

**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***

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

SEPTEMBER 25, 2017

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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) (the "**CLA**"), 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 ("**JKDC**") (the "**SUSQ Property**").
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the SUSQ Property, take possession and control of the SUSQ Property and any and all proceeds, receipts and disbursements arising out of or from the SUSQ Property, market any or all of the SUSQ Property, and sell, convey, transfer, lease or assign the SUSQ Property or any part or parts thereof with the approval of the Court.
3. All Court documents referred to herein, and other publicly available information relating to this proceeding, has been posted on the Trustee's website (the "**Trustee's Website**"), which can be found at:

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

PURPOSE OF SEVENTEENTH REPORT

4. The purpose of this Seventeenth Report of the Trustee (the “**Seventeenth Report**”) is to:
- (a) provide the Court with an overview with respect to the realizations achieved by the Trustee from the SUSQ Property and other property of JKDC since the Trustee’s appointment, and the claims of mortgagees, construction lien claimants, secured creditors and condominium corporations to such proceeds;
 - (b) provide an interim statement of the Trustee’s receipts and disbursements for the period from February 11, 2015 to September 8, 2017;
 - (c) provide the Court with the Trustee’s proposed allocation of administrative costs across all realization proceeds;
 - (d) report to the Court on the Trustee’s activities since March 15, 2016, being the date of the Trustee’s Sixth Report to the Court;
 - (e) request that the Court grant orders:
 - (i) approving the Trustee’s proposal for the allocation of administrative costs across all realization proceeds;
 - (ii) authorizing the Trustee to distribute \$800,000 from the net sale proceeds from the Phase I Mall Units, Unit 60 and certain of the Phase I Kiosk Units (each as defined below) to MarshallZehr Group

Inc. ("**MZG**" or "**MarshallZehr**"), as mortgagee, and authorizing the Trustee to make further distributions without Court order;

- (iii) authorizing the Trustee to distribute \$3,000,000 from the net sale proceeds of the Phase II Property, the Vacant Lands and from non-SUSQ Property (each as defined below) proceeds to Am-Stat Corporation ("**Am-Stat**"), as mortgagee and secured creditor, and authorizing the Trustee to make further distributions without Court order;
- (iv) authorizing the Trustee to distribute a holdback payment of \$135,000 from the net sale proceeds from the Phase II Commercial Units (as defined below) to a construction lien claimant, 2050491 Ontario Inc. o/a The Downsview Group ("**Downsview**"), and to release the remaining funds in the reserve to the Trustee;
- (v) authorizing the Trustee to release from reserve the amount of \$49,445 from the net sales proceeds for the Vacant Lands (as defined below), which was being held by the Trustee pursuant to Court order in connection with the now withdrawn construction lien claim of Sereen Painting Ltd. ("**Sereen**");
- (vi) authorizing the Trustee to distribute \$40,159.71 from the combined net sale proceeds of the Phase I Commercial Units (as defined below) to YRSCC 1228 (as defined below), on account of its registered condominium liens;

- (vii) approving the Seventh Report of the Trustee dated June 6, 2016, the Ninth Report of the Trustee dated September 30, 2016, the Tenth Report of the Trustee dated October 11, 2016, the Eleventh Report of the Trustee dated October 27, 2016, the Supplement to the Eleventh Report dated November 9, 2016, the Twelfth Report of the Trustee dated December 15, 2016, the Thirteen Report of the Trustee dated March 13, 2017, the Fourteenth Report of the Trustee dated April 17, 2017, the Fifteenth Report of the Trustee dated June 28, 2017 the Sixteenth Report of the Trustee dated August 1, 2017, and this Seventeenth Report; and
- (viii) approving the fees and disbursements of the Trustee and its counsel Chaitons LLP ("**Chaitons**") as set out in herein and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

5. In preparing this Seventeenth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of JKDC, discussions with management and employees of JKDC and other companies within the MADY group of companies, and information received from other third-party sources (collectively, the "**Information**"). Certain of the information contained in this Seventeenth 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.

REPORTS PREVIOUSLY FILED

6. As noted above, on February 11, 2015, the Court appointed CBTL as the Trustee. Since its appointment, the Trustee has filed with the Court the First Report dated April 23, 2015 (the "**First Report**"), the Second Report dated May 15, 2015 (the "**Second Report**"), the Supplement to the Second Report dated May 26, 2015 (the "**Supplement to the Second Report**"), the Third Report dated June 1, 2015 (the "**Third Report**"), the Fourth Report dated October 8, 2015 (the "**Fourth Report**"), the Fifth Report dated December 18, 2015 (the "**Fifth Report**"), the Sixth Report dated March 15, 2016 (the "**Sixth Report**"), the Supplement to the Sixth Report dated March 31, 2016 (the "**Supplement to the Sixth Report**"), the Second Supplement to the Sixth Report dated June 28, 2016 (the "**Second Supplement to the Sixth Report**"), the Seventh Report dated June 6, 2016 (the "**Seventh Report**"), the Eighth Report dated July 22, 2016 (the "**Eighth Report**"), the Ninth Report dated September 30, 2016 (the "**Ninth Report**"), the Tenth Report dated October 11, 2016 (the "**Tenth Report**"), the Eleventh Report dated October 27, 2016 (the "**Eleventh Report**"), the Supplement to the Eleventh Report dated November 9, 2016 (the "**Supplement**

to the Eleventh Report”), the Twelfth Report dated December 15, 2016 (the “Twelfth Report”), the Thirteenth Report dated March 13, 2017 (the “Thirteenth Report”), the Fourteenth Report dated April 17, 2017 (the “Fourteenth Report”), the Fifteenth Report dated June 28, 2017 (the “Fifteenth Report”), and the Sixteenth Report dated August 1, 2017 (the “Sixteenth Report”). Copies of these reports, with appendices, can be found on the Trustee’s Website.

