

**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***

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

MARCH 15, 2016

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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 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 "**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, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, market any or all of the Property, and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. Publicly available information relating to this proceeding has been posted on the Trustee's website, which can be found at:

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

PURPOSE OF SIXTH REPORT

4. The purpose of this Sixth Report of the Trustee (the “**Sixth Report**”) is to:
- (a) report to the Court on the Trustee’s activities since April 23, 2015, being the date of the Trustee’s First Report to the Court;
 - (b) provide the Court with an interim statement of the Trustee’s receipts and disbursements for the period from February 11, 2015 to March 4, 2016;
 - (c) provide the Court with an update with respect to the lien claims process conducted by the Trustee pursuant to the Order of Justice Pattillo dated May 1, 2015;
 - (d) request that the Court grant orders:
 - (i) approving this Sixth Report, the Third Report of the Trustee dated June 1, 2015 and the Fourth Report of the Trustee dated October 8, 2015, and the conduct and activities of the Trustee described therein;
 - (ii) authorizing and approving the execution by the Trustee of the Letters of Credit Documents (as defined below) and granting a first ranking charge over the Cash Collateral (as defined below) in favour of The Toronto-Dominion Bank (“**TD Bank**”) in connection with the issuance of the Replacement Letters of Credit (as defined below);

- (iii) approving the sale by the Trustee of residential condominium suite 1521, along with parking unit 4, level B, and locker unit 330, level B, to Anissa Ling-Ling Yuen (the "**Purchaser**"), and vesting such property in the Purchaser free and clear of all claims and encumbrances;
- (iv) authorizing the Trustee to distribute up to \$1.25 million to Am-Stat Corporation ("**Am-Stat**") from the net sale proceeds of the Vacant Lands (as defined below), subject to the Trustee maintaining a reserve; and
- (v) approving the fees and disbursements of the Trustee and its counsel Chaitons LLP ("**Chaitons**"), as set out in the Sixth Report and the fee affidavits attached as appendices hereto and to the Trustee's supplementary report to be served and filed.

TERMS OF REFERENCE

5. In preparing this Sixth 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 Sixth 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

6. 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 Property and developer of the South Unionville Square condominium project (the "**SUSQ Project**") to be constructed on certain portions of the Property, which is located in Markham, Ontario.
7. JKDC sought the appointment of the Trustee as it was insolvent, contractors had registered construction lien claims against title to the Property, and the appointment was necessary to complete the closing of certain pre-sold commercial/retail units, market and sell the unsold Property, and distribute the sale proceeds pursuant to a Court order.
8. The SUSQ Project was to be developed and constructed by JKDC in three phases, as described below.

Phase I

9. 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. The mall is known as “The Mall at Langham Square” and is located at 8339 Kennedy Road, Markham, Ontario.
10. 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 No. 1228**”). YRSCC 1228 is managed by PH Property Management & Consulting Inc. (“**PH Property**”).
11. As of the date of the Appointment Order, all of the townhomes had been sold and there were twenty-two (22) unsold commercial/retail, kiosk and mall units, and four (4) unsold parking units that are only accessible to the residents of the townhomes.
12. Pursuant to Approval and Vesting Orders granted by Justice Pattillo dated October 16, 2015, the Court approved the sale of three kiosk commercial units (legally known as units 73, 74 and 75 on level 1) (collectively, the “**Kiosks**”) and a commercial/retail unit (legally known as unit 60, level 1, and commonly known as suite 1077) (“**Unit 60**”).
13. The sale of the Kiosks closed on October 21, 2015. The gross sale proceeds received by the Trustee for the Kiosks were \$88,504.70.

14. The sale of Unit 60 closed on October 30, 2015. The gross sale proceeds received by the Trustee for Unit 60 were \$800,000.
15. As a result, there remains 18 Phase I commercial units and the four parking units to be sold by the Trustee.
16. As previously reported to the Court, the Trustee has retained TradeWorld Realty Inc. ("**TradeWorld**") to list all unsold Property for sale, other than the four parking units referenced above and the Vacant Lands, pursuant to a listing agreement dated May 4, 2015. This listing agreement is presently scheduled to end on July 31, 2016. The Trustee is attempting to find purchasers for the parking units.

