieu of parkland".
82. The Trustee contacted JKDC's management who advised that JKDC's position is that the above-noted LC draw was overstated by approximately \$1.0 million and that JKDC had previously identified this discrepancy, prepared an analysis in

support of its position and retained Aird & Berlis to draft a letter to the City of Markham detailing its position. This letter was never sent.

83. The Trustee has retained Mr. Hal Kersey of HRK, the former JKDC employee who handled planning issues and was involved in identifying and trying to resolve the discrepancy noted above. The Trustee has also retained Aird & Berlis and instructed them to finalize and send the above-noted letter to the solicitor at the City of Markham.
84. Mr. Kersey is also working with the Trustee to determine what is required to complete JKDC's obligations under these agreements in order to cancel the related LC and release the underlying cash collateral.

Am-Stat Corporation

85. Am-Stat Corporation was owed \$5,080,957.38 as of February 19, 2015. Based on the *per diem* rate of \$1,670.45, the Trustee calculates a balance owing of \$5,147,775.38 as at March 31, 2015.

MarshallZehr

86. 144 Park is indebted to MarshallZehr and this indebtedness is secured by a mortgage over Phase I Commercial Units of the Property. MarshallZehr was owed \$3,320,808.64 as of February 13, 2015. Based on a *per diem* rate of \$1,273.73 and a monthly administration fee of \$5,000, the Trustee calculates a balance owing of \$3,384,400.22 as at March 31, 2015.

CLAIMS PROCESS

87. As a result of the existence of the construction liens, and the need for all construction liens against the Property to be asserted so that the Trustee can make a recommendation to the Court as to the parties entitled to the net sale proceeds, it is necessary, in the Trustee's view, to establish a claims process for the submission, review and determination of all *CLA* lien claims for the provision of services and materials prior to February 11, 2015 with respect to the Property, and that this process be the exclusive process by which all construction lien claims and their priority are determined.
88. The Trustee is proposing the following construction lien claim process be approved by the Court:
- (a) a claims bar date of May 29, 2015 be established, by which date all lien claimants must provide to the Trustee specified documentation with respect to their claims, otherwise their claims are forever barred and extinguished;
 - (b) the Trustee shall administer the claim process, including the review, determination, acceptance, revision, disallowance and/or settlement of any claim;
 - (c) the Trustee shall accept, revise and/or disallow a claim by delivering a notice of determination to the claimant including the reasons for such determination;

- (d) any determination or disposition by the Trustee shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*;
- (e) a claimant may appeal the revision and/or disallowance of its claims as set out in a notice of determination by delivering a dispute notice to the Trustee within 10 days of delivery of the notice of determination from the Trustee. Any claimant who does not deliver a dispute notice within 10 days of delivery of the notice of determination with respect to its claim shall be deemed to have accepted the determination as set out in the notice of determination, which shall be final and binding; and
- (f) any appeal of a notice of determination as set out in a dispute notice for which the Trustee cannot reach a consensus with the claimant, shall either be referred to a claims officer to be appointed by further order of the Court in recommendation by the Trustee, or be heard by the Court. Any appeal hearing before the claims officer shall be conducted as a hearing *de novo* and any appeal of any decision of the claims officer shall be heard by this Court on a timetable approved by this Court.

89. The Trustee is of the view that the construction lien claim process will allow for a timely and cost effective adjudication of the claims of the construction lien claimants, and is in the best interest of all of JKDC's stakeholders.