7. The Court previously approved the First Report, the Second Report, the Supplement to the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Sixth Report, the Supplement to the Sixth Report, the Second Supplement to the Sixth Report and the Eighth Report, and the conduct of the activities of the Trustee set out therein, in Court orders granted in this proceeding. Copies of these Court orders can be found on the Trustee’s Website.
8. As a result, at this time the Trustee is seeking approval of this Seventeenth Report, along with the Seventh Report, the Ninth Report, the Tenth Report, the Eleventh Report, the Supplement to the Eleventh Report, the Twelfth Report, the Thirteenth Report, the Fourteenth Report, the Fifteenth Report and the Sixteenth Report, and the conduct and activities of the Trustee as set out therein.

BACKGROUND

9. JKDC is an Ontario corporation that was incorporated on January 30, 2008 and has its registered office located in Markham, Ontario. JKDC was incorporated for

the purpose of being the registered owner of the SUSQ Property and developer of the South Unionville Square condominium project (the "**SUSQ Project**") to be constructed on certain portions of the SUSQ Property, which is located in Markham, Ontario.

10. JKDC sought the appointment of the Trustee as it was insolvent, contractors had registered construction lien claims against title to the SUSQ Property, and the appointment was necessary to complete the closing of certain pre-sold commercial/retail units, market and sell the unsold SUSQ Property, and distribute the sale proceeds pursuant to Court order(s).
11. The SUSQ Project was to be developed and constructed by JKDC in phases, as described below.

SUSQ PROPERTY AT TIME OF TRUSTEE'S APPOINTMENT

Phase I

12. Phase I of the SUSQ Project was the development and construction of 28 residential townhomes, a T&T Supermarket, and a commercial condominium project with units for retail, restaurant, office and medical services.
13. Construction of Phase I was substantially completed on March 5, 2013 and the condominium declaration was registered on April 17, 2013, which established York Region Standard Condominium Corporation No. 1228 ("**YRSCC 1228**").
14. As of the date of the Appointment Order, JKDC was still the registered owner of the following Phase I properties (collectively, the "**Phase I Property**"):

- (a) one commercial/retail unit (legally known as unit 60, level 1) ("**Unit 60**");
- (b) eleven mall units (located on level 2) (collectively, the "**Phase I Mall Units**");
- (c) ten kiosks units (three of which are located on level 1 and the remaining eight on level 2) (collectively, the "**Phase I Kiosk Units**", and together with Unit 60 and the Phase I Mall Units, the "**Phase I Commercial Units**"); and
- (d) four (4) unsold parking units that are only accessible to the residents of the Phase I townhomes (collectively, the "**Phase I Parking Units**").

Phase II

15. Phase II of the SUSQ Project involved the two-stage development and construction of a 12-storey condominium-apartment tower, which contains residential, parking and locker units in the tower, and twenty-one (21) commercial/retail units located in, adjacent to and/or underneath the tower.
16. The first stage was the development and construction of the residential tower. Construction was substantially completed on June 10, 2014 and the residential condominium declaration was registered on September 11, 2014, which established York Region Standard Condominium Corporation No. 1265 ("**YRSCC 1265**").

17. As at the Trustee's appointment, JKDC was still the registered owner of the following Phase II residential properties (collectively, the "**Phase II Residential Property**"):
 - (a) six residential units (suites 117, 218, 827, 1216, 1521 and 1527) (collectively, the "**Phase II Residential Suites**");
 - (b) eight parking units (units 4, 26, 50, 80, 125, 178, 179 and 188 on level B) (collectively, the "**Phase II Parking Units**"); and
 - (c) six locker units (units 282, 327, 330, 333, 335 and 373 on level B) (collectively, the "**Phase II Locker Units**").
18. The second stage of the Phase II development and construction was the twenty-one commercial units (collectively, the "**Phase II Commercial Units**").
19. 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. As a result, the Phase II Commercial Units now form part of YRSCC 1228.
20. As of the date of the Appointment Order, eighteen (18) of the 21 Phase II Commercial Units were subject to existing agreements of purchase and sale and were scheduled to close on February 17, 2015.
21. Pursuant to the Appointment Order, the Trustee was authorized to complete the existing agreements of purchase and sale for the 18 pre-sold Phase II Commercial Units. The Trustee was able to close the sale transactions for 16 of

the 18 Phase II Commercial Units. The remaining two sale transactions did not close due to purchaser defaults, and accordingly the sale transactions were terminated by the Trustee and the deposits were not returned to the prospective purchasers.