Phase II

17. Phase II of the SUSQ Project involved the development and construction of a 12-storey condominium-apartment tower, which contains 253 residential units and 312 parking units. There are also twenty one (21) commercial/retail units located underneath the residential tower (collectively, the "**Phase II Commercial Units**").

Residential

18. Phase II was constructed in two stages. The first stage was the development and construction of the residential tower. Construction was substantially completed on June 10, 2014 and the condominium declaration was registered on September 11, 2014, which established York Region Standard Condominium Corporation No. 1265 ("**YRSCC No. 1265**"). The residential tower is now managed by DUKA Property Management and was previously managed by First Service Residential until January 18, 2016.

19. The residential tower is known as "The Residences at South Unionville Square" and is located at 8323 Kennedy Road, Markham, Ontario.
20. As at the Trustee's appointment, there were six residential units (suites 117, 218, 827, 1216, 1521 and 1527), eight parking units and six locker units that were still owned by JKDC.
21. Jade-Kennedy Residential Corporation ("**JKRC**"), a party related to JKDC, had entered into sale agreements with respect to suites 827, 1216, 1521 and 1527 for no cash consideration with parties who had provided construction services in respect of some of the Property. The parties had agreed to acquire the suites by setting off amounts due to them by JKDC.
22. Pursuant to the Order of Justice Pattillo dated May 1, 2015, the Trustee was authorized by the Court to terminate such sale agreements, which the Trustee did on May 4, 2015.
23. JKRC had also entered into sale agreements with respect to suites 117 and 218 just prior to the commencement of this proceeding. The Trustee brought a motion before the Court seeking the authority to terminate these sale agreements, as in the Trustee's view they represented sales at below market value.
24. Pursuant to the Order of Justice Pattillo dated June 4, 2015, the Trustee was authorized by the Court to terminate such sale agreements, which the Trustee

did on June 16, 2015. The Trustee returned the deposits received from these prospective purchasers.

25. The Trustee brought a motion seeking Court approval of sale transactions for suites 1521 and 1527, along with parking and locker units, on December 23, 2015. Pursuant to Approval and Vesting Orders of Justice Pattillo dated December 23, 2015, the Court approved these sale transactions. However, these sale transactions did not close as the purchasers were not prepared to waive certain closing conditions.

Phase II Commercial Units

26. The second stage of the development and construction of Phase II was with respect to the Phase II Commercial Units, which are municipally known as 8321 Kennedy Road, Markham, Ontario. 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, which is the condominium corporation for the Phase I development. As a result, the Phase II Commercial Units now form part of YRSCC 1228 and therefore are managed by PH Property.
27. 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.
28. 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.

29. 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.
30. The gross sale proceeds received by the Trustee for the 16 Phase II Commercial Units were \$3,717,421.84.

Phase III

31. 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 "**Vacant Lands**"). The Vacant Lands are just south of Phases I and II of the SUSQ Project.
32. 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 Phase I and II condominium units 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 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.
33. 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**") in

November 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.

34. Following its appointment, the Trustee was able to negotiate a sale of the Vacant Lands to Primont. As set out in the Second Report dated May 15, 2015 (the "**Second Report**") and the Supplement to the Second Report dated May 26, 2015 (the "**Supplementary Report**"), copies of which can be found on the Trustee's website, the sale negotiated by the Trustee 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.
35. 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.
36. The sale to Primont closed on June 12, 2015. The gross sale proceeds received by the Trustee for the sale of the Vacant Lands were \$1,750,489.

TRUSTEE'S ACTIVITIES SINCE THE FIRST REPORT

37. As noted above, the Trustee was appointed by the Court on February 11, 2015. Since its appointment, the Trustee has filed with the Court the First Report dated April 23, 2015, the Second Report, the Supplementary Report, the Third Report dated June 1, 2015 (the "**Third Report**"), the Fourth Report dated October 8,

2015 (the "**Fourth Report**"), and the Fifth Report dated December 18, 2015 (the "**Fifth Report**"). Copies of these reports, with appendices, can be found on the Trustee's website.