TRUSTEE'S REQUEST TO THE COURT

90. The Trustee respectfully requests that this Court issue Orders:

- (a) approving the First Report and the conduct and activities of the Trustee described therein;
- (b) authorizing and empowering the Trustee to execute, issue and endorse documents of whatever nature in respect of the Property in the name and on behalf of JKRC, and to take all necessary steps in the name and on behalf of JKRC in respect of the Property, for any purpose pursuant to the Appointment Order;
- (c) authorizing the Trustee to terminate or disclaim the Lien Claimant Sale Agreements that were entered into by JKRC with construction lien claimants prior to the commencement of this proceeding for no cash consideration and at a time when JKRC and JKDC were insolvent;
- (d) authorizing the Trustee to terminate or disclaim two (2) residential Agreements of Purchase and Sale that were entered into by JKRC on the eve of the Trustee's appointment for purchase prices that were substantially below the listing prices and at a time when JKDC and JKRC were insolvent;
- (e) vesting the right, title and interest of JKDC in the Terrace Unit to York YRSCC No. 1265 pursuant to the Condominium Declaration, free and clear of all encumbrances and claims; and

- (f) approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to February 11, 2015 with respect to the Property.

All of which is respectfully submitted to this Court as of this 23rd day of April, 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, FCPA, FCA, FCIRP
President

APPENDIX "A"



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

THE HONOURABLE Mr.) WEDNESDAY, THE 11th DAY
)
JUSTICE P. HILL) OF FEBRUARY, 2015

**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
(appointing trustee)

THIS APPLICATION made by the Applicant, Jade-Kennedy Development Corporation, for an Order pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") appointing Collins Barrow Toronto Limited as trustee (the "Trustee") of the Property (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Charles Mady sworn February 5, 2015 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for those other

parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn February 9, 2015, and on reading the consent of Collins Barrow Toronto Limited to act as the Trustee,

SERVICE

1. **THIS COURT ORDERS** that the time for and manner of service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 68(1) of the CLA, Collins Barrow Toronto Limited is hereby appointed Trustee, without security, of the lands and premises legally described in Schedule "A" attached hereto, and comprised of, among other things, commercial/retail and residential condominium units, and vacant lands, commonly known as South Unionville Square (the "Property").

TRUSTEE'S POWERS

3. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to act as receiver and manager of the Property;
- (b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;
- (d) to engage consultants, agents, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, or other assets to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant in respect of the Property, and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;
- (g) to settle, extend or compromise any indebtedness owing to the Applicant;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Trustee's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the

Applicant, the Property or the Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to complete the existing agreements of purchase and sale reproduced in the Confidential Appendix "1" for the 18 pre-sold South Unionville Square Phase II commercial/retail condominium units that forms part of the Property (collectively, the "Sold Units");
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof, with the approval of this Court;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;

Subject to solicitor and client privilege

LL

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (p) to apply for any permits, licences, approvals, declarations, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Applicant; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicant, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

4. **THIS COURT ORDERS** that (i) the Applicant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall grant immediate and continued access to the Property to the Trustee.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE TRUSTEE

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

8. **THIS COURT ORDERS** that, subject to the provisions of paragraph 9, no Proceeding against or in respect of the Applicant or the Property, including without limitation any Proceeding commenced under the CLA against the Applicant or mortgagees of the Property, shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court. Any request by construction lien claimants to mortgagees pursuant to section 39 of the CLA for particulars or information with respect to outstanding encumbrances, shall be directed to, and responded by, the Trustee upon being provided the requested information by the mortgagees.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Applicant, the Trustee, or affecting the Property, are hereby stayed and suspended, except with the written consent of the Trustee or leave of this Court, provided that nothing in this paragraph shall (i) empower the Trustee or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Trustee or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, or (iii) prevent the registration of claims for lien, the issuance of statements of claim and the registration of certificates of action by

construction lien claimants, provided that no further steps to enforce the liens may be taken by the lien claimants without consent of the Applicant and Trustee or leave of this Court.