The Vacant Lands

22. Additionally, there 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 and situated south of the SUSQ Project lands (the "**Vacant Lands**").
23. Although commonly referred to as Phase III of the SUSQ Project, the Trustee understands that there was to be no connection or common purpose between the SUSQ Project and the freehold townhomes and detached homes to be constructed on the Vacant Lands. A street (South Unionville Avenue) and a roundabout separates the SUSQ Project lands from the Vacant Lands. There was no intent for the purchasers of the townhomes and houses to be constructed on the Vacant Lands to have any special access to or use of the SUSQ Project.
24. JKDC and the MADY Group did not intend to build the homes to be situated on the Vacant Lands. JKDC had entered into an agreement of purchase and sale for the Vacant Lands with Primont Homes (Harmony) Inc. ("**Primont**") on November 24, 2011 and was to complete the servicing requirements for the Vacant Lands. JKDC did not complete the servicing under the agreement with

Primont and, notwithstanding extensions and amendments, a sale of the Vacant Lands was not completed by JKDC prior to the Trustee's appointment.

25. Following its appointment, the Trustee was able to negotiate a sale of the Vacant Lands to Primont, which resulted in an increase of approximately \$1.1 million in the purchase price paid by Primont as compared to the last offer Primont made to JKDC to purchase the Vacant Lands on an "as is, where is" basis.
26. The sale of the Vacant Lands by the Trustee to Primont was approved by the Court pursuant to the Approval and Vesting Order of Justice Pattillo dated May 29, 2015. The sale to Primont closed on June 12, 2015.

REALIZATIONS FROM SUSQ PROPERTY

27. Since the Trustee's appointment, it has completed sale transactions for the SUSQ Property listed below, which were previously described in detail in the Trustee's reports to the Court and approved by Court orders granted in this proceeding. The net sale proceeds for each of the properties is included below. The amounts set out below take into account direct expenses, such as real estate commissions, HST, property taxes and certain common expense amounts paid by the Trustee. Details as to how the net sale proceeds amounts were calculated are set out in the spreadsheets attached hereto respectively as **Appendices "A" through "D"**.

PROPERTY	NET SALE PROCEEDS
<u>PHASE I COMMERCIAL UNITS</u>	
Unit 60	\$731,871.47
Units 73, 74 and 75	\$83,034.38
Unit 138	\$64,012.31
Unit 146	\$67,376.87
Unit 174	\$43,040.80
Unit 181	\$42,988.07
Unit 209	\$47,923.22
Unit 250	\$47,923.25
Unit 348	\$46,940.62
Unit 361	\$59,655.44
Units 389 and 391	\$79,154.40
Unit 392	\$11,586.05
Unit 393	\$11,586.05
Unit 394	\$11,586.05
Total	\$1,348,679.23
<u>PHASE II COMMERCIAL UNITS</u>	
Units 86 & 87	\$346,424.32
Units 88 & 89	\$430,111.17
Units 90 & 91	\$477,714.75
Units 92 & 93	\$493,700.85
Unit 94	\$268,616.30
Units 95 & 96	\$309,379.84

PROPERTY	NET SALE PROCEEDS
Units 97 & 98	\$264,721.02
Unit 355	\$222,441.98
Unit 356	\$208,557.83
Unit 357	\$274,514.75
Unit 358	\$382,601.40
Unit 359	\$532,338.48
Total	\$4,211,122.69
<u>PHASE II RESIDENTIAL</u>	
Suite 117; Parking Unit 26; Locker Unit 335	\$209,863.17
Suite 218; Parking Unit 80; Locker Unit 327	\$221,638.24
Suite 827; Parking Unit 188; Locker Unit 282	\$231,616.37
Suite 1216; Parking Unit 125; Locker Unit 373	\$258,109.37
Suite 1521; Parking Unit 4; Locker Unit 330	\$240,995.59
Suite 1527; Parking Unit 50; Locker Unit 333	\$234,050.76
Total	\$1,396,273.50
VACANT LANDS	
Vacant Lands	\$1,736,150.08

28. With respect to the calculation of the net sale proceeds, the amounts for the Phase II Residential Property listed above take into account amounts paid by the Trustee to YRSCC 1265 on the closing of each application sale transaction for common expense amounts that had accrued since the Trustee's appointment, along with pre-appointment common expense amounts that YRSCC 1265 was

entitled to receive payment of as a result of registering liens against title to the property under the *Condominium Act, 2001*.

29. The Trustee continues to market for sale the following SUSQ Property:
- (a) five Phase I Commercial Units (three mall units and two kiosk units);
 - (b) four Phase I Parking Units;
 - (c) three Phase II Commercial Units; and
 - (d) two Phase II Parking Units.

REALIZATIONS FROM NON-SUSQ PROPERTY

Letters of Credit Funds

30. As previously reported, JKDC was required to arrange for the issuance of letters of credit ("LCs") in connection with its obligations to complete certain works pursuant to site plan, construction and other agreements.
31. JKDC arranged for its senior lender, Laurentian, to issue the required LCs, and JKDC posted cash collateral with Laurentian in support of the LCs. The cash collateral was advanced to JKDC by Laurentian under its letters of credit facility discussed below.
32. As at the date of the Trustee's appointment, there were eleven (11) irrevocable standby LCs outstanding with a total aggregate value of \$3,038,273.54.
33. The Trustee retained third party professional consultants and trades to complete the outstanding works in order to obtain the required certifications that would

result in a release of the LCs and the return to the Trustee of the cash collateral held by Laurentian.