38. The First Report, the Second Report, the Supplementary Report and the Fifth Report, and the conduct and activities of the Trustee set out therein, were respectively approved by the Court pursuant to Orders granted by Justice Pattillo on May 1, May 29, and December 23, 2015.
39. As a result, the Trustee is seeking approval of this Sixth Report, along with the Third Report and the Fourth Report, at this time.
40. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the First Report:
 - (a) attending to all matters necessary to sell the Vacant Lands to Primont as set out in the Second Report and the Supplementary Report;
 - (b) attending to all matters necessary to terminate the sale of two agreements of purchase and sale for residential suites 117 and 218 as set out in the Third Report;
 - (c) attending to all matters in connection with the sale and closing of the Kiosk Units and Unit 60 as set out in the Fourth Report;
 - (d) attending numerous calls with Chaitons and the Trustee's condominium law counsel, Harris Sheaffer LLP ("**Harris Sheaffer**"), regarding the

Trustee's motions with respect to matters detailed in the Second Report, the Third Report, the Fourth Report, and the Fifth Report;

- (e) attending numerous site meetings with JKDC's senior service manager and several third party consultants to review various issues, including items related to warranty coverage of Tarion Warranty Corporation ("Tarion") and the status of work in progress;
- (f) 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;
- (g) 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;
- (h) attending to voluminous discussions and emails with the property managers for the Phase I and Phase II commercial and residential units regarding repairs, maintenance and other issues;
- (i) attending to numerous discussions, emails and meetings with representatives of Tarion and YRSCC No. 1228 regarding satisfactory completion of the common element Performance Audit deficiencies required under Tarion's Builder's Bulletin 49 related to the Phase I

townhomes and parking units in order to release the Phase I bond issued by Aviva Insurance Company of Canada ("**Aviva**") in favour of Tarion;

- (j) coordinating work required to obtain clearance certificates under Tarion's Builder's Bulletin 19 ("**BB19**") related to the Phase II residential condominium units, including retaining third party consultants to review and approve works completed by trades in accordance with site plan, construction and other agreements, and meeting with Construction Control Inc. ("**CCI**"), all in order to obtain a reduction in the Phase II surety bond issued by Aviva in favour of Tarion;
- (k) attending meetings with Tarion representatives and requesting a reduction in the bond value assigned to the Phase II residential condominiums;
- (l) interviewing and retaining 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**"), The Regional Municipality of York ("**York Region**"), and PowerStream in order to obtain reductions/releases of the letters of credit (collectively, "**LCs**" or individually, an "**LC**") issued by Laurentian Bank of Canada ("**Laurentian**") totalling \$3,038,273.54 as at the date of the Appointment Order;
- (m) doing all things necessary to coordinate repairs and the completion of outstanding work in order to comply with obligations to Markham, York

Region and PowerStream, as set out in various agreements and supported by the LCs;

- (n) obtaining a full release or reduction to the maintenance amount for all of the outstanding York Region LCs, the PowerStream LC and only one of the Markham LCs;
- (o) working with its engineering consultants to finalize all documentation required by Markham including meetings, correspondence and preparing applications for reductions in the outstanding LCs of \$1,151,890.35 on February 4, 2016 and an estimated \$151,518.60 in early May 2016;
- (p) ongoing discussions and emails with Laurentian regarding LC issues including the extension of certain LCs and payment of net funds to the Trustee as LCs are cancelled or reduced to maintenance levels;
- (q) attending the opening of the sealed bids for the tender for engineering works required under various Markham LCs at Masongsong's offices;
- (r) extending the listing agreements with TradeWorld for unsold units at the Property to July 31, 2016;
- (s) engaging in ongoing discussions and emails with TradeWorld representatives to review numerous offers received and obtaining market updates;

