Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

SECOND REPORT OF THE TRUSTEE

June 23, 2015

INTRODUCTION AND PURPOSE OF THE SECOND REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 22, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee (the "**Trustee**") with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule "A" to the Appointment Order (the "**Property**"). A copy of the Appointment Order is attached hereto and marked as **Appendix "A"**. Copies of the two parcel registers that constituted the Property as of June 14, 2015 are collectively attached hereto and marked as **Appendix "B"**.

2. The purpose of the second report of the Trustee (the "**Second Report**") is to:

   (a) report to the Court on the Trustee's activities since April 17, 2015, being the date of the Trustee's last report to the Court;

   (b) request that the Court grant an Order:

      (i) authorizing the Trustee, for an on behalf of 144 Park Ltd. ("**144**"), to appoint Bryan A. Tannenbaum, Daniel R. Weisz, and Arif N. Dhanani (collectively, the "**Directors and Officers**") of Collins Barrow Toronto Limited as directors and officers of the Condominium Corporation (as defined below) in accordance with s. 42(1) of the *Condominium Act* (Ontario) (the "*CA*");

(ii) indemnifying the Directors and Officers against any and all obligations and liabilities that they may incur as directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct;

(iii) directing that the Administration Charge (as defined below) stand as security for the indemnity granted to the Directors and Officers; and

(iv) approving a form of vesting order to be used by the Trustee to complete the sale of 95 pre-sold residential units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons LLP upon delivery of a Trustee certificate confirming the name(s) of the purchaser(s) and the legal description of the property as set out in each vesting order.

TERMS OF REFERENCE

3. In preparing this Second Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144, discussions with management and employees of 144 and other companies within the MADY Group ("**MADY**"), and information received from third-party sources (collectively, the "**Information**"). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by 144 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

4. This proceeding was commenced by way of application brought by 144, the registered owner of the Property. A copy of the Affidavit of Greg Puklicz sworn January 16, 2015 (the "**Puklicz Affidavit**"), without exhibits, with respect to the application is attached hereto and marked as **Appendix "C"**. A complete copy of 144's Application Record can be found on the Trustee's website at:

http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd

5. The Property was acquired by 144 in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 149 residential units (the "**144 Park Project**").

6. 144 is part of the MADY Group, a diversified real estate development group with commercial and residential business operations across North America.

7. At the time of the commencement of this proceeding:

(a) 144 was insolvent;

(b) the 144 Park Project had been completely constructed but the condominium declaration had yet to be finalized and registered;

(c) 129 residential units had been sold to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings;

(d) there were approximately 20 unsold residential units that all work had been completed on, other than the installation of flooring, kitchen and bathroom cabinets, and countertops, which are typically completed with purchaser input;

(e) over $3.0 million in construction liens had been registered against the 144 Park Project; and

(f) it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of the pre-sold residential units, complete the sale of the unsold residential units, and distribute the net sale proceeds pursuant to Court order.[1]

8. Pursuant to the Appointment Order, the Trustee was authorized and empowered to, among other things:

(a) act as receiver and manager of the Property;

(b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and

[1] In accordance with a request made by construction lien claimants at the hearing of 144's application, the Appointment Order does not authorize of empower the Trustee to market the unsold units.

(c) complete the existing agreements of purchase and sale for the pre-sold residential units and related parking units and storage units that form part of the Property.

9. The Appointment Order also provided that the Trustee, its counsel, and counsel to 144 were granted a charge over the Property (the "**Administration Charge**") as security for payment of their respective fees and disbursements.

10. Additionally, the Court authorized and empowered the Trustee to complete and register the condominium declaration and do whatever else was necessary in order to cause the registration of the proposed condominium at the Property. The steps necessary to complete the registration of the condominium were set out in Schedule "B" of the Appointment Order.

11. The Trustee filed its first report to the Court dated April 17, 2015 (the "**First Report**") in connection with the Trustee's motion that was heard on April 23, 2015. A copy of the First Report, without appendices, is attached hereto and marked as **Appendix "D"**. A complete copy of the First Report can be found on the Trustee's website.

12. As set out in the First Report, the Trustee reported to the Court on its activities since the date of its appointment, and requested that the Court approve its conduct and activities as set out in the First Report. The Trustee also sought orders from the Court:

(a) authorizing it to terminate or disclaim an agreement for purchase and sale for a residential unit that was entered into with a lien claimant for no cash consideration;

(b) approving the increase of its borrowings amount from $500,000 to $750,000 and approving the related commitment letter and payment of a facility fee thereunder;

(c) authorizing it to enter into an agreement related to parking for the 144 Park Project; and

(d) approving a construction lien claims process.

13. Pursuant to the Order of Mr. Justice Wilton-Siegel dated April 23, 2015, the Court approved the Trustee's conduct and activities as set out in the First Report, and approved a commitment letter and authorized the Trustee to borrow and perform its obligations thereunder. A copy of the Order dated April 23, 2015 is attached hereto and marked as **Appendix "E"**.

14. Justice Wilton-Siegel also granted an Order (re Construction Lien Claims Process) dated April 23, 2015, a copy of which is attached hereto and marked as **Appendix "F"**. With respect to the two Orders, Justice Wilton-Siegel issued a hand-written Endorsement, a copy of which is attached hereto and marked as **Appendix "G"**.

15. As referenced in the Endorsement, the matters relating to the approval of the parking agreement and the termination or disclaimer of the agreement of purchase and sale for a residential unit were adjourned to April 30, 2015.

16. The Trustee filed a supplement to the First Report dated April 29, 2015 (the "**Supplementary Report**") in connection with the adjourned matters. A copy of the Supplementary Report is attached hereto and marked as **Appendix "H"**.

17. Following discussions with the relevant parties, the Trustee determined that it would not proceed to seek the relief with respect to the parking agreement. The relief related to the termination of the agreement of purchase and sale went ahead unopposed. Attached hereto and marked as **Appendix "I"** is a copy of the Order of Mr. Justice McEwen dated April 30, 2015 approving the conduct and activities of the Trustee as set out in the Supplementary Report and authorizing the Trustee to terminate or disclaim the agreement of purchase and sale.

TRUSTEE'S ACTIVITIES SINCE THE FIRST REPORT

18. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since April 17, 2015, being the date of the First Report:

(a) coordinating and collecting occupancy fees for the months of May and June 2015;

(b) reviewing and executing on behalf of 144 the final Plan of Condominium 30CDM-13406 (the "**Plan**");

(c) clearing all conditions for registration of the Property, including:

(i) coordinating completion and submission to the City of Waterloo (the "**City**") of an architect's report in accordance with the *Building Code Act* (Ontario);

(ii) payment of all outstanding property taxes;

(iii) doing all things necessary, including making a payment of $26,180 to Turner Fleischer Architects Inc., to vacate its lien on City lands for non-

payment of amounts owed to it by One 55 Mady Ltd., a related party to 144, which issue was discussed in the First Report;

(iv) coordinating the attendance at the Property by a representative of the City to review the matter of a low steady water flow into the sanitary sewer of the Property and obtaining confirmation from the City that there is no issue in this regard;

(v) caused to be published on May 14, 2015 in the Daily Commercial News, Form 24 – Notice of Intention to Register a Condominium in accordance with the *CA*, under s. 33.1 of the *CA*;

(vi) obtaining clearance from the Regional Municipality of Waterloo to proceed to register the condominium declaration and the Plan on May 20, 2015;

(vii) submitting materials to and obtaining confirmation from the Land Registry Office of the successful registration of the condominium declaration and the Plan on May 25, 2015;

(d) continuing to engage trades and hourly labourers to address in-suite and certain common area deficiencies;

(e) responding to calls from creditors requesting an update on the proceedings;

(f) attending to and facilitating operating matters, including:

(i) start-up of the cooling tower;

(ii) installation of a "wind break" at the front door of the Property;

(iii) modification and servicing of the handicapped lift;

(iv) installation of a fob reader at the side door of the building;

(g) reviewing and discussing with Canada Revenue Agency ("**CRA**") its correspondence notifying the Trustee of its intention to examine the Trustee's Harmonized Sales Tax returns and supporting documentation thereto for the months of March and April 2015 and doing all things necessary to assemble the information requested by CRA and release it to them, prior to their 30 day deadline;

(h) reviewing and approving closing documentation for various purchasers;

(i) reviewing lien claims and supporting documentation from lien claimants, comparing information submitted to the books and records of 144 and contacting counsel for lien claimants for further information or clarification of items included in lien claims;

(j) corresponding and discussing with the Trustee's insurer, Northbridge Insurance (the "**Trustee's Insurer**"), the equipment ("**Equipment**") failure in unit 502 that resulted in a flooding incident (the "**Flooding Incident**") on March 20, 2015. The Flooding Incident is further discussed in the First Report as well as below;

(k) attending numerous conference calls and meetings regarding the sale by 144 of parking units in excess of availability in the Property and the manner in which to

proceed with contacting and dealing with purchasers to attempt to resolve the situation;

(l) attending to completion of the Second Report; and

(m) posting various documents to the Trustee's website in accordance with the Commercial List E-Service Protocol.

Flooding at the Property

19. As discussed in detail in the First Report, on the evening of March 20, 2015, the Trustee was advised by on-site personnel that a flooding incident occurred at the Property as a result of a ball valve breaking in unit 502, an unoccupied unit, on the fifth floor of the project. The Trustee had an emergency services provider attend immediately at the Property to commence clean-up work and the Trustee's Insurer was notified. .

20. On March 24, 2015, the Trustee attended at the Property with the Trustee's Insurer and its contractor ("**Strone**") to review the damage and obtain an estimate and timeframe for the repair work to be completed, which timeframe was estimated to be approximately 6-8 weeks. The Trustee's Insurer obtained an estimate for repair of the damaged suites and common areas, which estimate totaled approximately $140,000. In accordance with the terms of its insurance policy, the Trustee has paid to Strone the insurance deductible of $50,000.