34. As detailed in the R&D Statement discussed below, the Trustee has received \$1,758,457.84 in net LC proceeds from Laurentian in connection with released LCs. Prior to releasing funds to the Trustee, Laurentian retained an aggregate amount of \$231,742.62 on account of fees, which includes \$62,704.84 used by LBC to pay the invoices of its legal and other advisors.
35. As detailed in the Sixth Report, in December 2015, the Trustee was notified by Laurentian that it did not wish to continue to extend the outstanding LCs as they came up for renewal. The Trustee negotiated arrangements with TD Bank to issue replacement LCs.
36. The Trustee sought this Court's approval of the arrangements it had entered into with TD Bank, which was granted pursuant to the Order of The Honourable Madam Justice Conway dated March 22, 2016.
37. The Trustee completed the transaction with LBC and TD Bank, and the LCs that had been issued by Laurentian were terminated and replaced by TD Bank issued LCs. Additionally, the cash collateral held by Laurentian, after payment of Laurentian's fees and costs, was transferred to TD Bank to secure the replacement letters of credit.
38. As of the date of this Seventeenth Report, the Trustee has recovered \$1,990,200.46 in gross proceeds that were used as cash collateral to secure

LCs. There are currently seven (7) LCs outstanding with a face value of \$995,028.24.

39. The Trustee has completed all works required in favour of the beneficiaries of these LCs. The maintenance period for two of the remaining LCs expires November 24, 2017, and the Trustee expects to receive approximately \$81,367.20 in cash collateral at that time. The Trustee is waiting for confirmation of the maintenance periods for the five remaining LCs with an aggregate face value of \$913,661.04. The estimated proceeds from these remaining LCs will be reduced for any additional maintenance required by the City of Markham over the maintenance period, and increased for any interest earned on the cash collateral held by TD Bank.

Deposit Funds

40. As detailed below, Aviva Insurance Company of Canada ("**Aviva**") issued certain Tarion bonds and deposit insurance facilities to JKDC in connection with the construction of the SUSQ Project and JKDC's obligations under the *Ontario New Home Warranties Act*. In connection with the deposit insurance facilities, JKDC granted Aviva a security interest in all deposits being held by its lawyers, Harris, Sheaffer LLP, as escrow agent (the "**Escrow Agent**").
41. The Trustee has been informed by the Escrow Agent that it holds in escrow an aggregate amount of \$873,734.62 as of September 20, 2017, which represents deposits received by JKDC from purchasers (plus accrued interest) and still held in escrow as security for JKDC's outstanding obligations to Aviva.

42. As noted below, JKDC's obligations to Aviva have been reduced to \$120,000 and as a result, the Trustee has requested that Aviva direct the Escrow Agent to deliver \$724,881.05 to the Trustee, which is the amount being held in escrow in excess of the \$120,000 plus outstanding amounts for bond premiums and legal costs of the Escrow Agent.

Management Office

43. As noted above, on April 17, 2013, JKDC registered a declaration with respect to the Phase I commercial/retail condominium units, along with the residential townhouse units (the "**Phase I Declaration**").
44. As a result of the registration, YRSCC 1228 was established and JKDC became the registered owner of all of the Phase I condominium units.
45. Section 4.6 of the Phase I Declaration provides that Unit 50 on level 2 (the "**Management Unit**") was to be used as the office for the property manager appointed by YRSCC 1228, and YRSCC 1228 was to purchase the Management Unit from JKDC for a purchase price of \$200,000 exclusive of HST. YRSCC 1228 was to give a VTB mortgage to JKDC for the full purchase price.
46. A Transfer and a Charge were registered on title to the Management Unit on May 14, 2014 (the "**Management Unit Charge**"). In accordance with the Phase I Declaration, the Management Unit Charge has an eleven (11) year term, which bore no interest for the first year of the term and thereafter, for the balance of the term, bears interest at a fixed rate of interest being four (4.0%) percent over the Government of Canada Bond Yield in effect on April 17, 2013, calculated semi-

annually, not in advance. Blended monthly installments on account of principal and interest were to be computed based on an amortization period of ten (10) years and payable commencing on the thirteenth month following April 17, 2013.

47. To date, the Trustee has received all required payments from YRSCC 1228. Given that the term of the Management Unit Charge far exceeds the expected duration of this proceeding, the Trustee has suggested to YRSCC 1228 that it consider taking steps to re-finance the mortgage. YRSCC 1228 representatives have advised the Trustee that they are looking into re-financing alternatives.

CREDITORS

Mortgagees / Secured Creditors

48. As has been previously reported to the Court, the following parties registered mortgages against portions of the Property:
- (a) Laurentian Bank of Canada (“**LBC**” or “**Laurentian**”);
 - (b) Am-Stat;
 - (c) MZG; and
 - (d) Aviva.
49. Additionally, as at the time of the commencement of this proceeding, Laurentian, Am-Stat and Aviva had registered financing statements against the personal property of JKDC in accordance with the *Personal Property Security Act*.

Laurentian

50. The development and construction of SUSQ Project was financed by credit facilities made available to JKDC by Laurentian. Laurentian was granted, among other things:
- (a) a charge/mortgage in the principal amount of \$45,000,000;
 - (b) a charge/mortgage in the principal amount of \$3,600,000;
 - (c) a charge/mortgage in the principal amount of \$2,400,000; and
 - (d) a general security agreement and a deposit trust agreement.
51. The \$3.6 million collateral charge was granted by JKDC over certain of the Phase I Property (the “**\$3.6 Million Charge**”) with respect to the indebtedness of 144 Park Ltd. (“**144 Park**”), a company related to JKDC. This charge was subsequently assigned by Laurentian to MZG.
52. The \$2.4 million charge was granted by JKDC over certain of the SUSQ Property; however, Laurentian has confirmed there is no outstanding indebtedness or obligations that are secured by this charge.