- (t) drafting and sending letters to all Phase I townhome owners offering four available townhome parking units for sale;
- (u) sending demand letters to a purchaser of a Phase I commercial unit in connection with a \$34,982.13 promissory note issued in favour of JKDC relating to the closing of the sale, and responding to that purchaser's position;
- (v) demanding payment in connection with a \$200,000 mortgage for unit 50, level 1, a property management office located in Phase I, granted by YRSCC 1228 as owner of the unit in favour of JKDC;
- (w) determining and receiving an unrecorded \$212,125.30 refund owing from PowerStream related to a difference in estimated consumption rates from the amount initially estimated;
- (x) engaging in ongoing discussions and emails with Tarion representatives to approve, pay and provide proof of payment to owners entitled to receive delayed occupancy payments from the Trustee;
- (y) attending to numerous calls and requests with mortgagees, including Laurentian, who requested that monthly status reports be given to them by the Trustee;
- (z) reviewing and discussing with Canada Revenue Agency ("CRA") its correspondence notifying the Trustee of its intention to examine the Trustee's Harmonized Sales Tax ("HST") returns and supporting

documentation thereto for the months of August, September and October 2015 and doing all things necessary to assemble the information requested by CRA and release it to them;

- (aa) reviewing and approving documentation from prospective purchasers;
- (bb) 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;
- (cc) responding to various enquiries from unsecured creditors;
- (dd) paying property tax bills received for unsold units;
- (ee) drafting materials for this Sixth Report and reviewing, amending and discussing same with Chaitons;
- (ff) attending to all matters necessary to obtain Court approval to conduct a property claims process, as approved by the Court in the Property Claims Procedure Order dated December 23, 2015, and to conduct such process, as set out in the Fifth Report;
- (gg) posting the Vesting Orders and other required documentation to the Trustee's website; and
- (hh) doing all other things necessary with respect to the Trustee's mandate under the Appointment Order and the *CLA*.

Repairs, Maintenance and Third Party Consultants

41. As noted in the First Report, the Trustee had retained Mr. A. Hanoman, JKDC's former senior service manager, as a consultant to manage on site repairs required to be completed to meet health and safety standards, in accordance with Tarion's performance audits, and to comply with obligations set out under numerous agreements in place with Markham and York Region and supported by LCs issued by Laurentian. Mr. Hanoman gave his notice of resignation effective January 15, 2016.
42. In addition, in order to obtain clearance certificates required for Tarion's BB 19 report related to the Phase II residential condominium units, the Trustee re-engaged former consultants retained by JKDC: SNC Lavalin as the engineering consultant, Turner Fleischer Architects Inc. as the architectural consultant and MHBC Planning Inc. as the landscape architect consultant.
43. The Trustee also retained Masongsong as its engineering consultant to manage the works required to be completed under agreements in place with Markham and York Region under the respective LCs. The Trustee's dealings with Laurentian and the municipalities is discussed in further detail below.
44. As at March 4, 2016, the Trustee has paid \$1,001,999.81 to various trades and \$232,657.31 to third party consultants as indicated on the Trustee's interim statement of receipts and disbursements for the period from February 11, 2015 to March 4, 2016 (the "**R&D Statement**"), which is attached hereto as **Appendix "B"**.

LETTERS OF CREDIT

45. As noted in the First Report, JKDC was required to arrange for the issuance of LCs in favour of Markham, York Region and PowerStream in connection with JKDC's obligations to complete certain works pursuant to site plan, construction and other agreements.
46. JKDC arranged for its senior lender, Laurentian, to issue the required LCs, and JKDC posted cash collateral with Laurentian in support of the LCs.
47. As at the date of the Trustee's appointment, the following eleven irrevocable standby LCs with a total aggregate value of \$3,038,273.54 were outstanding:

Beneficiary	Reference No.	Amount
York Region	S600579	\$359,100.00
	S600723	\$196,812.00
	S601070	\$182,448.00
Markham	S600796	\$1,589,573.21
	S601064	\$455,896.11
	S601065	\$83,950.00
	S601067	\$20,000.00
	S601069	\$15,000.00
	S601113	\$25,000.00 ¹
	S601151	\$90,594.00

¹ This amount excludes \$2,077,408.07 that was drawn by Markham on January 21, 2015, just prior to the appointment of the Trustee.