21. On May 1, 2015, the Trustee's Insurer contacted the Trustee to advise that its engineer, Robert G. McEwen & Associates Ltd. ("**McEwen**"), had prepared a report (the "**Engineer's Report**") and caused to be conducted a metallurgical analysis on the

Equipment. The Trustee's Insurer has not publicly released the Engineer's Report as it will be relying on the report to make a claim against the relevant parties that manufactured, distributed and/or installed the Equipment. On this basis, the Engineer's Report has not been attached hereto; however, should the Court require it, the Trustee will request of the Trustee's Insurer that it provide the Court with a copy on a confidential basis.

22. The Trustee's Insurer recommended that the Trustee have a qualified professional examine the Equipment in other suites of the Property to determine whether the same Equipment had been used throughout the building. The Trustee requested of Strone that it inspect the Equipment in five other suites, being those suites affected by the Flooding Incident. Strone conducted a visual inspection of the Equipment in the other suites and confirmed that the same Equipment had been used. On this basis, the Trustee's Insurer advised that it was likely that the same Equipment had been used throughout the Property and recommended that the Trustee contact Nelco Mechanical Limited ("**Nelco**") to request that it replace the Equipment throughout the building. The Trustee's Insurer also caused McEwen to provide to the Trustee a letter (the "**Engineer's Letter**") summarizing the findings in the Engineer's Report in order to support the Trustee's request of Nelco. A copy of the Engineer's Letter is attached hereto and marked as **Appendix "J"**.

23. On May 21, 2015, the Trustee wrote to Nelco to advise it of the situation and to request that Nelco confirm by May 22, 2015 that it would replace the Equipment. A copy of the Trustee's correspondence to Nelco (the "**Nelco Letter**") is attached hereto and marked as **Appendix "K"**. Nelco contacted the Trustee on May 21, 2015 to advise that they could not possibly respond to the Trustee's request by May 22, 2015 and would need additional

time to consider same. The Trustee responded to Nelco and advised that it would give Nelco until noon on May 25, 2015 to respond.

24. On May 22, 2015, legal counsel for HTS Engineering Ltd. ("**HTS**"), the supplier of heat pumps that contain the Equipment, contacted the Trustee to advise of the following:

(a) HTS' counsel had reviewed the Nelco Letter and the Engineer's Letter; and

(b) The chain of supply for the Equipment involved the sale of the Equipment from Noble Trade to Omega Heat Pumps, who subsequently sold it to HTS. HTS then sold the Equipment to Nelco, who installed it.

25. HTS' counsel further advised that HTS required a reasonable opportunity to:

(a) investigate this matter;

(b) retain an engineer; and

(c) inspect the failed valve and the alleged defective valves in the other units.

26. On May 25, 2015, Nelco advised that its insurance provider was in contact with the Trustee's Insurer in addition to several other suppliers, heat pump manufacturers, valve suppliers and HTS. Nelco informed the Trustee that its insurance company advised that Nelco was not to change out any valves until a complete investigation can be carried out by all parties involved.

27. On May 25, 2015, counsel to the Trustee advised that it should allow a reasonable time for Nelco, HTS and others (the "**Equipment Suppliers**") to conduct their investigation into the Equipment. On June 8, 2015, the Trustee was contacted by HTS' counsel to

request that an expert retained by HTS be granted access to two suites in order to inspect the Equipment therein, which request the Trustee granted. As at June 18, 2015, the Equipment Suppliers' investigation continues and correspondence between HTS' insurer and the Trustee's Insurer was exchanged wherein HTS's insurer was requesting that the Equipment be made available for inspection by its expert. The Trustee will report further details in respect of this matter in its next report to the Court.

Unit 610

28. On May 4, 2015, the Trustee received documentation setting out that the purchasers of Unit 610 (the "**610 Purchaser**"), Mary and Brian Sweeny, had filed a joint consumer proposal under the *Bankruptcy and Insolvency Act* (Canada) from the 610 Purchaser's proposal trustee (the "**Proposal Trustee**").

29. On June 2, 2015, the Trustee wrote to the 610 Purchaser to request that it confirm whether its intention was to close the sale of unit 610. On June 4, 2015, the 610 Purchaser wrote back to the Trustee to confirm that it would not be able to close.

30. The Trustee has filed an unsecured claim with the Proposal Trustee for, among other things, unpaid occupancy fees, penalty amounts for returned cheques and replacement of flooring in the unit which was damaged as a result of the 610 Purchaser's negligence, which damage is not warranted by Tarion Warranty Corporation. The Trustee has also filed a secured claim with the Proposal Trustee, who has requested an accounting for the subsequent sale of the unit.

Public Art

31. In 2011, an agreement pursuant to S. 37 of the Planning Act (the "**Agreement**") was signed between Allen Street Holdings Inc. ("**Allen Street**") and the City with regard to the construction and installation of certain public art that is the subject of article 4 of the Agreement. The Trustee further understands that subsequent to execution of the Agreement, 144 took on the obligations of Allen Street under the Agreement. Article 4.5 of the Agreement sets out that the owner agrees that it will make a Public Art contribution equal to one percent (1%) of the Gross Construction Cost of the building to the City. 144 posted a letter of credit (the "**LC**") in favour of the City in the amount of $229,420 and provided the City with certain drawings and specifications of the Public Art it intended to complete and install, which drawings and specifications were approved by the City.

32. The Agreement set out that the Public Art was to be completed and installed prior to the City granting occupancy to residents; however, the Public Art was not completed and installed by 144, nor was this condition enforced by the City. Purchasers had been in occupation from as early as March 2014.

33. After the Trustee's appointment, the City advised the Trustee that the completion and installation of the Public Art was a condition of registration. In order to clear this condition and proceed to obtain clearance from the City for registration, the Trustee executed an undertaking dated May 1, 2015 to have the public art completed and installed.

34. On or about May 8, 2015, Laurentian Bank of Canada ("**LBC**") advised that the LC was about to expire and requested that the Trustee confirm whether it intended to renew the LC or allow it to be cancelled. On the basis that the matter of the Public Art issue was ongoing, the Trustee instructed LBC to renew the letter of credit and on May 12, 2015, LBC sent to the Trustee an invoice for renewal of the LC for $4,638.40.

35. On May 11, 2015, the City advised the Trustee that it intended on drawing on the LC and, pursuant to its rights under the Agreement, it intended on keeping the residual funds from the LC beyond those required to fund the costs of completion and installation of the public art (the "**Residual Funds**").

36. On May 13, 2015, the City informed the Trustee that it had been in contact with Waterloo North Hydro ("**WNH**") regarding the specifications for installation of the Public Art it had approved and that WNH had advised that it did not approve the specifications as they did not meet WNH's clearance requirements for separation between the art structure and electrical conductors or power lines. The City advised the Trustee that it should not do anything further at that time in respect of the Public Art. On this basis, the Trustee advised the City that it did not think drawing on the LC was appropriate until such time as the matter of the Public Art was resolved. The City proceeded to discuss with WNH clearance requirements for the Public Art to be installed.

37. On May 14, 2015, the Trustee convened a conference call with the City and a representative of MarshallZehr Group Inc. ("**MZ**") to discuss the matter of the Public Art, including modification to the specifications and costs associated with same. The City proposed that it would fund the following costs from the LC:

(a) artist's costs to complete and install the Public Art, which amount was yet to be determined as modifications to the specifications were required to be made;

(b) LC renewal fee of $4,638 with LBC;

(c) the fees of the Trustee up to $10,000 for the time and effort expended with respect to dealing with the Public Art; and

(d) the fees of MZ up to $10,000 for the time and effort expended with respect to dealing with the Public Art.

38. During the call with the City and MZ, the Trustee raised its concern with respect to the City's position that it was going to keep the Residual Funds in light of the fact that secured and unsecured creditors of 144 are owed significant amounts, which are unpaid.

39. On the evening of May 19, 2015, LBC advised, to the Trustee's surprise, that the City had drawn on the full amount of the LC on May 13, 2015. There was no mention by the City of its draw on the LC on the May 14, 2015 conference call with the Trustee.

40. After some discussion with the City regarding its draw on the LC and the Trustee's concern in this regard as terms and conditions with respect to the completion and installation of the Public Art had not been finalized, the City agreed to raise as an agenda item at the next City Council meeting whether the Residual Funds should be kept by the City or returned to the Trustee for the benefit of 144's creditors. The City undertook to write a report (the "**CW Report**") to City Council and requested of the Trustee that it write a letter (the "**CC Letter**") in respect of the situation that the City could attach to its report for the purposes of providing background and information to City Council on the

matter. Both the CW Report and CC Letter are respectively attached hereto and marked as **Appendix "L"** and **"M"**.

41. On June 15, 2015, City Council convened and considered the CW Report, the CC Letter and the issue at hand. The Trustee was unable to attend the meeting; however, a representative of MZ attended to voice its position on the matter. City Council voted 5-2 in favour of retaining the Residual Funds in an art fund and not returning them to the Trustee for the benefit of 144's creditors. The City has offered to provide the Trustee with copies of the meeting minutes when they are available. The Trustee is continuing to work with the City towards the completion and installation of the Public Art for which the total costs are estimated to be:

Artist's costs and fees	$79,891
Trustee's fees	11,300
MZ fees	10,000
LC renewal fee	4,638
Total	$105,829

* all amounts are inclusive of applicable HST, if any

42. The City will retain for the benefit of its art fund $123,591.

Condominium Corporation

43. As referenced above, the condominium declaration and Plan were registered on May 25, 2015. As a result of the registration, Waterloo Standard Condominium Corporation No. 591 (the "**Condominium Corporation**") was established pursuant to the provisions of the *CA*.