NO INTERFERENCE WITH THE TRUSTEE

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, without written consent of the Trustee or leave of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

11. **THIS COURT ORDERS** that no Proceeding may be commenced or continued against any of the former or current directors, officers or management of the Applicant, and any person, including an employee or agent of the Applicant, who had effective control of the Applicant or its relevant activities, with respect to any claim against such persons that arose before the date hereof and whereby such persons are alleged under any law to be liable, including the CLA, except with the prior written consent of the Trustee or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, equipment, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the

Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with arrangements as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including without limitation the sale(s) of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Trustee (the "Post Trusteeship Accounts") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Applicant shall remain the employees of the Applicant until such time as the Trustee, on the Applicant's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Trustee may specifically agree in writing to pay.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any part of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the Ontario

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE'S LIABILITY

17. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Trustee by any applicable legislation.

ACCOUNTS

18. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Trustee, counsel to the Trustee and counsel to the Applicant shall be entitled to and are hereby granted a charge (the "**Administration Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a first charge on the Property in priority to all any and all existing and future security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, encumbrances, claims of secured creditors (whether contractual, statutory or

otherwise), executions, or charges, whether or not they have attached or been perfected, registered or filed (collectively, the "Claims") in favour of any Person.

19. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee, its counsel, or counsel to the Applicant, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

BORROWING POWERS

21. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Claims in favour of any Person, but subordinate in priority to the Administration Charge.

22. **THIS COURT ORDERS** that neither the Trustee's Borrowings Charge nor any other security granted by the Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Trustee is at liberty and authorized to issue certificates substantially in the form of Schedule "B" attached hereto (the "Trustee's Certificates") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Trustee's Certificates.

RETENTION OF LAWYERS

25. **THIS COURT ORDERS** that the Trustee may retain solicitors to represent and advise the Trustee in connection with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order. Such solicitors may include Chaitons LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Trustee shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.collinsbarrow.com/en/toronto-ontario/SUSQ>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

SEALING

29. THIS COURT ORDERS that Confidential Appendix "1" is hereby sealed and shall not form part of the public record until further order of the Court.

"completion of the last transaction"

UP

GENERAL

30. THIS COURT ORDERS that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Trustee from acting as receiver or trustee in bankruptcy of the Applicant.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

[Handwritten Signature]

ENTERED AT / ENREGISTRÉ À TORONTO
ON / ENREGISTRÉ LE / DANS LE REGISTRE NO.

FEB 11 2015
MB

SCHEDULE "A"

Phase I Commercial Units

| PIN | Property Description |
|-----------------|--|
| 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 |
| 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 |
| 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 |
| 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 |
| 29759-0403 (LT) | Unit 49, 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 |
| 29759-0492 (LT) | Unit 138, 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 |
| 29759-0500 (LT) | Unit 146, 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 |
| 29759-0528 (LT) | Unit 146, 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 |
| 29759-0535 (LT) | Unit 181, 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 |
| 29759-0563 (LT) | Unit 209, 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 |
| 29759-0604 (LT) | Unit 250, 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 |

| PIN | Property Description |
|-----------------|--|
| 29759-0670 (LT) | Unit 316, 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 |
| 29759-0673 (LT) | Unit 319, 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 |
| 29759-0702 (LT) | Unit 348, 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 |
| 29759-0714 (LT) | Unit 360, 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 |
| 29759-0715 (LT) | Unit 361, 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 |
| 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 |
| 29759-0743 (LT) | Unit 389, 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 |
| 29759-0744 (LT) | Unit 390, 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 |
| 29759-0745 (LT) | Unit 391, 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 |
| 29759-0746 (LT) | Unit 392, 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 |
| 29759-0747 (LT) | Unit 393, 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 |
| 29759-0748 (LT) | Unit 394, 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 |

| PIN | Property Description |
|------------------|---|
| 29759-0774 (LT) | Unit 25, Level A, 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 |
| 29759-0805 (LT) | Unit 56, Level A, 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 |
| 29759-0806 (LT) | Unit 57, Level A, 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 |
| 29759-08014 (LT) | Unit 65, Level A, 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 |