Beneficiary	Reference No.	Amount
PowerStream	S601063	\$19,900.22
TOTAL		\$3,038,273.54

48. As noted above, the Trustee retained third party professional consultants and trades to complete the outstanding works in order to obtain the required certifications as expeditiously as possible.
49. As detailed in the R&D Statement, to date the Trustee has received \$729,442.18 in gross LC proceeds (includes accrued interest of \$37,549.16) with respect to LCs S601063, S601070, S600723, S600579 and S601069.
50. LCs S600723, S601069 and S601063 have been fully released. Markham fully drew down on LC S601151 in the amount of \$90,594 on or about May 8, 2015, which LC related to the Vacant Lands sold to Primont. The Trustee is currently reviewing documentation relating to Markham's authority to draw down this LC.
51. As a result, as of February 4, 2016, the following seven LCs were outstanding with a total aggregate value of \$2,255,786.52:

Beneficiary	Reference No.	Amount
York Region	S600579	\$54,000.00
	S601070	\$27,367.20
Markham	S600796	\$1,589,573.21
	S601064	\$455,896.11

	S601065	\$83,950.00
	S601067	\$20,000.00
	S601113	\$25,000.00
TOTAL		\$2,255,786.52

52. The two outstanding LCs in favour of York Region (as noted in paragraph 51 above) have been reduced to the maintenance amounts that are required to remain in place for two years. With respect to Markham, on February 4, 2016, the Trustee requested that the LCs be reduced by the aggregate amount of \$1,151,890.35 as a result of the completion of necessary work. A copy of the Trustee's letter to Markham, without attachments, is attached hereto as **Appendix "C"**.

53. While the Trustee has not yet received a written response from Markham in connection with its LC reduction request, based on Masongsong's view, the Trustee believes that it has complied with all of the requisite documentation requirements to reduce the amounts of the required LCs.

Replacement Letters of Credit

54. As noted above, Laurentian issued the outstanding LCs in favour of Markham and York Region. 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 and Laurentian were able to reach an agreement that resulted in extensions to the expiry dates of the outstanding LCs to either April

30, 2016 or September 15, 2016. The extensions were obtained upon payment of additional fees and costs to Laurentian and with the consent of York Region and Markham.

55. As part of the LC extension agreement, Laurentian required that the Trustee enter into a binding commitment with a financial institution to replace the outstanding LCs by March 22, 2016, which would result in the outstanding LCs with Laurentian being replaced by no later than April 30, 2016.
56. The Trustee has negotiated arrangements with TD Bank to issue letters of credit to replace the seven (7) Laurentian issued LCs referred to in paragraph 51 above (collectively, the "**Replacement Letters of Credit**"). The Trustee and TD Bank have entered into the Letter of Credit Indemnity Agreement dated February 29, 2016 that was executed by the Trustee on March 11, 2016, and the letter agreement between the Trustee and TD Bank dated February 26, 2016 that was accepted by the Trustee on March 11, 2016 (collectively, the "**Letters of Credit Documents**"). Copies of the Letters of Credit Documents are collectively attached hereto as **Appendix "D"**.
57. Pursuant to the terms of the Letters of Credit Documents, TD Bank requires a first ranking charge on cash collateral to be pledged as security. As of February 11, 2016, the amount of the cash collateral held by Laurentian with respect to the outstanding LCs was \$2,258,194.17, including interest of \$4,064.82.
58. The Trustee understands that, in the event that the Court authorizes the Trustee to complete the transaction with TD Bank, the cash collateral held by Laurentian

will be turned over to the Trustee once the outstanding LCs have been cancelled, subject to payment of Laurentian's fees and costs.