44. The Trustee has been informed by Harris Sheaffer LLP, condominium counsel to 144 ("**Harris Sheaffer**") that:

(a) section 42 of the *CA* requires that a first board of directors of the Condominium Corporation is to be appointed by the declarant, in this case the Trustee on behalf of 144, and that the first board of directors:

(i) shall consist of three or more persons;

(ii) shall hold office until a new board is elected at a turn-over meeting; and

(b) the initial board of directors is required to sign bylaws and enter into any necessary agreements, such as management agreements, metering agreements and assumption agreements, which must be entered into prior to the closing of sale transactions.

45. The Trustee understands that a turnover meeting is typically scheduled to be held to transfer control of the Condominium Corporation to the owners of units in the condominium once at least fifty per cent (50%) of the units have been conveyed to purchasers. As discussed below, it is expected that over 50% of the units will be conveyed to purchasers by July 9, 2015, and based on that, Harris Sheaffer expects to hold the turnover meeting in late August after the necessary notice periods have expired.

46. So that the sale of the condominium units may be completed for the benefit of all of 144's stakeholders, it is necessary for at least three individuals to be appointed as directors on the initial board of directors of the Condominium Corporation, as well as officers of the corporation. Bryan A. Tannenbaum, Daniel R. Weisz and Arif N. Dhanani of the Trustee's office are prepared to act as Directors and Officers, provided that they are indemnified against any and all obligations and liabilities that they may incur as

directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's and officer's gross negligence or wilful misconduct. They are also asking that the indemnification be secured by the Administration Charge previously granted by this Court over the Property as security for the fees and disbursements of the Trustee, its counsel, and counsel to 144.

SALE TRANSACTIONS FOR THE SOLD UNITS

47. As a result of the registrations, among other things, the Land Registry Office created 461 new parcel registers to represent the residential units, parking units, and storage units located at the 144 Park Project.

48. As previously reported to the Court in the Puklicz Affidavit, there are 148 residential units in the 144 Park Project and one guest unit. Prior to the appointment of the Trustee, 144 had entered into agreements of purchase and sale with purchasers for the sale of 129 residential units and parking units and storage units to be allocated by 144 to the purchasers.

49. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of Justice McEwen dated April 29, 2015.

50. As a result, there remain 128 units that are the subject of agreements of purchase and sale with 144 (the "**Sold Units**"). The Sold Units are comprised of:

(a) five of the eight townhouse suite units located on level 1;

(b) 115 of the 130 apartment style units located on levels 4 through 17;

(c) six of the seven penthouse suite units located on level 18; and

(d) two of the four greater penthouse suite units located on level 19.

51. The agreements of purchase and sale with respect to the Sold Units were entered into by 144 between May 20, 2009 and July 13, 2013, with the vast majority of the agreements entered into in 2009 and 2010. Attached hereto and marked as **Appendix "N"** is a copy of the standard form agreement of purchase and sale that was used by 144 as the basis for each sale transaction. Attached hereto and marked as **Appendix "O"** is a spreadsheet prepared by Harris Sheaffer LLP, condominium counsel to 144, which sets out the following details with respect to the 95 Sold Units: suite number, unit number, floor level, name of purchaser(s), date of agreement, final closing date, parking units and storage units.

52. Subject to obtaining Court approval, the sale transactions for 76 of the 128 Sold Units are expected to close by July 7, 2015 and 19 of the 128 Sold Units are expected to close by July 9, 2015, totaling 95 Sold Units. There remain 33 Sold Units that currently do not have a set date for closing.

53. The reason for this is an issue with parking. As described in greater detail in the First Report, in connection with the Sold Units, 144 sold seven more parking units to the purchasers of the Sold Units than currently are available at the 144 Park Project and there are no parking units available in the building for the 20 unsold units.

54. Harris Sheaffer sent letters to purchasers with two parking units to advise them of the Trustee's inability to deliver the contracted number of parking units. The Trustee, in

consultation with MZ, has offered to amend the agreements of purchase and sale ("**APS**") of these purchasers to buy back one of the two parking units of each purchaser at its cost of $30,000 plus HST and to reduce the purchase price of their units accordingly. Attached hereto and marked as **Appendix "P"** is a redacted copy of such a letter sent to purchasers.

55. The Trustee is requesting that the Court grant vesting orders with respect to the sale of the 95 Sold Units and related parking units and storage units, such that the purchasers may obtain title to the units free and clear from all mortgages, construction liens and other encumbrances upon delivery of a Trustee's certificate on each closing.

56. In an effort to make practical and efficient use of judicial resources, the Trustee proposes that, as opposed to requesting that the Commercial List Judge hearing the Trustee's motion issue 95 separate vesting orders with respect to the sale transactions that are to close by July 9, 2015, the Trustee is requesting that the Court approve a form of vesting order to be used in connection with each of the 95 sale transactions.

57. The form of vesting order will substantially be in the form of the Model Approval and Vesting Order. However, the form of vesting order will leave the following information blank: (a) name of purchaser(s) in the vesting order and in the draft Trustee's Certificate attached to the form of vesting order; and (b) legal descriptions of the residential unit, parking unit(s) and storage unit(s) to be conveyed to the purchaser(s).

58. The Trustee is requesting that the Court authorize a representative of Chaitons LLP ("**Chaitons**"), counsel to the Trustee, to insert the name of the purchasers or its/their nominee(s) and the legal property descriptions into the separate vesting orders for each of

the sale transactions for the 95 Sold Units, and authorize and direct the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon presentation of a Trustee's certificate to the Registrar confirming the name(s) of the purchaser(s) and the legal description of the property set out in each vesting order.

TRUSTEE'S REQUEST TO THE COURT

59. Based on the foregoing, the Trustee respectfully requests that the Court issue Orders:

(a) authorizing the Trustee, for and on behalf of 144, to appoint the Directors and Officers as directors and officers of the Condominium Corporation in accordance with s. 42(1) of the *CA*;

(b) indemnifying the Directors and Officers against any and all obligations and liabilities that they may incur as directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct;

(c) directing that the Administration Charge stand as security for the indemnity granted to the Directors and Officers; and

(d) approving a form of vesting order to be used by the Trustee to complete the sale of the Sold Units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon

delivery of a Trustee's certificate confirming the name(s) of the purchaser(s) and the legal description of the property set out in each vesting order.

All of which is respectfully submitted to this Court as of this 23rd day of June, 2015.

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

Per: _____
Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP
Title: President

I have the authority to bind the corporation

APPENDIX "A"

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	THURSDAY, THE 22nd DAY
	)	
JUSTICE PENNY	)	OF JANUARY, 2015

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

ORDER
(appointing trustee)

THIS APPLICATION made by the Applicant, 144 Park Ltd., for an Order pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") appointing Collins Barrow Toronto Limited as trustee (the "**Trustee**") of the Property (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Puklicz sworn January 16, 2015 (the "**Puklicz Affidavit**") and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for those other parties listed on the Counsel Slip, no one else appearing although

duly served as appears from the affidavit of service of Sam Rappos sworn January 20, 2015, and on reading the consent of Collins Barrow Toronto Limited to act as the Trustee,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 68(1) of the CLA, Collins Barrow Toronto Limited is hereby appointed Trustee, without security, of the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, legally described in **Schedule "A"** attached hereto, and comprised of, among other things, 149 residential condominium units (the "**Property**").

TRUSTEE'S POWERS

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

(a) to act as receiver and manager of the Property;

(b) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property,

including, without limitation, the Occupancy Funds (as defined in the Puklicz Affidavit);

(c) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;

(d) to engage consultants, agents, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;

(e) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant in respect of the Property, including, without limitation, all occupancy fees, and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;

(f) to settle, extend or compromise any indebtedness owing to the Applicant;

(g) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Trustee's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;

(h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicant, the Property or the Trustee, and to settle or compromise any such

proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(i) complete and register the condominium declaration and final Plan of Condominium 30CDM-13406, and any related documents, on title to the Property, and do whatever else is necessary in order to cause the registration of the proposed condominium thereon. For clarity, the foregoing shall include, without limitation:

(A) finalizing all outstanding draft plan conditions, including all required documentation, to the extent applicable;

(B) submitting the declaration and plan of condominium (i.e. the description) to the applicable approval authorities for final approval;

(C) executing the declaration and the plan of condominium (mylar) and cause same to be registered in the appropriate Land Registry Office (the "**LRO**"); and

(D) arranging for delivery of architectural and structural plans to the LRO;

(j) Upon the registration of the condominium and creation of the resultant condominium corporation (the "**Condominium Corporation**"), the Trustee is authorized to operate the Condominium Corporation in accordance with and

subject to the provisions of the *Condominium Act, 1998* (Ontario) (the "**Condominium Act**"), including, without limitation:

(A) appointing a board of directors and auditor;

(B) opening the appropriate bank accounts;

(C) collecting common expenses;

(D) obtaining and maintaining the appropriate insurance;

(E) preparing the record of unit owners required under Section 47 of the Condominium Act and other records as required by the Act;

(F) ratifying and registering the proposed by-law(s) of the Condominium Corporation;

(G) ratifying the proposed rules;

(H) ratifying and entering into an assignment agreement of the Shared Facilities Agreement;

(I) ratifying and entering into any necessary service and maintenance agreements as may be required; and

(J) turning over control of the condominium at the appropriate time and in the manner as prescribed by the Condominium Act;

(k) to complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking spaces that form part of the Property (collectively, the "**Sold Units**");

(l) to apply for any vesting order or other orders necessary to convey title to the Sold Units or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;

(o) to apply for any permits, licences, approvals, declarations, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Applicant; and

(p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

4. **THIS COURT ORDERS** that the Trustee shall take all steps necessary to complete the registration of the Condominium, those steps being more particularly set out in **Schedule "B"** attached hereto, and to accomplish that purpose, all lien claims, mortgages and other encumbrances are hereby subordinated to any utility easements and any municipal development or warnings agreements that may be required.