Am-Stat

53. As has been previously reported, the Trustee understands that Am-Stat advanced \$10.0 million to JKDC and a related company, Milliken Development Corporation, in September 2013.

54. As security for its indebtedness to Am-Stat, JKDC granted a \$10.0 million charge, which was registered against certain of the Property in August 2013 (the "**Am-Stat Charge**"). Additionally, JKDC granted a general security agreement in favour of Am-Stat.
55. As previously reported, the Trustee obtained an opinion from Chaitons that confirmed that, subject to standard qualifications and assumptions, the Am-Stat Charge was a valid and enforcement charge against the SUSQ Property it was registered against and the proceeds thereof.
56. As noted below, Am-Stat received a distribution of \$1.2 million from the Trustee from the net sale proceeds of the Vacant Lands on July 7, 2017 in accordance with the Order of Justice Conway dated July 4, 2017.
57. Am-Stat has informed the Trustee that, as of September 20, 2017, it was owed \$5,775,017.69 by JKDC, as set out in the statement attached hereto and marked as **Appendix "E"**.
58. In addition to the Am-Stat Charge, the Trustee has obtained an opinion from Chaitons that, subject to usual qualifications and assumptions, Am-Stat has valid and enforceable security against the personal property of JKDC.

MarshallZehr

59. MarshallZehr provided construction financing to 144 Park. As collateral security for payment by 144 Park of its indebtedness to MarshallZehr, JKDC granted a charge/mortgage in the principal amount of \$8,000,000, which charge/mortgage

was registered on title to certain of the Phase I Commercial Units (the “**MZG Charge**”).

60. The Trustee had obtained an opinion from Chaitons that confirmed that, subject to standard qualifications and assumptions, the MZG Charge is a valid and enforcement charge against the SUSQ Property it was registered against and the proceeds thereof.
61. MarshallZehr has informed the Trustee that, as of September 20, 2017, it was owed approximately \$5.72 million by 144 Park, which is secured by the MZG Charge.

Aviva

62. In connection with the proposed development of the SUSQ Project, JKDC obtained residential and commercial deposit insurance facilities, and Tarion Warranty Corporation (“**Tarion**”) Bonds totalling \$5.3 million from Aviva. The facilities and the Tarion Bonds were obtained to satisfy and secure JKDC’s deposit and warranty obligations under the *Ontario New Home Warranties Plan Act*. JKDC also entered into an indemnity agreement in favour of Aviva and agreed to indemnify Aviva from any losses or claims Aviva may suffer in connection with the issuance of the Bonds.
63. JKDC granted security to Aviva with respect to its indemnification obligations, including a \$30.0 million charge and a \$16.5 million charge registered over certain of the Property, and a security interest over all deposits held by the Escrow Agent.

64. Since its appointment, the Trustee has spent considerable time and effort to arrange for the necessary steps to be completed so that the outstanding Tarion bonds could be reduced.

65. As a result of its efforts, the Trustee was recently informed by Tarion that the only remaining Tarion Bonds was reduced in favour from \$1.5 million to \$120,000, being \$20,000 per each Phase II Residential Suite sold by the Trustee during this proceeding.

66. The following chart sets out the mortgages registered in favour of the above-noted mortgagees and the portions of the Property that the mortgages were registered against:

Mortgagee	Mortgage	Mortgaged Property
Aviva	\$30.0 million charge	Phase I Commercial Units; Phase I Parking Units; Phase II Commercial Units
	\$16.5 million charge	Phase II Commercial Units; Phase II Residential Suites; Phase II Parking Units; Phase II Locker Units
LBC	\$45.0 million charge	Phase II Commercial Units; Phase II Residential Units; Phase II Parking Units; Phase II Locker Units; Vacant Lands
	\$3.6 million charge	Phase I Commercial Units (except for three Phase I Kiosk Units)
	\$2.4 million charge	Phase I Commercial Units (except for three Phase I Kiosk Units)
MarshallZehr	\$8.0 million charge	Phase I Commercial Units (except for three Phase I Kiosk Units)
Am-Stat	\$10.0 million charge	Phase II Commercial Units, Phase II Residential Suites; Vacant Lands

Construction Lien Claims

67. Construction liens totalling approximately \$3.7 million were registered against the Property by eighteen (18) parties (collectively, the “**Construction Lien Claimants**”).
68. Pursuant to the Order (re Lien Claims Process) of Justice Pattillo dated May 1, 2015, the Trustee was ordered to implement and administer a lien claims process with respect to condominium liens and with respect to construction liens (the “**Construction Lien Claims Process**”).
69. As at the date of the Trustee’s appointment, no funds were being held by JKDC with respect to the ten per cent (10%) basic holdback established under section 22 of the *CLA* (the “**Basic Holdback**”).
70. As previously reported to the Court, and pursuant to Court orders, granted in this proceeding, the Trustee has made distributions in the aggregate sum of \$1,354,672.72 to all but two of the Construction Lien Claimants on account of the deficiency in the Basic Holdback.
71. The remaining two Construction Lien Claimants are Sreen and Downsview.
72. Sreen’s construction lien with respect to painting and wallpaper services and materials supplied to JKDC. Its construction lien was only registered against two parcels of the Vacant Lands.