59. TD Bank requires that there be cash collateral in the amount of the face value of the Replacement Letters of Credit (\$2,255,789) plus \$60,000 on account of fees and costs, for a total amount of \$2,315,789 (the "**Cash Collateral**").
60. The Trustee proposes that, once it receives from Laurentian the amount of \$2,258,194.17 less Laurentian's fees, it will deposit that amount along with the additional funds required to reach the amount of the Cash Collateral with TD Bank.
61. It is necessary for the Replacement Letters of Credit to be issued, as Laurentian is not prepared to renew or extend the existing LCs, and if they are not replaced, Markham and York Region will likely draw down on the LCs in full, which may result in none of the outstanding cash collateral being recovered by the Trustee for the benefit of the creditors of JKDC.
62. Accordingly, the Trustee recommends that the Court approve the execution of the Letters of Credit Documents and grant a first ranking charge in favour of TD Bank over the Cash Collateral.

SALE PROCEEDS FOR KIOSKS AND UNIT 60

63. As noted above, the Trustee received gross sale proceeds of \$88,504.70 for the Kiosks and \$800,000 for Unit 60.

64. After payment of \$40,092.40 in real estate commissions and \$2,485.66 of legal fees for Harris Sheaffer, net proceeds of \$83,204.49 for the Kiosks and \$762,722.15 for Unit 60 were received by the Trustee.
65. The Kiosks were each subject to a condominium lien in favour of YRSCC No. 1228 for unpaid common expenses in the amount of \$1,981.53. The Kiosks were also subject to a \$30.0 million charge in favour of Aviva, and construction liens registered by Guest Tile Inc. ("**Guest Tile**") and Draglam Waste & Recycling Inc. ("**Draglam**").
66. In accordance with the Order (re Lien Claims Process) of Justice Pattillo dated May 1, 2015, Chaitons has reviewed the condominium liens registered by YRSCC No. 1228 with respect to the Kiosks and is in discussions with counsel to YRSCC No. 1228 as to the validity of the lien and, if valid, the amounts secured by the lien.
67. With respect to Unit 60, that unit was subject to the following encumbrances:
 - (a) a condominium lien in favour of YRSCC 1228 for unpaid common expenses in the amount of \$34,084.62;
 - (b) a \$30.0 million Aviva charge;
 - (c) a \$3.6 million Laurentian collateral charge with respect to indebtedness owed to Laurentian by 144 Park Ltd., a company in the MADY group;

- (d) a \$2.4 million Laurentian collateral charge;²
 - (e) an \$8.0 million charge in favour of MarshallZehr Group Inc.; and
 - (f) construction liens in favour of Guest Tile and Draglam.
68. Chaitons has reviewed the condominium lien registered by YRSCC No. 1228 with respect to Unit 60 and is in discussions with counsel to YRSCC No. 1228 as to the validity of the lien and, if valid, the amounts secured by the lien.
69. With respect to Aviva's charge over Unit 60 and the Kiosks, the Trustee is currently in discussions with Aviva regarding the scope and amount of obligations secured by its charge, as the Trustee, after expending significant time and effort, recently received confirmation from Tarion that that bond issued by Aviva with respect to the Phase II residential tower was reduced from \$5,018,135 to \$2,500,000. The Trustee hopes to be in a position to report to the Court on this issue and seek Court authority to make an additional distribution from the net sale proceeds of Unit 60 in the near future.

DISTRIBUTIONS OF VACANT LANDS PROCEEDS TO AM-STAT

70. As noted above, the Trustee received gross sale proceeds of \$1,750,489 with respect to the sale of the Vacant Lands to Primont.

² Counsel to Laurentian has confirmed that there is no outstanding indebtedness or obligations that are secured by this charge.

71. As at the closing of the sale of the Vacant Lands, the property was subject to a \$45.0 million charge in favour of Laurentian, a \$10.0 million charge in favour of Am-Stat, and a number of construction liens.
72. As noted above, the Vacant Lands, while often referred to as Phase III of the SUSQ Project, were in no way connected to or had any common purpose or use with the Phase I and II condominiums constructed by JKDC. Other than certain road curb work performed by a trade, no services or materials were supplied to the Vacant Lands by the contractors that supplied services or materials with respect to Phase I and II of the SUSQ Project.
73. Chaitons has been informed by counsel to Laurentian that the only outstanding obligation secured by the \$45.0 million Laurentian charge is with respect to the outstanding LCs. As a result, in the event the Replacement Letters of Credit are issued and Laurentian's LCs are cancelled, there no longer will be any indebtedness or obligations secured by the \$45.0 million Laurentian charge.
74. JKDC and related companies obtained financing from Am-Stat in the amount of \$10.0 million pursuant to a commitment letter dated August 6, 2013.
75. As security for the financing, JKDC granted a charge/mortgage in the principal amount of \$10.0 million in favour of Am-Stat, which charge/mortgage was registered on title to, among others, the Vacant Lands as Instrument No. YR2029025.