Unsold Residential Units

| PIN | Property Description |
|-----------------|--|
| 29796-0007 (LT) | Unit 7, Level 1, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0024 (LT) | Unit 14, Level 2, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0146 (LT) | Unit 22, Level 7, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0223 (LT) | Unit 11, Level 11, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0247 (LT) | Unit 15, Level 12, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0250 (LT) | Unit 18, Level 12, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |

| PIN | Property Description |
|-----------------|--|
| 29796-0255 (LT) | Unit 4, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0277 (LT) | Unit 26, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0301 (LT) | Unit 50, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0331 (LT) | Unit 80, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0376 (LT) | Unit 125, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0429 (LT) | Unit 178, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0430 (LT) | Unit 179, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0439 (LT) | Unit 188, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0533 (LT) | Unit 282, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0578 (LT) | Unit 327, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0581 (LT) | Unit 330, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0584 (LT) | Unit 333, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |

| PIN | Property Description |
|-----------------|--|
| 29796-0586 (LT) | Unit 335, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |
| 29796-0624 (LT) | Unit 373, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham |

Phase II Commercial Units

| PIN | Property Description |
|-----------------|--|
| 29759-0834 (LT) | Unit 355, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0835 (LT) | Unit 356, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0836 (LT) | Unit 357, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0837 (LT) | Unit 358, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0838 (LT) | Unit 359, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0839 (LT) | Unit 360, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0840 (LT) | Unit 361, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0841 (LT) | Unit 85, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |

| PIN | Property Description |
|-----------------|---|
| 29759-0842 (LT) | Unit 86, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0843 (LT) | Unit 87, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0844 (LT) | Unit 88, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0845 (LT) | Unit 89, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0846 (LT) | Unit 90, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0847 (LT) | Unit 91, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0848 (LT) | Unit 92, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0849 (LT) | Unit 93, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0850 (LT) | Unit 94, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0851 (LT) | Unit 95, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0852 (LT) | Unit 96, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |
| 29759-0853 (LT) | Unit 97, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |

| PIN | Property Description |
|-----------------|---|
| 29759-0854 (LT) | Unit 98, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham |

Vacant Lands

| PIN | Property Description |
|-----------------|--|
| 02963-2965 (LT) | Pt Lt 2 PL 2196 Markham, Pt 9 65R27668 ; T/W Row Over Pt Lt 2 PL 2196 Markham, Pts 10, 11 & 12, 65R27668, until such time as said Pts 10, 11 & 12, 65R27668 have been dedicated as part of public highway, as in YR623430 ;; Town of Markham |
| 02963-2972 (LT) | Pt Lt 2 PL 2196 Markham, Pt 8 65R27668 ; T/W Row Over Pt Lt 2 PL 2196 Markham, Pts 2, 3, 5, 6 & 7, 65R27668, until such time as said Pts 2, 3, 5, 6 & 7, 65R27668 have been dedicated as part of public highway, as in YR623430 ;; Town of Markham |
| 02963-3571 (LT) | Pt Lt 2 PL 2196, Being Pts 2 & 3 PL 65R33603 ;; Town of Markham |
| 02963-3579 (LT) | Part Lot 1 Plan 2196, Pts 1 and 2 on 65R33243.; Town of Markham |
| 02963-3587 (LT) | Pt Lt 2 PL 2196, Pt 10 65R33243, S/T Easement in Gross, as in YR767057 ;; Town of Markham |

SCHEDULE "B"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the trustee (the "Trustee") of the Property appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 11th day of February, 2015 (the "Order") made in an application having Court file number ___-CL-_____, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Trustee is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the Claims (as defined in the Order) of any other person, but subject to the priority of the charges set out in the Order, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Trustee to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Trustee does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

COLLINS BARROW TORONTO LIMITED,
solely in its capacity as Trustee of the Property,
and not in its personal capacity

Per: _____
Name:
Title:

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

Court File No. C-15-10882-00 CL

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

Proceedings commenced at Toronto

ORDER
(appointment of a trustee)

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Jade-Kennedy Development Corporation**