5. **THIS COURT ORDERS** that the Trustee, as soon as practical following the sale of at least 65 of the Sold Units, shall bring a motion for interim distribution of the net proceeds.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Applicant, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

10. **THIS COURT ORDERS** that, subject to the provisions of paragraph 11, no Proceeding against or in respect of the Applicant or the Property, including without limitation any Proceeding commenced under the CLA against the Applicant or mortgagees of the Property, shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court. Any request for particulars with respect to outstanding encumbrances, including, without limitation, requests made pursuant to the CLA, shall be directed to, and responded by, the Trustee.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

13. **THIS COURT ORDERS** that, until June 30, 2015 or such other date as the Court may hereafter order, no Proceeding may be commenced or continued against any of the former or current directors, officers or management of the Applicant, and any person, including an employee or agent of the Applicant, who had effective control of the Applicant or its relevant activities, with respect to any claim against such persons that arose before the date hereof and whereby such persons are alleged under any law to be liable, including the CLA, except with the prior written consent of the Trustee or leave of this Court. The foregoing does not apply to proceedings bearing Court File No. CV-14-5608-00 commenced in Brampton, Ontario.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, equipment, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Applicant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with arrangements as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any part of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE'S LIABILITY

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

ACCOUNTS

20. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Trustee, counsel to the Trustee and counsel to the Applicant shall be entitled to and are hereby granted a charge (the "**Administration Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a first charge on the Property in priority to all any and all existing and future security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, encumbrances, claims of secured creditors (whether contractual, statutory or otherwise), executions, or charges, whether or not they have attached or been perfected, registered or filed (collectively, the "**Claims**") in favour of any Person.

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

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

BORROWING POWERS

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

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

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

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

RETENTION OF LAWYERS

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

SERVICE AND NOTICE

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the **"Protocol"**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL http:www.collinsbarrow.com/en/toronto-ontario/144-park.

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

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

GENERAL

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

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

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

J.

JAN 13 2015

MB

SCHEDULE "A"

PIN 22417-0135 (LT)
LRO # 58

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, Being Part 1 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

PIN 22417-0134 (LT)
LRO # 58

Property Description: Lots 2 & 3, Part of Lots 1, 4, 5, & 6 Plan 186, Being Part 2 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

SCHEDULE "B"

Task	Notes	Timing to Completion
Registration of Waterloo North Hydro Easement	Requires postponements from lenders and priority over lien claimants	
Update of Condominium Plan and Schedule A to the Declaration	Requires registration of the easement	Few days after registration of easement
Submit Declaration and Condominium Plan for Pre-approval	Requires update of plan and schedule A	
LRO to complete pre-approval review		LRO has 10 business days to complete their review
Update Declaration and Condominium Plan based on LRO comments		Few days after completion of LRO pre-approval review
Obtain signed consents (schedule "B" to Declaration) from lenders		
Publish notice of intent to register condominium		Must be published not less than 5 days and not more than 15 days before Condo Plan is submitted to City for signing
Declarant to sign Condominium Plan and submit to City to sign		5 days after notice of intention is published
Declarant to sign Declaration and submit Declaration with registration fee to LRO		Upon completion of update
Satisfy all Region/City conditions		
Registration of Region of Waterloo Development Agreement (re noise)	Requires postponements from lenders and priority over lien claimants	

Task	Notes	Timing to Completion
Registration of City of Waterloo Warning Agreement	Requires postponements from lenders and priority over lien claimants	
Submit as built architectural and as built structural plans to LRO		
Registration	Notice of final closing to be sent to purchasers lawyers day after registration	Couple of days after LRO receives all the following: final plan, declaration, architectural plans and structural plans.
Release of new PINs by LRO		10 business days after registration
Delivery of closing documents and statement of adjustments	Purchaser's lenders require statement of adjustment to finalize mortgage financing	Approximately 5 business days after PINs are released
Final Closing		Approximately 20 business days (30 calendar days) from date of registration.

SCHEDULE "C"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the trustee (the "**Trustee**") of the Property appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 22nd day of January, 2015 (the "**Order**") made in an application having Court file number __-CL-_____, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Trustee is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(appointment of a trustee)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

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Tel: (416) 218-1129
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Sam Rappos (LSUC #51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Applicant, 144 Park Ltd.

APPENDIX "B"

Ontario ServiceOntario

LAND REGISTRY
OFFICE #58

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

22417-0134 (LT)

PREPARED FOR LynnLeel
ON 2015/06/15 AT 14:04:09

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON 58R-17836; SUBJECT TO AN EASEMENT AS IN WR666363; SUBJECT TO AN EASEMENT IN GROSS OVER PTS. 1, 2, 3 ON 58R-18429 AS IN WR864508; CITY OF WATERLOO

PROPERTY REMARKS: PLANNING ACT CONSENT IN 1356494. FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2013/06/13, INSTRUMENT WR759234.

ESTATE/QUALIFIER:
FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY:
RE-ENTRY FROM 22417-0131

PIN CREATION DATE:
2013/06/13

OWNERS' NAMES
144 PARK LTD.

CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
**	PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **					
**	TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **					
NOTE: THIS PROPERTY WAS RETIRED ON 2015/05/25. THIS PROPERTY IS NOW DIVIDED INTO THE FOLLOWING PROPERTIES: 22417-0152 TO 22417-0153						
WR611290	2011/05/02	NOTICE	$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2184038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR625222	2011/07/07	NOTICE	$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR639367	2011/09/01	TRANSFER	$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
REMARKS: PLANNING ACT STATEMENTS						
WR639368	2011/09/01	CHARGE	$8,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR639369	2011/09/01	CHARGE	$3,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/11/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660381	2011/12/13	CHARGE	$2,887,696	144 PARK LTD.	MARSHALLZEHR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR690395	2012/05/25	CHARGE	$40,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690396	2012/05/25	NO ASSGN RENT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
	REMARKS: WR690395.					
WR690416	2012/05/25	POSTPONEMENT		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639369 TO WR690395					
WR690422	2012/05/25	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639368 TO WR690395					
WR690423	2012/05/25	POSTPONEMENT		MARSHALLZEHR GROUP INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR660381 TO WR690395					
58R17836	2013/06/13	PLAN REFERENCE				C
WR759234	2013/06/13	APL ABSOLUTE TITLE		144 PARK LTD.		C
58R18116	2014/02/07	PLAN REFERENCE				C
WR847447	2014/10/24	CONSTRUCTION LIEN	$301,592	GLOBAL FIRE PROTECTION LTD.		C
WR849030	2014/10/31	CONSTRUCTION LIEN	$88,883	694643 ONTARIO LIMITED		C
58R18429	2014/11/27	PLAN REFERENCE				C
WR854810	2014/12/01	CONSTRUCTION LIEN	$537,286	J & I GAWEDA CONSTRUCTION LIMITED		C
WR854978	2014/12/02	CONSTRUCTION LIEN	$26,889	BAST HOME COMFORT INC.		C
WR856168	2014/12/08	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR856621	2014/12/10	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA MARSHALLZEHR GROUP INC.	D
	REMARKS: WR847447					
WR856756	2014/12/11	CONSTRUCTION LIEN	$328,260	FRENDEL KITCHENS LIMITED		C
WR857239	2014/12/12	CONSTRUCTION LIEN	$436,314	T.I.C. CONTRACTING LTD.		C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WR857322	2014/12/15	CONSTRUCTION LIEN	$188,393	GLOBAL PRECAST INC.		C
WR857462	2014/12/15	CONSTRUCTION LIEN	$110,716	2050491 ONTARIO INC. O/A THE DOWNSVIEW GROUP		C
WR857468	2014/12/15	CONSTRUCTION LIEN	$104,009	SAM TORTOLA ENTERPRISES INC.		C
WR857793	2014/12/16	CONSTRUCTION LIEN	$15,870	CRS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
WR857850	2014/12/16	CONSTRUCTION LIEN	$83,436	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR858473	2014/12/19	CONSTRUCTION LIEN	$30,851	TURNER FLEISCHER ARCHITECTS INC.		C
WR858748	2014/12/19	CONSTRUCTION LIEN	$46,043	HAMMERSCHLAG & JOFFE INC.		C
WR858991	2014/12/22	CONSTRUCTION LIEN	$345,952	SEREEN PAINTING LTD.		C
WR859188	2014/12/23	CONSTRUCTION LIEN	$176,771	WESTON FLOORING LIMITED		C
WR859941	2014/12/30	CONSTRUCTION LIEN	$32,381	GREAT PYRAMID ALUMINUM LTD.		C
WR860525	2015/01/05	CONSTRUCTION LIEN	$139,287	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR860757	2015/01/06	CERTIFICATE		FRENDEL KITCHENS LIMITED	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. MARSHALLZEHR GROUP INC. ALLEN STREET HOLDINGS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA	C
	REMARKS: CERTIFICATE OF ACTION WR855756					
WR861891	2015/01/13	CERTIFICATE		EAST HOME COMFORT INC.		C
	REMARKS: CERTIFICATE OF ACTION RE WR854978					
WR862054	2015/01/14	CERTIFICATE		J & I GAWEDA CONSTRUCTION LIMITED		C
	REMARKS: WR854810					
WR862055	2015/01/14	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANANDA MARSHALLZEHR GROUP INC.	
	REMARKS: WR847447					
WR862500	2015/01/16	CERTIFICATE		694643 ONTARIO LIMITED		C
	REMARKS: WR849030					
WR863268	2015/01/21	CERTIFICATE		TURNER FLEISCHER ARCHITECTS INC.	MADY CONTRACT DIVISION LTD. MADY CONTRACT DIVISION (2009) LTD. MADY DEVELOPMENT CORPORATION 144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR858473					
WR863291	2015/01/21	CONSTRUCTION LIEN	$113,328	BRODY WALL SYSTEM LTD.		C
WR863296	2015/01/21	CERTIFICATE		T.I.C. CONTRACTING LTD.		C
	REMARKS: WR857239					
WR863658	2015/01/23	CONSTRUCTION LIEN	$4,258	SKYWAY CANADA LIMITED		C
WR863814	2015/01/23	CONSTRUCTION LIEN	$210,190	DKS STONE FABRICATION & DESIGN INC.		C
WR863820	2015/01/23	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	COLLINS BARROW TORONTO LIMITED	C
WR864339	2015/01/28	CONSTRUCTION LIEN	$752,632	CLONARD GROUP INC.		C
WR864365	2015/01/28	CERTIFICATE		HAMMERSCHLAG & JOFFE INC.	ONTARIO SUPERIOR COURT OF JUSTICE	C
	REMARKS: RE: WR858748					
WR864508	2015/01/29	TRANSFER EASEMENT	$2	144 PARK LTD.	WATERLOO NORTH HYDRO INC.	C
WR864695	2015/01/29	CONSTRUCTION LIEN	$260,447	ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
WR865440	2015/02/02	CERTIFICATE		GREAT PYRAMID ALUMINUM LTD.	144 PARK LTD.	C
	REMARKS: CERTIFICATE OF ACTION - WR859941					