73. Sereen submitted a claim to the Trustee in the Construction Lien Claims Process. Sereen's claim was disallowed by the Trustee for a number of reasons. Sereen notified the Trustee that it wished to appeal the Trustee's disallowance.
74. Pursuant to Court orders granted in this proceeding, the Trustee has been holding a reserve of \$49,445 with respect to Sereen's holdback claim from the net sale proceeds of the Vacant Lands.
75. On August 23, 2017, Sereen confirmed in writing, through its counsel, that it no longer intended to appeal the Trustee's disallowance of its claim. As a result, there is no longer a need for the Trustee to maintain a reserve, and requests that the Court authorize it to release these funds, plus any accrued interest, from reserve.
76. Downsvew supplied certain landscaping and other services and materials to JKDC with respect to the SUSQ Project. The Trustee and Downsvew have exchanged numerous correspondences with respect to matters related to Downsvew claim. The Trustee has been holding net sale proceeds from the Phase II Commercial Units equal to \$199,756.53 in a reserve pursuant to a Court order issued in this proceeding in connection with Downsvew's holdback claim.
77. The Trustee and Downsvew have agreed, subject to Court approval, that the Trustee will distribute \$135,000 to Downsvew from the funds currently held in reserve in connection with Downsvew's construction lien holdback claim. Accordingly, the Trustee requests that the Court authorize it to distribute \$135,000 to Downsvew from the funds currently being held in reserve, and

authorize the release to the Trustee of the remaining funds that were being held in reserve of \$64,756.53 plus any accrued interest.

78. Additionally, one Construction Lien Claimant, Guest Tile Inc. ("**Guest Tile**"), registered its construction lien claim against all of the SUSQ Property, including certain property that is not subject to any mortgage with amounts outstanding. As a result, Guest Tile was entitled to payment of an amount equal to the full principal amount of its claim, being \$249,916.12. The Trustee has paid this amount to Guest Tile from the net sale proceeds of the SUSQ Property pursuant to Court orders granted in this proceeding.
79. Guest Tile has taken the position that it is entitled to payment of its costs, and an interest amount, in connection with its construction lien claim, and that it should be paid these amounts from the property subject to its lien that is not encumbered by the claims of other parties.
80. Guest Tile has delivered a bill of costs setting out a partial indemnity amount of approximately \$27,000. In the Trustee's view, this amount is not proportionate to the amount of Guest Tile's claim and the steps taken by Guest Tile in this proceeding, and is of the view that a more appropriate amount of costs is \$23,500. The Trustee understands that, to date, Guest Tile has not agreed to accept this amount in connection with its costs claim. In the event an amount is agreed to by the parties, the Trustee will distribute funds to Guest Tile from the net sale proceeds of the three Phase I Kiosks located on level 1 of the mall, as

no other party has an amount outstanding with respect to encumbrances registered against tile to those units other than Guest Tile.

81. With respect to its interest claim, the Trustee has been advised by Chaitons that the CLA provides that a construction lien claim cannot include any amount on account of interest. The Trustee understands that Guest Tile's counsel has conceded this point, but is of the view that, but for the commencement of this proceeding, it could have taken steps to obtain judgment against JKDC and registered a writ against the SUSQ Property, which would have entitled it to received an amount on account of interest.

82. The Trustee, through its counsel Chaitons, has informed Guest Tile that, as there has been a stay of proceeding in effect since February 2015, Guest Tile was never in a position to obtain judgment against JKDC, and that any interest claim it may have against JKDC is an unsecured claim. The Trustee has informed Guest Tile that it opposes payment of any amount to it on account of interest, even if the claim is paid from SUSQ Property not otherwise encumbered, as such payment would constitute a unjust preference in relation to the other unsecured creditors of JKDC that will not be receiving any amount on account of their unsecured claims. If necessary, the Trustee is prepared to bring a motion for advice and direction so that this issue may be fully argued before the Court.

Priority Resolution Process

83. As has been previously reported to the Court, as a result of disputes between certain mortgagees and Construction Lien Claimants, it was necessary to

establish a procedure to adjudicate the priority dispute with respect to the entitlement of the Construction Lien Claimants to amounts in excess of the Basic Holdback. Such a procedure was established pursuant to the Order of Justice Wilton-Siegel dated June 30, 2016.

84. A hearing was held before Justice Wilton-Siegel on October 7 and 11, 2016. Pursuant to the Order of Justice Wilton-Siegel dated December 7, 2016, the Court held that:

- (a) the professional fees associated with the LBC \$45.0 million charge has priority over the claims of the Construction Lien Claimants with respect to the net sale proceeds of the SUSQ Property subject to such charge;
- (b) the claim of Guest Tile with respect to the Phase I Commercial Units for amounts in excess of the Basic Holdback has priority over the LBC \$3.6 Million Charge that had been assigned by LBC to MZG; and
- (c) the Am-Stat \$10.0 million Charge has priority over the claims of Construction Lien Claimants for amounts in excess of the Basic Holdback with respect to the net sale proceeds of the SUSQ Property subject to such charge.