76. Am-Stat has provided a mortgage statement dated as of February 1, 2016 that indicated that it was owed \$5,727,026.36 by JKDC as at that date.
77. Chaitons has reviewed the Am-Stat charge and is of the opinion that, subject to usual assumptions and qualifications, the charge is valid and enforceable against the Vacant Lands and its proceeds.
78. As a result, the Trustee requests that the Court authorize the Trustee to distribute to Am-Stat up to \$1.25 million from the net sale proceeds of the Vacant Lands. The Trustee will continue to hold funds in reserve, as there has yet to be a determination as to the allocation of the costs of these proceedings over all of the Property.

CONSTRUCTION LIEN CLAIMS PROCESS

79. Construction liens totalling approximately \$3.6 million had been registered against the Property. Attached hereto as **Appendix "E"** is a chart that sets out the eighteen (18) parties (collectively, the "**Construction Lien Claimants**") that registered construction liens against the Property, and the amount of each lien.
80. Pursuant to the Order (re Lien Claims Process) of Justice Pattillo dated May 1, 2015, the Trustee is to implement and administer a lien claims process with respect to condominium liens and with respect to construction liens (the "**Construction Lien Claims Process**"). A copy of the Order made on May 1, 2015 is attached hereto as **Appendix "F"**.

81. In accordance with the Construction Lien Claims Process, the Trustee has received documentation with respect to the construction liens of each of the Construction Lien Claimants.
82. The Trustee and Chaitons have reviewed the claims filed by the Construction Lien Claimants pursuant to the Construction Lien Claims Process. The Trustee has discussed the quantum of each claim with former employees of JKDC to confirm whether the amounts claimed by the Construction Lien Claimants were consistent with the amounts set out in JKDC's books and records.
83. Based on such review, the Trustee has determined that each of the Construction Lien Claimants entered into a contract directly with JKDC, and there was no general contractor with respect to the JKDC project.
84. The Trustee has been advised by Chaitons that, pursuant to section 22 of the *CLA*, JKDC was required to maintain a holdback for each Construction Lien Claimant of ten per cent (10%) of the price of services and materials as they were actually supplied by each Construction Lien Claimant. The Trustee understands that, as of the date of its appointment, there were no funds held by JKDC or Laurentian with respect to holdback amounts.
85. The Trustee has also been advised by Chaitons that, pursuant to section 78(2) of the *CLA*, a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that JKDC was required to retain under the *CLA*.

86. As noted above and in the R&D Statement, the Trustee has realized gross proceeds from the sale of the 16 Phase II Commercial Units, the Vacant Lands, the Kiosks and Unit 60.
87. As discussed above, the Trustee is of the view that the construction liens registered against the Vacant Lands do not entitle the Construction Lien Claimants to the proceeds of the Vacant Lands.
88. With respect to the Kiosks and Unit 60, only two Construction Lien Claimants registered construction liens against such property, being Guest Tile and Draglam. The Trustee is not seeking Court approval to distribute any of the net sale proceeds of the Kiosks and Unit 60 to any party at this time.
89. With respect to the 16 Phase II Commercial Units, sixteen of the eighteen Construction Lien Claimants registered a construction lien against all or part of that property. Based on a review of the information provided date, it is not clear what services or materials were supplied with respect to the Phase II Commercial Units and what were supplied to residential units in the residential tower and to the common spaces. The Trustee understands that, at the time of the closing of the sale transactions, the 16 Phase II Commercial Units were primarily "shells" that only had basic electrical, plumbing, drywall, concrete and window work completed.
90. As set out in a letter from Chaitons to counsel to the Construction Lien Claimants dated March 15, 2016, a copy of which is attached hereto as **Appendix "G"**, the Trustee has requested additional information from each of the lien claimants to

identity the services and materials they provided by phase and whether it was residential or commercial. The Trustee is in the process of scheduling a hearing date for the beginning of April 2016 to deal with the issue of distributions to Construction Lien Claimants.