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WR865713	2015/02/04	CERTIFICATE		GLOBAL PRECAST INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR857322					
WR865936	2015/02/05	CERTIFICATE		ADLERS MAIN TILE & CARPET CO. LTD.		C
	REMARKS: CERIFICATE OF ACTION WR860525 AND WR857850					
WR866373	2015/02/09	CERTIFICATE		2050491 ONTARIO INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: CERIFICATE OF ACTION WR857462					
WR867197	2015/02/13	CERTIFICATE		WESTON FLOORING LIMITED		C
	REMARKS: CERTIFICATE OF ACTION WR859188					
WR867313	2015/02/17	NOTICE	$2	THE REGIONAL MUNICIPALITY OF WATERLOO		C
WR867757	2015/02/19	CERTIFICATE		SEREEN PAINTING LTD.		C
	REMARKS: WR858991					
WR868713	2015/02/26	CERTIFICATE		SAM TORTOLA ENTERPRISES INC.		C
	REMARKS: CERTIFICATE OF ACTION WR857468					
WR870665	2015/03/11	CERTIFICATE		ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
	REMARKS: WR864655					
WR870768	2015/03/12	CERTIFICATE		CRS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
	REMARKS: WR857793					
WR870844	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.	144 PARK LTD.	C
	REMARKS: WR863291					
WR874856	2015/04/08	CERTIFICATE		DKS STONE FABRICATION & DESIGN INC.	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD.	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
					AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	
REMARKS: WR863814						
WR875305	2015/04/10	CERTIFICATE		SKYWAY CANADA LIMITED	144 PARK LTD.	C
REMARKS: WR863658						
WR876062	2015/04/16	NOTICE	$2	144 PARK LTD.	ONE 55 MADY LTD.	C
WCP591	2015/05/25	STANDARD CONDO PLN				C
WR882241	2015/05/25	CONDO DECLARATION		144 PARK LTD.		C

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PROPERTY DESCRIPTION: PART OF LOTS 217, 218, 219 & 267 PLAN 385, BEING PART 1 ON 58R-17836; T/W AN EASEMENT OVER ALL OF THE COMMON ELEMENTS OF WATERLOO STANDARD CONDOMINIUM PLAN NO. 591 FOR INGRESS AND EGRESS, MAINTENANCE REPAIR, ACCESS, CONSTRUCTION AS IN WR882241; SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO

PROPERTY REMARKS: PLANNING ACT CONSENT IN DOCUMENT WR611292. FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2013/06/13, INSTRUMENT WR759234.

ESTATE/QUALIFIER: FEE SIMPLE LT ABSOLUTE PLUS

RECENTLY: RE-ENTRY FROM 22417-0132

PIN CREATION DATE: 2013/06/13

OWNERS' NAMES: 144 PARK LTD.

CAPACITY SHARE: ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
WR611290	2011/05/02	NOTICE	$5	ALLEN STREET HOLDINGS INC.	ALLEN STREET HOLDINGS INC. 2184038 ONTARIO INC. 144 PARK LTD. COB GP INC.	C
WR625222	2011/07/07	NOTICE	$2	THE CORPORATION OF THE CITY OF WATERLOO	ALLEN STREET HOLDINGS INC.	C
WR639367	2011/09/01	TRANSFER	$2,200,000	ALLEN STREET HOLDINGS INC.	144 PARK LTD.	C
REMARKS: PLANNING ACT STATEMENTS						
WR639368	2011/09/01	CHARGE	$8,500,000	144 PARK LTD.	AVIVA INSURANCE COMPANY OF CANADA	C
WR639369	2011/09/01	CHARGE	$3,000,000	144 PARK LTD.	ALLEN STREET HOLDINGS INC.	C
WR655113	2011/11/17	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR660381	2011/12/13	CHARGE	$2,887,696	144 PARK LTD.	MARSHALLZEHR GROUP INC.	C
WR666363	2012/01/18	TRANSFER EASEMENT	$2	144 PARK LTD.	ROGERS CABLE COMMUNICATIONS INC.	C
WR690395	2012/05/25	CHARGE	$40,000,000	144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
WR690396	2012/05/25	NO ASSGN RENT GEN		144 PARK LTD.	LAURENTIAN BANK OF CANADA	C
REMARKS: WR690395.						

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WR690416	2012/05/25	POSTPONEMENT		ALLEN STREET HOLDINGS INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639369 TO WR690395					
WR690422	2012/05/25	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR639368 TO WR690395					
WR690423	2012/05/25	POSTPONEMENT		MARSHALLZEHR GROUP INC.	LAURENTIAN BANK OF CANADA	C
	REMARKS: WR660381 TO WR690395					
58R17836	2013/06/13	PLAN REFERENCE				C
WR759234	2013/06/13	APL ABSOLUTE TITLE		144 PARK LTD.		C
58R18116	2014/02/07	PLAN REFERENCE				C
WR847447	2014/10/24	CONSTRUCTION LIEN	$301,592	GLOBAL FIRE PROTECTION LTD.		C
WR849030	2014/10/31	CONSTRUCTION LIEN	$88,883	594643 ONTARIO LIMITED		C
WR854810	2014/12/01	CONSTRUCTION LIEN	$537,286	J & I GAWEDA CONSTRUCTION LIMITED		C
WR856168	2014/12/08	NOTICE		THE CORPORATION OF THE CITY OF WATERLOO	144 PARK LTD.	C
WR856621	2014/12/10	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANADA MARSHALLZEHR GROUP INC.	C
	REMARKS: WR847447					
WR856756	2014/12/11	CONSTRUCTION LIEN	$328,260	FRENDEL KITCHENS LIMITED		C
WR857239	2014/12/12	CONSTRUCTION LIEN	$436,314	T.I.C. CONTRACTING LTD.		C
WR857322	2014/12/15	CONSTRUCTION LIEN	$188,393	GLOBAL PRECAST INC.		C
WR857462	2014/12/15	CONSTRUCTION LIEN	$110,716	2050491 ONTARIO INC. O/A THE DOWNSVIEW GROUP		C
WR857468	2014/12/15	CONSTRUCTION LIEN	$104,009	SAM TORTOLA ENTERPRISES INC.		C

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WR857793	2014/12/16	CONSTRUCTION LIEN	$15,870	CRS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
WR857850	2014/12/16	CONSTRUCTION LIEN	$83,436	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR858473	2014/12/19	CONSTRUCTION LIEN	$30,851	TURNER FLEISCHER ARCHITECTS INC.		C
WR858748	2014/12/19	CONSTRUCTION LIEN	$46,043	HAMMERSCHLAG & JOFFE INC.		C
WR858991	2014/12/22	CONSTRUCTION LIEN	$345,952	SEREEN PAINTING LTD.		C
WR859188	2014/12/23	CONSTRUCTION LIEN	$176,771	WESTON FLOORING LIMITED		C
WR859941	2014/12/30	CONSTRUCTION LIEN	$32,381	GREAT PYRAMID ALUMINUM LTD.		C
WR860525	2015/01/05	CONSTRUCTION LIEN	$139,287	ADLERS MAIN TILE & CARPET CO. LTD.		C
WR860757	2015/01/06	CERTIFICATE		FRENDEL KITCHENS LIMITED	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. MARSHALLZEHR GROUP INC. ALLEN STREET HOLDINGS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA	C
	REMARKS: CERTIFICATE OF ACTION WR856756					
WR862054	2015/01/14	CERTIFICATE		J & I GANEDA CONSTRUCTION LIMITED		C
	REMARKS: WR854810					
WR862055	2015/01/14	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. LAURENTIAN BANK OF CANANDA MARSHALLZEHR GROUP INC.	C
	REMARKS: WR847447					
WR862500	2015/01/16	CERTIFICATE		694643 ONTARIO LIMITED		C
	REMARKS: WR849030					

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WR863	2015/01/21	CERTIFICATE		TURNER FLEISCHER ARCHITECTS INC.	MADY CONTRACT DIVISION LTD. MADY CONTRACT DIVISION (2009) LTD. MADY DEVELOPMENT CORPORATION 144 PARK LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR858473					
WR863291	2015/01/21	CONSTRUCTION LIEN	$113,328	BRODY WALL SYSTEM LTD.		C
WR863296	2015/01/21	CERTIFICATE		T.I.C. CONTRACTING LTD.		C
	REMARKS: WR857239					
WR863658	2015/01/23	CONSTRUCTION LIEN	$4,258	SKYWAY CANADA LIMITED		C
WR863814	2015/01/23	CONSTRUCTION LIEN	$210,190	DKS STONE FABRICATION & DESIGN INC.		C
WR863820	2015/01/23	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	COLLINS BARROW TORONTO LIMITED	C
WR864339	2015/01/28	CONSTRUCTION LIEN	$752,632	CLONARD GROUP INC.		C
WR864365	2015/01/28	CERTIFICATE		HAMMERSCHLAG & JOFFE INC.	ONTARIO SUPERIOR COURT OF JUSTICE	C
	REMARKS: RE: WR858748					
WR864655	2015/01/29	CONSTRUCTION LIEN	$260,447	ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
WR865440	2015/02/02	CERTIFICATE		GREAT PYRAMID ALUMINUM LTD.	144 PARK LTD.	C
	REMARKS: CERTIFICATE OF ACTION - WR859941					
WR865713	2015/02/04	CERTIFICATE		GLOBAL PRECAST INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR857322					
WR865936	2015/02/05	CERTIFICATE		ADLERS MAIN TILE & CARPET CO. LTD.		C
	REMARKS: CERIFICATE OF ACTION WR860525 AND WR857850					