85. The Construction Lien Claimants sought and obtained leave to appeal to the Divisional Court with respect to the Court's determination with respect to the priorities dispute.

86. The appeal was heard by the Divisional Court on May 29, 2017. The Divisional Court dismissed the appeal, as set out in its Decision dated June 2, 2017.
87. The Trustee understands that the period for the Construction Lien Claimants to commence a motion for leave to appeal to the Court of Appeal has expired and no such motion has been brought by the parties.
88. A number of parties have submitted costs submissions to Justice Wilton-Siegel. None of the parties have sought costs against the Trustee with respect to the motions heard by Justice Wilton-Siegel.

TRUSTEE'S ACTIVITIES SINCE THE SIXTH REPORT

89. The Trustee has undertaken the following activities in accordance with the Appointment Order since the date of the Sixth Report:
- (a) attending to all matters to in connection with determining the priorities of creditors;
 - (b) attending to all matters in connection with the sale and closing of Units:
 - (i) Phase I Commercial – Units 392, 393, 394, 209, 250, 146, 389, 391, 361, 348, 138, 174 and 181
 - (ii) Phase II Commercial – Units 92 and 93
 - (iii) Phase II Residential – Suites 117, 218, 827 and 1527

- (c) attending numerous calls with Chaitons regarding the Trustee's motions with respect to matters detailed in the Trustee's Seventh through Seventeenth Reports;
- (d) attending to numerous discussions, emails and meetings with representatives of Tarion and YRSCC 1265 regarding completion of the common element Performance Audit deficiencies required under Tarion's Builder's Bulletin 49 related to the Phase II condominium tower and parking units in order to eliminate the remaining \$1.5 million Phase II bond issued by Aviva in favour of Tarion;
- (e) attending numerous site meetings with third party consultants and contractors to review various issues, including items related to warranty coverage by Tarion and the status of work in progress;
- (f) doing all things necessary to rectify Tarion warranted in-suite and common area deficiencies, including approving quotes for services and materials, discussing specific issues with on-site personnel and facilitating payments, as appropriate, to trades and consultants;
- (g) entering into negotiations with YRSCC 1265 representatives resulting in a settlement agreement, signed release and Aviva's agreement to release its security;

- (h) respond to homeowners' requests to review items they claimed to be covered under warranty and coordinate repairs as required resulting in no outstanding warranty claims at this time;
- (i) ongoing meetings with representatives of Masongsong Associates Engineering Ltd ("**Masongsong**") to assist the Trustee in its oversight of the requisite work required to fulfill obligations to The Corporation of the City of Markham ("Markham") in order to obtain reductions/releases of the remaining LCs;
- (j) doing all things necessary to coordinate repairs and complete outstanding work in order to comply with obligation to Markham, as set out in the various agreements and supported by the LCs;
- (k) working with its engineering consultants to finalize all documentation required by Markham including meetings, correspondence and preparing applications for LC reductions;
- (l) doing all things necessary to approve and pay for ongoing costs related to the units available for sale, including insurance, occupancy fees and property taxes;
- (m) doing all things necessary to replace Laurentian as the LC provider with TD Bank, including obtaining the required approval form;

- (n) doing all thing necessary to retain a new realtor including revising the listing prices, approving a marketing programme and negotiating/signing various agreements;
- (o) engage in ongoing discussions with Century 21 representatives to review numerous offers received and obtaining market updates;
- (p) advertising the four townhome parking spaces and two residential condominium tower parking spaces for sale to the existing owners and to YRSCC 1228 and YRSCC 1265;
- (q) collect a receivable of \$34,982.13 pursuant to a demand letter issued by the Trustee to the purchaser of a Phase I commercial unit;
- (r) collect amounts owed to the Trustee by YRSCC 1228 under the Management Unit Charge;
- (s) receive \$25,729 held by the Escrow Agent pursuant to a release agreement entered into by the Trustee with the former purchaser (Jiang) of Unit 60;
- (t) attending to calls with mortgagees and providing information;
- (u) responding to enquiries from unsecured creditors;
- (v) reviewing, negotiating and approving documentation from prospective purchasers;

- (w) reviewing lien claims and supporting documentation from lien claimants, comparing information submitted to the books and records of JKDC, preparing a reconciliation and providing documentation in support of JKDC's position to the lien claimants;
- (x) attending to voluminous discussions and emails with property managers for Phase I and II commercial and residential units regarding repairs, maintenance and other issues;
- (y) posting the Vesting Orders and other required documentation to the Trustee's website; and
- (z) doing all other things necessary with respect to the Trustee's mandate under the Appointment Order and the CLA.¹

STATEMENT OF RECEIPTS AND DISBURSEMENTS

90. Attached hereto as **Appendix "F"** is the Trustee's Statement of Receipts and Disbursements for the period from February 11, 2015 to September 8, 2017 (the "**R&D Statement**").
91. As indicated in the R&D Statement, the Trustee has an Excess of Receipts over Disbursements of \$4,926,702.46 as at September 8, 2017. The Trustee proposes to make distributions to entitled creditors after maintaining reserves for future costs, as discussed below.

¹ Significant details as to the activities of the Trustee can be found in the narratives contained in the Trustee's invoices, which are included as an exhibit to the Affidavit of Bryan Tannenbaum attached hereto as an appendix.