SALE OF SUITE 1521

91. Pursuant to paragraphs 3(k) through (m) of the Appointment Order, the Trustee was authorized by the Court to market the Property, sell the Property with the approval of the Court, and to apply for vesting orders necessary to convey the Property free and clear of all claims and encumbrances affecting the Property.
92. Pursuant to paragraph 3(d) of the Appointment Order, the Trustee was authorized by the Court to engage agents to assist with the exercise of the Trustee's powers and duties.
93. As noted above, the Trustee has retained TradeWorld as its listing agent. Based on the advice and recommendation of TradeWorld, suite 1521 was included in the listing agreement at an initial price of \$289,900 that was reduced to \$284,900 in January, 2016. Suite 1521 is a one-bedroom unit, 565 square feet in size.
94. Since May 2015, the Trustee has received five offers for suite 1521 and was unable to complete a sale in connection with the first four offers. The fifth offer received by the Trustee is from the Purchaser with a purchase price of \$281,900, as set out in the agreement of purchase and sale executed by the Purchaser on March 5, 2016 that was accepted by the Trustee on March 8, 2016. A copy of

the agreement of purchase and sale is attached hereto and marked as **Appendix "H"**.

95. Suite 1521 is subject to the following encumbrances:
 - (a) a condominium lien in favour of YRSCC 1265;
 - (b) a \$16.5 million charge in favour of Aviva;
 - (c) a \$10.0 million Am-Stat charge; and
 - (d) construction liens.

96. In the event that the sale transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further Order of the Court.

97. The Trustee believes that suite 1521 has been fairly and sufficiently exposed to the market through the listing by TradeWorld, that all reasonable steps have been taken to obtain the best price possible, and recommends that the sale transaction be approved by the Court, as:
 - (a) the purchase price is higher than the previous offer approved by the Court;
and
 - (b) the offer is unconditional other than with respect to Court approval.

98. If the Court approves the sale transaction, it is scheduled to close on April 28, 2016.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

99. 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.
100. The total fees for the Trustee for the period from November 18, 2014 to January 31, 2016 were \$674,999.00 plus HST of \$87,749.90 for a total of \$762,748.90. The time spent by the Trustee is more particularly described in the Affidavit of Bryan A. Tannenbaum sworn March 11, 2016, 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.
101. The total fees of Chaitons, as insolvency counsel to Trustee, will be detailed in the Affidavit of Sam Rappos, which will be appended to a supplementary report to be served and filed by the Trustee.

TRUSTEE'S REQUEST TO THE COURT

102. The Trustee requests that the Court grant orders:
- (a) approving this Sixth Report, along with the Third Report and the Fourth Report, and the conduct and activities of the Trustee described therein;

- (b) authorizing and approving the execution by the Trustee of the Letters of Credit Documents and granting a first ranking charge in favour of TD Bank over the Cash Collateral;
- (c) approving the sale by the Trustee of residential condominium suite 1521, along with parking unit 4, level B, and locker 330, level B, to the Purchaser and vesting such property in the Purchaser free and clear of all claims and encumbrances;
- (d) authorizing the Trustee to distribute up to \$1.25 million to Am-Stat from the net sale proceeds of the Vacant Lands, subject to the Trustee maintaining a reserve; and
- (e) approving the fees and disbursements of the Trustee and Chaitons, as set out in the Sixth Report and the fee affidavits attached as appendices hereto and to the Trustee's supplementary report.

All of which is respectfully submitted to this Court as of this 15th day of March, 2016.

COLLINS BARROW TORONTO LIMITED

In its capacity as Trustee under the *Construction Lien Act* of Jade-Kennedy Development Corporation as owner of South Unionville Square and not in its personal capacity

Per: 

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