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WR866373	2015/02/09	CERTIFICATE		2050491 ONTARIO INC.	144 PARK LTD. MADY CONTRACT DIVISION (2009) LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS LTD. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: CERIFICATE OF ACTION WR857962					
WR867197	2015/02/13	CERTIFICATE		WESTON FLOORING LIMITED		C
	REMARKS: CERTIFICATE OF ACTION WR859188					
WR867757	2015/02/19	CERTIFICATE		SEREEN PAINTING LTD.		C
	REMARKS: WR858991					
WR868712	2015/02/26	CERTIFICATE		SAM TORTOLA ENTERPRISES INC.		C
	REMARKS: CERTIFICATE OF ACTION WR857468					
WR870665	2015/03/11	CERTIFICATE		ALUMINUM WINDOW DESIGN INSTALLATIONS INC.		C
	REMARKS: WR864655					
WR870768	2015/03/12	CERTIFICATE		CRS CONTRACTORS RENTAL SUPPLY GENERAL PARTNER INC.		C
	REMARKS: WR857793					
WR870844	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.	144 PARK LTD.	C
	REMARKS: WR863291					
WR874856	2015/04/08	CERTIFICATE		DKS STONE FABRICATION & DESIGN INC.	144 PARK LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. AVIVA INSURANCE COMPANY OF CANADA ALLEN STREET HOLDINGS INC. MARSHALLZEHR GROUP INC. LAURENTIAN BANK OF CANADA	C
	REMARKS: WR863814					
WR875305	2015/04/10	CERTIFICATE		SKYWAY CANADA LIMITED	144 PARK LTD.	C
	REMARKS: WR863658					
WR876062	2015/04/16	NOTICE	$2	144 PARK LTD.	ONE 55 MADY LTD.	C

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APPENDIX "C"

17

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

AFFIDAVIT OF GREG PUKLICZ

(sworn January 16, 2015)

I, GREG PUKLICZ, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am Senior Vice President and Chief Financial Officer of MADY Development Corporation ("**MADY**") and Vice President of 144 Park Ltd. ("**144**"). The facts set forth herein are within my personal knowledge, determined from the face of the documents attached hereto as exhibits, and from information and advice provided to me by others. Where I have relied upon such information and advice, I have identified its source and I verily believe it to be true.

Overview

2. 144 is the owner of a 149 unit condominium project in Waterloo, Ontario. 144 has sold 129 units to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings. 144 is insolvent. It is in default of its loan obligations to its bank and currently

owes in excess of $39.0 million to the bank. There are approximately $3.0 million in construction liens registered against title to the property. The closings of the units cannot occur without the construction liens being vacated. The lien claimants have no way of recovering any payment at this time. There is an additional 20 units to be sold. The units require additional work that cannot be completed by 144 without further financing. It is in the best interest of all stakeholders for a construction lien trustee to be appointed to register the Plan, complete the closing of the 129 sold units, complete and sell the 20 unsold units, and distribute the sale proceeds pursuant to Court order.

The MADY Group

3. The MADY Group is a diversified real estate development group with commercial and residential business operations across North America. The MADY Group was founded over 40 years ago in Windsor, Ontario by Charles Mady. The MADY Group currently has offices in Markham and Windsor, Ontario.

4. The MADY Group builds condominiums, mixed-use developments and commercial retail developments, and has a current development portfolio of more than 1,500 condos, over 1.5 million square feet of retail projects, and several retirement communities.

5. The MADY Group also includes a construction division. In many of our projects, we provide construction management services through a related party, Mady Contract Division (2009) Ltd. ("**MCDL**").

144 Park Project and the Property

6. One of the MADY Group's current condominium development projects is a 19 storey condominium project known as "144 Park Uptown Waterloo" (the "**144 Park Project**"). 144 is

the registered owner of the lands that comprise the 144 Park Project (the "**Property**"). Copies of the parcel registers for the two PINs that form the Property are collectively attached hereto and marked as **Exhibit "A"**.

7. 144 is a single purpose standalone entity that was incorporated to develop and construct the Property. 144 is an Ontario corporation with its registered office located in Markham, Ontario. A copy of a Corporate Profile Report for 144 is attached hereto and marked as **Exhibit "B"**.

8. In September 2011, 144 purchased the Property from Allen Street Holdings Inc. ("**Allen Street**") pursuant to a Transfer registered on title to the Property on September 1, 2011 as Instrument No. WR639367. A copy of the Transfer is attached hereto and marked as **Exhibit "C"**.

9. The 144 Park Project is located at 142, 144 and 148 Park Street and 21 Allen Street West, which is at the intersection of Park Street and Allen Street West in the Old Westmount neighbourhood of Waterloo, Ontario.

10. The 144 Park Project is a residential condominium project with 149 total units (148 residential units and one guest suite unit), along with 150 storage units, 149 parking units, 12 miscellaneous units and one (1) roof top terrace unit.

11. The 144 Park Project has the following building amenities and features: concierge; fully outfitted Fitness Room with change rooms; Party Room equipped with caterers' kitchen and bar and with direct access to a 4th floor terrace featuring natural gas barbeque, outdoor eco-friendly

furniture and landscaping; and a Theater Room complete with big screen television and surround sound audio system.

12. MCDL is the construction manager for the 144 Park Project.

Mortgagees

Allen Street

13. As noted above, 144 purchased the Property from Allen Street on September 1, 2011. 144 financed the purchase of the Property, in part, by way of a loan in the form of vendor take-back financing from Allen Street (the "**Allen Street Loan**"). The Allen Street Loan was evidenced by a non-interest bearing promissory note in the amount of $3,000,000, a copy of which is attached hereto and marked as **Exhibit "D"**.

14. As security for the Allen Street Loan, 144 granted a charge/mortgage in the principal amount of $3,000,000 in favour of Allen Street, which charge/mortgage was registered on title to the Property on September 1, 2011 as Instrument No. WR639369 (the "**Allen Street Charge**"). A copy of the Allen Street Charge is attached hereto and marked as **Exhibit "E"**.

15. The Allen Street Charge is the second mortgage registered against title to the Property, after the Aviva Charge (as defined below). As discussed below, the Allen Street Charge has been postponed in favour of the Laurentian Charge (as defined below). Additionally, although no postponement has been registered on title to the Property, I understand that, pursuant to an amending agreement dated April 29, 2011, Allen Street agreed that the Allen Street Charge would be postponed in favour of, among other things, any mezzanine financing obtained by 144. Additionally, on November 14, 2014, Allen Street and MarshallZehr Group Inc. ("**MarshallZehr**") entered into a postponement and priorities agreement that provides that the

Allen Street Charge is subordinated to the MarshallZehr Charge (as defined below). Copies of the amending agreement and the postponement and priorities agreement are attached hereto and respectively marked as **Exhibit "F"** and **Exhibit "G"**.

16. As of January 15, 2015, 144 was indebted to Allen Street for the Allen Street Loan in the principal amount of $3,000,000.

Aviva

17. In connection with the proposed development of the Property and the 144 Park Project, 144 obtained a Tarion Warranty Corporation Bond from Aviva Insurance Company of Canada ("**Aviva**"). The Tarion Warranty Corporation Bond was obtained to secure 144's deposit and warranty obligations under the *Ontario New Home Warranties Plan Act*. 144 also entered into a deposit trust agreement and 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 Bond.

18. As security for the obligations 144 owes to Aviva, 144 granted a charge/mortgage in the principal amount of $8,500,000 in favour of Aviva, which charge/mortgage was registered on title to the Property on September 1, 2011 as Instrument No. WR639368 (the "**Aviva Charge**"). A copy of the Aviva Charge is attached hereto and marked as **Exhibit "H"**.

19. The Aviva Charge is the first mortgage registered against title to the Property. However, as described below, a postponement has been registered in favour of the Laurentian Charge.

20. As of January 15, 2015, I am not aware of any claims having been made to Aviva in connection with the Tarion Warranty Corporation Bond issued in connection with the 144 Park Project.

MarshallZehr

21. 144 obtained mezzanine financing from MarshallZehr in the amount of $2,887,696 pursuant to a commitment letter dated October 24, 2011, a copy of which is attached hereto and marked as **Exhibit "I"**.

22. As security for the mezzanine financing, 144 granted a charge/mortgage in the principal amount of $2,887,696 in favour of MarshallZehr, which charge/mortgage was registered on title to the Property on December 13, 2011 as Instrument No. WR660381 (the "**MarshallZehr Charge**"). A copy of the MarshallZehr Charge is attached hereto and marked as **Exhibit "J"**.

23. The MarshallZehr Charge is the third mortgage registered against title to the Property. As discussed below, the MarshallZehr Charge has been postponed in favour of the Laurentian Charge. As noted above, I understand that Allen Street agreed to postpone its loan and charge/mortgage in favour of mezzanine financing such as the financing provided by MarshallZehr.

24. As of January 15, 2015, 144 was indebted to MarshallZehr pursuant to the terms of the commitment letter in the principal amount of $2,887,696, plus accrued interest.