92. The proposed distributions take into account an allocation of the administrative costs of the Trustee in connection with this proceeding across the SUSQ Property. The amounts allocated to the SUSQ Property is detailed in charts appended hereto and discussed below with respect to the proposed distributions to MZG and Am-Stat.

DISTRIBUTION OF PROCEEDS

MZG

93. As noted above, MZG is the assignee of Laurentian's \$3.6 Million Charge and is the mortgagee under the MZG Charge, both of which are registered against certain of the Phase I Commercial Units.
94. As set out in the Estimated Property Realizations Charts, the Trustee is holding net sale proceeds totalling \$1,348,679.43 from the sale of Phase I Commercial Units and \$1,265,644.60 of this was secured by the MZG Charge.
95. Attached hereto as **Appendix "G"** hereto is a chart that sets out the calculation for an interim distribution to MarshallZehr in the amount of \$800,000. This amount is based on the Net Sale Proceeds in the Property Realization Chart less costs incurred for units available for sale, an allocation of administrative costs and court ordered payments to prior ranking creditors;

Am-Stat

96. As noted above, Am-Stat has provided a mortgage statement that indicates that it is owed in excess of \$5.7 million by JKDC as at September 20, 2017.

97. As set out in the Estimated Property Realizations Charts, the Trustee is holding net sale proceeds totalling \$4,211,122.69 from the sale of Phase II Commercial Units, \$1,396,273.50 from the sale of Phase II Residential Units and \$1,736,150.08 from the sale of the Phase III vacant land. In addition, there is \$2,891,431.11 in Non-Property Proceeds.
98. Attached hereto as **Appendix "H"** is a chart that sets out the calculation for an interim distribution to Am-Stat in the amount of \$3,000,000. This amount is based on the Net Sale Proceeds in the Property Realization Chart less costs incurred for units available for sale, an allocation of administrative costs and court ordered payments to prior ranking creditors.

YRSCC 1228

99. As noted above, the Trustee has completed the sale of a number of the Phase I Property during the course of its appointment. Each of the Phase I units were subject to condominium liens registered on title by YRSCC 1228 in connection with unpaid common expenses owing with respect to the property at the time of the Trustee's appointment, and at the time of the completion of the sale transactions for each of the units.
100. As part of the closing of the sale transactions, the Trustee paid out of the gross sale proceeds common expenses arrears that had arisen since its appointment. However, to date, the Trustee has not distributed any amounts to YRSCC 1228 in connection with amounts secured by its condominium liens as YRSCC 1228

had failed to serve notices of its liens to Aviva as mortgagee in contravention of the provisions of the *Condominium Act, 2001*.

101. However, as noted above, the obligations owed by JKDC to Aviva have been reduced to \$120,000 and there are sufficient deposits being held by the Escrow Agent to fully secure this amount. As a result, Aviva will not be required to rely on its mortgages registered against the SUSQ Property to satisfy the outstanding obligations to it.
102. Given the fact that Aviva will not be looking to the Phase I Property proceeds under its mortgages, it is no longer necessary for the Trustee to refrain from distributing the aggregate amount of \$40,159.71 to YRSCC 1228 from the net sale proceeds of the Phase I Property with respect to its registered condominium liens. As a result, the Trustee is requesting that the Court authorize to proceed with this proposed distribution.

LBC

103. As noted above, one of the issues before Justice Wilton-Siegel in connection with the priority motions was whether Laurentian was entitled to payment of its legal fees and disbursements from the net sale proceeds subject to its \$45 million charge. Justice Wilton-Siegel held that LBC was entitled to payment of its fees and disbursements.
104. The Trustee understands that LBC is seeking payment of approximately \$100,000 from the net sale proceeds of SUSQ Property subject to the \$45 million charge. This amount is in addition to the approximately \$62,000 of legal fees

and disbursements that Laurentian satisfied from funds it was holding in connection with the LCs.

105. The Trustee has been informed that Am-Stat does not agree with LBC's entitlement to the net sale proceeds of SUSQ Property subject to the \$45 million charge. As a result, the Trustee is not in a position to seek Court approval of a distribution to LBC, and will hold a specific reserve of \$96,595.30 with respect to this matter, as that was the last amount provided by counsel to LBC.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

106. Pursuant to paragraph 18 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
107. The total fees for the Trustee for the period from February 1, 2016 to July 31, 2017 were \$504,701 plus disbursements of \$2,354.20 plus HST of \$65,917.21 for a total of \$572,972.31. The time spent by the Trustee is more particularly described in the Affidavit of Bryan A. Tannenbaum sworn September 13, 2017, which is attached hereto and marked as **Appendix "I"**. This affidavit contains a summary of the invoices that set out the services provided during this time period.
108. The total fees of Chaitons, as insolvency counsel to Trustee, for the period from January 1, 2015 to August 31, 2017 were \$362,104.50 plus disbursements of

\$20,127.29 plus HST of \$48,522.39 for a total of \$430,754.18. The time spent is more particularly described in the Affidavit of Harvey Chaiton sworn September 25, 2017, which is attached hereto and marked as Appendix "J". This affidavit contains a summary of the invoices that set out the services provided during this time period.

TRUSTEE'S REQUEST TO THE COURT

109. The Trustee requests that the Court grant orders described in paragraph 4 above.

All of which is respectfully submitted to this Court as of the 25th day of September, 2017.

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