

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C. 30**

**AND IN THE MATTER OF THE APPLICATION MADE BY JADE-KENNEDY  
DEVELOPMENT CORPORATION FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C. 30**

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

**November 9, 2016**

## INTRODUCTION

1. By Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) dated February 11, 2015, Collins Barrow Toronto Limited was appointed trustee pursuant to section 68(1) of the *Construction Lien Act* (Ontario) ("**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.
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 SUPPLEMENTARY REPORT

4. The purpose of this supplement to the Eleventh Report of the Trustee (the "**Supplementary Report**") is to:

- (a) provide the Court with an update with respect to the status of the claims of Dircam and CRS to amounts being held in reserve by the Trustee pursuant to Court order; and
- (b) request that the Court grant an order authorizing the Trustee to release from reserve and distribute \$16,384.53 to Dircam and \$9,345.80 to CRS, and to release from reserve the amounts of \$18,787.03 and \$3,428.62 that were respectively being held in connection with Dircam's and CRS' holdback claims, for use in the administration of this proceeding.

#### **TERMS OF REFERENCE**

- 5. In preparing this Supplementary Report and making the comments herein, the Trustee has relied upon the Information. Certain of the information contained in this Supplementary Report may refer to, or is based on, the Information. As the Information has been provided by JKDC or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.
- 6. This Supplementary Report should be read together with the Eleventh Report of the Trustee dated October 27, 2016. Capitalized terms used and not otherwise

defined herein shall have the meanings ascribed to such terms in the Eleventh Report.

## **DIRCAM**

7. Dircam submitted a construction lien claim to the Trustee in accordance with the Court-approved construction lien claims process.
8. In connection with its claim, Dircam claimed entitlement to a distribution from the net sales proceeds of the Property in the amount of \$384,710.69 on account of the deficiency in the holdback, in priority to the interests of mortgagees.
9. Dircam received payment from the Trustee of a holdback amount of \$349,539.13 pursuant to the June 30 Order.
10. Dircam claimed an additional holdback amount of \$35,171.56. The Trustee is currently holding this amount in reserve in connection with the additional claim of Dircam, in accordance with the June 30 Order.
11. The Trustee and Dircam have agreed that Dircam's holdback amount for distribution purposes will be \$16,384.53. As a result, the Trustee requests that the Court grant an order authorizing the Trustee to distribute \$16,384.53 from the reserve to Dircam on account of its entitlement to the deficiency in the holdback required to be retained pursuant to the *CLA*, in priority to the interests of mortgagees.
12. As noted above, the Trustee is holding \$35,171.56 in reserve with respect to Dircam's holdback claim. In the event the Court grants the Trustee's request set

out in paragraph 11 above, the Trustee will request that the Court authorize it to release \$18,787.03 from the reserve, being the difference between the reserve amount of \$35,171.56 and the payment amount of \$16,384.53, for use by the Trustee in the administration of this proceeding.

## **CRS**

13. CRS submitted a construction lien claim to the Trustee in accordance with the Court-approved construction lien claims process.
14. In connection with its claim, CRS claimed entitlement to a distribution from the net sales proceeds of the Property in the amount of \$37,523.34 on account of the deficiency in the holdback, in priority to the interests of mortgagees.
15. CRS received payment from the Trustee of a holdback amount of \$24,748.92 pursuant to the June 30 Order.
16. CRS claimed an additional holdback amount of \$12,774.42. The Trustee is currently holding this amount in reserve in connection with the additional claim of CRS, in accordance with the June 30 Order.
17. The Trustee and CRS have agreed that CRS' holdback amount for distribution purposes will be \$9,345.80. As a result, the Trustee requests that the Court grant an order authorizing the Trustee to distribute \$9,345.80 from the reserve to CRS on account of its entitlement to the deficiency in the holdback required to be retained pursuant to the *CLA*, in priority to the interests of mortgagees.

18. As noted above, the Trustee is holding \$12,774.42 in reserve with respect to CRS' holdback claim. In the event the Court grants the Trustee's request set out in paragraph 17 above, the Trustee will request that the Court authorize it to release \$3,428.62 from the reserve, being the difference between the reserve amount of \$12,774.42 and the payment amount of \$9,345.80, for use by the Trustee in the administration of this proceeding.

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

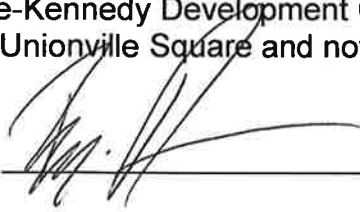
19. Based on the foregoing, the Trustee respectfully requests that the Court grant the relief set out in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 9<sup>th</sup> day of November, 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