Laurentian

25. The development of the 144 Park Project was also financed by credit facilities made available to 144 by Laurentian Bank of Canada ("**Laurentian**"), pursuant to an offer of financing dated March 7, 2012, as amended (the "**Laurentian Offer of Financing**"). A copy of the Laurentian Offer of Financing is attached hereto and marked as **Exhibit "K"**.

26. The Laurentian Offer of Financing initially established three credit facilities in favour of 144: a non-revolving construction loan in the maximum amount of $36,044,000; a letter of credit facility in the maximum amount of $2,000,000; and an operating credit facility in the maximum amount of $250,000. Pursuant to an amendment dated September 12, 2014, a bridge loan was advanced by Laurentian to 144 in the amount of $3,000,000.

27. As security for 144's indebtedness to Laurentian, 144 granted, and Laurentian received, among other things:

(a) a charge/mortgage in the principal amount of $40,000,000 in favour of Laurentian, which charge/mortgage was registered on title to the Property on May 25, 2012 as Instrument No. WR690395 (the "**Laurentian Charge**"). A copy of the Laurentian Charge is attached hereto and marked as **Exhibit "L"**;

(b) a General Assignment of Rents dated April 24, 2012 and registered on title to the Property on May 25, 2012 as Instrument No. WR690396, a copy of which is attached hereto and marked as **Exhibit "M"**;

(c) an Assignment of Sale Agreements dated April 24, 2012, a copy of which is attached hereto and marked as **Exhibit "N"**; and

(d) a General Security Agreement dated April 24, 2012, a copy of which is attached hereto and marked as **Exhibit "O"**.

28. The Laurentian Charge is the fourth registered mortgage against title to the Property. Laurentian obtained postponements from Aviva, Allen Street and MarshallZehr respectively with respect to the Aviva Charge, the Allen Street Charge and the MarshallZehr Charge (collectively,

the "**Postponements**"). The Postponements were registered on title to the Property on May 25, 2012. Copies of the Postponements are collectively attached hereto and marked as **Exhibit "P"**.

29. As a result of the Postponements, it is my understanding that the Laurentian Charge is the first ranking mortgage with respect to the Property.

30. As of January 6, 2015, 144 was indebted to Laurentian pursuant to the terms of the Laurentian Offer of Financing in the amount of $39,022,634.38 (principal and interest).

Status of the 144 Park Project

31. 144 has sold 129 of the 149 units. The vast majority of the purchasers have assumed interim occupancy of the units. Purchasers of units on the first ten (10) floors of the 144 Park Project were granted interim occupancy commencing in early 2014. Purchasers of units on floors 11 through to 19 of the 144 Park Project were granted interim occupancy commencing in the fall of 2014.

32. 144 has received monthly occupancy fees and related amounts from such purchasers in accordance with the provisions of the *Condominium Act* (Ontario). Occupancy fees and related amounts for January 2015, totaling approximately $180,000, is currently being held in an account with Laurentian and has not been applied by Laurentian to reduce 144's indebtedness or used by 144 to date (the "**Occupancy Funds**").

33. Occupancy fees and related amounts received by 144 for months prior to January 2015 were used by 144 to fund project expenses.

34. Additionally, in connection with the 129 sold units, 144 received deposits in the aggregate amount of approximately $6,350,000. As a result of obtaining the Tarion Warranty

Corporation Bond with Aviva, 144 was entitled to, and has used approximately $3,350,000 of such funds to finance the completion of the 144 Park Project. The remaining amount of approximately $3,000,000 is currently being held in trust by the law firm Harris Sheaffer LLP as escrow agent, pursuant to an agreement between 144, Aviva and Harris Sheaffer LLP.

35. There remain 20 unsold units in the 144 Park Project. The units are comprised of two penthouse units, 15 apartment style units, and three townhouse units.

36. All work has been completed on the units, other than the installation of flooring, kitchen and bathroom cabinets, and countertops. All appliances and fixtures for the units are on site but have not been installed. The remaining work is typical given the unsold status of the units, as the remaining work requires input from purchasers as it involves designer finishings and upgrades.

37. 144 obtained an appraisal from a third party in November 2014 that indicated that the unsold units had substantial value.

38. All exterior work, and work with respect to the common elements of the 144 Park Project, other than as described below, has been completed.

39. 144 had submitted a draft Plan of Condominium 30CDM-13406 for the 144 Park Project (the "**Plan**") for approval by the City of Waterloo (the "**City**") and the Regional Municipality of Waterloo (the "**Region**"). The Region granted draft approval of the Plan on November 14, 2014, and the draft approval of the Plan came into effect on December 5, 2014. The draft approval is subject to a number of conditions that must be satisfied by 144 before the Plan can be finalized and registered. The City also provided comments on the Plan and conditions to 144 in October 2014.

40. I have been informed by Hal Kersey, Vice President of MADY, that the City and the Region are currently working on final comments and resolving minor issues in connection with the registration of the Plan and the condominium declaration. Mr. Kersey has also informed me that there are material conditions that remain to be satisfied so that registration of the Plan may proceed, which are:

(a) installation of a silencer and related bracket in the garage, which is required for the garage exhaust fans and is to be installed on Monday January 19, 2015;

(b) registration of an easement in favour of Waterloo North Hydro and postponements of the charges/mortgages in favour of the easement;

(c) registration of certain notices regarding noise agreements with the City and the Region, and a notice with respect to shared facilities, and postponements of the charges/mortgages in connection with such notices; and

(d) registration of the consent of the mortgagees to the registration of the condominium.

41. Such documents cannot be registered on title to the Property until all registered construction liens and certificates have been vacated.

Financial Difficulties

42. In 2014, 144 began to experience financial difficulties in connection with the 144 Park Project as a result of, among other things:

(a) significant delays as a result of:

(i) higher than reported ground water conditions, which required the installation of a temporary de-watering system on site and obtaining Ministry of Environment permits;

(ii) the need to redesign the structure of the 144 Park Project to install a raft slab structure;

(iii) a forming contractor that was three months behind schedule;

(iv) a glazing contractor that was four months behind schedule and had delivery difficulties; and

(b) cost overruns in connection with the delays described above, along with the costs incurred by 144 to take steps to mitigate the delay in time for interim occupancy.

43. As a result of such financial difficulties, 144 is in default of its obligations under the Laurentian Offer of Financing.

44. By a letter dated January 7, 2015, Laurentian demanded immediate payment of 144's obligations under the Laurentian Offer of Financing, terminated the credit facilities, and confirmed that no further credit will be made available to 144. Laurentian has also delivered a notice of its intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada). Copies of the demand letter and notice are collectively attached hereto and marked as **Exhibit "Q"**.

45. 144 has no further availability under its credit facilities with Laurentian.

Construction Lien Claimants

46. During the period starting on October 24, 2014 up to and including January 15, 2015, seventeen (17) construction liens, with an aggregate value of $2,992,932.77, have been registered against title to the Property, as described in further detail below:

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
WR847447	October 24, 2014	Global Fire Protection Ltd.	$301,592.04	Sprinkler system and related work
WR849030	October 31, 2014	694643 Ontario Limited cob as O'Connor Electric	$88,882.72	Work for section 16000 electrical installation
WR854810	December 1, 2014	J & I Gaweda Construction Ltd.	$537,285.80	Supply and install trim carpentry
WR854978	December 2, 2014	Bast Home Comfort Inc.	$26,889.48[1]	Supply and installation of fireplaces
WR856756	December 11, 2014	Frendel Kitchens Limited	$328,259.71	Supply and install kitchen cabinets and bathroom vanities
WR857239	December 12, 2014	T.I.C. Contracting Ltd.	$436,313.73	Installation of metal stud, drywall, taping and acoustical ceilings
WR857322	December 15, 2014	Global Precast Inc.	$188,393.19	Supply and install of architectural concrete and precast
WR857462	December 15, 2014	2050491 Ontario Inc. o/a The Downsview	$110,715.72	Supply and install of hard landscaping concrete works, sodding, irrigation

[1] I have been advised by 144's legal counsel, Chaitons LLP, that this lien has been registered against only one of the two parcels that form the Property.

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
		Group		
WR857468	December 15, 2014	Sam Tortola Enterprises Inc.	$104,008.59	Supervision, labour materials, equipment and incidentals to stock, supply and install washers, dryers, connection hoses, vents, clamps, microwave ovens, dishwashers, refrigerators and ranges
WR857793	December 16, 2014	CRS Contractors Rental Supply General Partner Inc.	$15,869.50	Rental and/or sale of construction and related equipment/materials
WR857850	December 16, 2014	Adlers Main Tile & Carpet Co. Ltd.	$83,436.17	Supply and installation of various flooring
WR858473	December 19, 2014	Turner Fleischer Architects Inc.	$30,851.42	Supply of architectural services for the design, development, construction document and contract administration phases of a residential condominium development
WR858748	December 19, 2014	Hammerschlag & Joffe Inc.	$46,043.26	Electrical consulting services and related matters
WR858991	December 22, 2014	Sereen Painting Ltd.	$345,952.00	Painting, caulking, staining, touch-ups
WR859188	December 23, 2014	Weston Flooring Limited	$176,771.34	Supply and install flooring
WR859941	December 30, 2014	Great Pyramid	$32,380.71	Supply and install GWG Glass, frameless shower

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
		Aluminum Ltd.		enclosures, handrail, guardrail and firelite glass
WR860525	January 5, 2015	Adlers Main Tile & Carpet Co. Ltd.	$139,287.39	Supply and installation of various flooring

47. In addition to the lien claims described above, 144 has received a letter from counsel to Lipton's Audio Video Unlimited ("**Lipton's**") dated December 12, 2014, which sets out that Lipton's is claiming a lien in the amount of $37,516.93 in connection with various audio/visual materials, services and equipment supplied in connection with the Theatre room at the 144 Park Project. In late December 2014, Lipton's attended at the 144 Park Project and removed certain of the equipment it had supplied from the Theatre room.

48. As a result, 144 is aware of in excess of $3,000,000 in construction liens being claimed with respect to services and/or materials supplied in connection with the 144 Park Project.

PPSA Secured Creditors

49. In addition to the mortgagees and construction lien claimants described above, I have been informed by Sam Rappos of Chaitons LLP, 144's legal counsel, that the following parties have registered financing statements under the *Personal Property Security Act* (Ontario), as set out in the copy of the PPSRS Enquiry Response Certificate current as of January 11, 2015 that is attached hereto and marked as **Exhibit "R"**:

(a) Aviva, with a financing statement registered on July 19, 2011 with respect to collateral classified as Accounts and Other;

(b) MarshallZehr, with a financing statement registered on November 28, 2011 with respect to collateral classified as Inventory, Equipment, Accounts, Other and Motor Vehicles Included. MarshallZehr's registration has been subordinated to Laurentian's registration;

(c) Laurentian, with a financing statement registered on April 3, 2012 with respect to collateral classified as Inventory, Equipment, Accounts and Other, and a General Collateral Description of "property now or hereafter used in connection with, situate at, or arising from the ownership, development, use or disposition of the lands municipally known as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and all proceeds thereof.";

(d) VW Credit Canada Inc., with a financing statement registered on November 2, 2012 with respect to an amount of $77,449, collateral classified as Consumer Goods, Equipment, Other and Motor Vehicle Included, and more specifically described as a 2013 Audi A7 Premium;

(e) MarshallZehr, with a financing statement registered on November 5, 2014 with respect to collateral classified as Inventory, Equipment, Accounts, Other and Motor Vehicle Included; and

(f) MarshallZehr, with a financing statement registered on November 5, 2014 with respect to collateral classified as Accounts and Other and a General Collateral Description of "general assignment of rents covering the property municipally known as 21 Allen Street and 142, 144 and 148 Park Street, Waterloo, Ontario".

Need for the Appointment of a Trustee

50. As a result of the registration of the construction liens against the Property, 144 cannot complete the necessary conditions to have the Plan registered against title and close the sale of the 129 units. Additionally, 144 does not have funds available to complete the unsold units and market them for sale. As a result, 144 is seeking the appointment of Collins Barrow Toronto Limited ("**Collins Barrow**") as a trustee under section 68 of the *Construction Lien Act* (Ontario). A copy of the consent of Collins Barrow to act as trustee is attached hereto and marked as **Exhibit "S"**.

51. Collins Barrow is well qualified to act as a trustee, as its representatives have acted as a trustee under the *Construction Lien Act* (Ontario) previously, and it is well versed in the 144 Park Project as it has been involved in numerous meetings and discussions with MADY on the 144 Park Project on an ongoing basis since November 2014, and more recently with representatives of Laurentian and MarshallZehr.

52. Once Collins Barrow is appointed as trustee, it intends to borrow $500,000 from MarshallZehr so that the trustee may complete the necessary steps to enable the registration of the Plan and the sale of the 129 units to be completed. The $500,000 intends to be applied by the trustee for payment of the following expenses:

(a) expenses to be incurred in connection with completion of the project (unit PDI repairs, corridor carpets, common areas, and unit HVAC repair);

(b) expenses to be incurred in connection with services required to operate the project (hydro, gas, water, janitorial, security, waste removal, management, insurance, office and phones); and

(c) other expenses including, among other things, professional fees.

53. Additionally, the trustee intends to take steps to complete the development of the 20 unsold units and market the units for sale. MarshallZehr has agreed to provide the additional funding required by the trustee to take such steps. The trustee would seek the Court's approval prior to obtaining such funding from MarshallZehr.

54. The trustee will be requesting that the Court grant orders that the financing provided by MarhallZehr have priority over all existing mortgagees, existing and future lien claimants and other encumbrancers pursuant to, among other things, sections 68 and 78(7) of the *Construction Lien Act* (Ontario).

55. The appointment of Collins Barrow as trustee will be for the benefit of all parties that have an interest in the Property and the 144 Park Project, as it will:

(a) allow for the trustee to obtain an order vacating the construction liens without posting security so that the necessary steps can be taken to have the Plan and the condominium declaration registered against title to the Property;

(b) allow the trustee to close the sale of the 129 sold units;

(c) permit the purchasers of all units to obtain vesting orders from the Court, ensuring clear title to their units free from all mortgages, construction lien claims and other encumbrances;

(d) allow Collins Barrow to access the Occupancy Funds if necessary for use toward satisfying the remaining conditions for the Plan to be registered;

(e) permit Collins Barrow to complete the necessary work for the 20 unsold units and sell the units;

(f) provide for the proceeds of sale of the units to be paid into the trustee's trust account, which will allow for the monetization of the sold units; and

(g) provide a forum for the amount and priority of claims of the mortgagees and the construction lien claimants to be adjudicated.

56. I have spoken with representatives of Laurentian, MarshallZehr, Allen Street and Aviva, and can confirm that the mortgagees either support or do not object to 144's application for the appointment of Collins Barrow as trustee.

57. The 144 Park Project is currently at a standstill. As detailed herein, there is outstanding work that cannot be completed, and 144's creditors are owed money and cannot be paid. Purchasers have had interim occupancy of their units for some time without obtaining clear title to their units. These purchasers cannot otherwise lease or sell their units.

58. As a result of the registration of the claims for construction liens, 144 cannot convey good title to unit purchasers. If the closings of the units do not occur, there will be no source of money available to pay the claims of the mortgagees and the construction lien claimants. The appointment of the trustee will provide a mechanism to allow for the completion and registration of the Plan and condominium declaration, permit the sales to close and allow the trustee to complete the sale of the unsold units. All sale proceeds will be held by the trustee and distributed in accordance with Court order.

SWORN BEFORE ME at the City of Markham, in the Province of Ontario on January 16, 2015

R. Standil

Commissioner for Taking Affidavits
(or as may be)

GREG PUKLICZ

Ryan Cale Standil, a Commissioner, etc.,
Province of Ontario, while a
Student-at-Law.
Expires August 12, 2017.

APPENDIX "D"

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

FIRST REPORT OF THE TRUSTEE

April 17, 2015

INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 22, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) ("***CLA***") trustee (the "**Trustee**") with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule "A" to the Appointment Order (the "**Property**"). A copy of the Appointment Order is attached as **Appendix "A"**.

2. The Appointment Order authorized the Trustee to, among other things:

   a) act as receiver and manager of the Property;

   b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

   c) complete and register the condominium declaration and do whatever else is necessary in order to cause the registration of the proposed condominium at the Property; and

   d) complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking units that form part of the Property.

3. In addition, pursuant to paragraph 23 of the Appointment Order, the Trustee was authorized to borrow up to $500,000 (or such greater amount as the Court may further authorize), and any such borrowings, together with interest and charges thereon, is

secured by a fixed and specific charge over the whole of the Property, in priority to all claims in favour of any person, including construction lien and trust claims, but subordinate in priority to the Administration Charge.

PURPOSE OF FIRST REPORT

4. The purpose of the first report of the Trustee (the "**First Report**") is to:

   a) provide to the Court details of the Trustee's activities since its appointment on January 22, 2015;

   b) request that the Court grant an Order or Orders:

      i. approving the Trustee's activities as set out in the First Report;

      ii. authorizing the Trustee to terminate or disclaim an agreement of purchase and sale for a residential unit that was entered into by 144 (as defined below) with a construction lien claimant prior to the commencement of this proceeding for no cash consideration;

      iii. increasing the amount that the Trustee may borrow from $500,000 to $750,000 and authorizing and empowering the Trustee to borrow such funds from MarshallZehr Group Inc. ("**MarshallZehr**") on the terms and subject to the conditions of the commitment letter dated April 2, 2015 between the Trustee and MarshallZehr;

      iv. approving an agreement entered into by the Trustee for the transfer of certain parking spaces to the Property; and

v. approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to January 22, 2015 with respect to the Property, and establishing a committee to assist the Trustee in the review of the claims.

TERMS OF REFERENCE

5. In preparing this First Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park Ltd. ("**144**"), discussions with management and employees of 144 and other companies within the MADY Group ("**MADY**"), and information received from third-party sources (collectively, the "**Information**"). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by 144 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. This proceeding was commenced by way of application by 144, the registered owner of the Property. The Property was acquired by 144 in September 2011 for the purpose of developing the lands and constructing a 19 story residential condominium project containing 149 total units (the "**144 Park Project**"). 144 is part of the MADY Group, a

diversified real estate development group with commercial and residential business operations across North America.

7. The 144 Park Project has been completely constructed and 129 units within it have been sold to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings.

8. There remain 20 unsold units in the 144 Park Project consisting of two (2) penthouse units, 15 apartment style units, and three (3) townhouse units (collectively, the "**Unsold Units**"). All work has been completed on the Unsold Units, other than the installation of flooring, kitchen and bathroom cabinets, and countertops. The remaining work requires input from purchasers as it involves selecting the materials and finishes to be used.

9. 144 commenced this proceeding as it was insolvent. Over $3.0 million in construction liens had been registered against the 144 Project, and it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of the 129 pre-sold units, complete the sale of the Unsold Units, and distribute the sale proceeds pursuant to Court order.

10. Additional information with respect to the 144 Project can be found in the Affidavit of Greg Puklicz sworn January 16, 2015, a copy (without exhibits) of which is attached hereto as **Appendix "B"**. A copy of the affidavit with exhibits can be found on the Trustee's website at: http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd

TRUSTEE'S ACTIVITIES TO DATE

11. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since its appointment, with the primary focus being on taking all steps necessary to register to condominium plan for the 144 Park Project:

Operational

a) opened the Trustee's trust account with Laurentian Bank of Canada;

b) closed the HST account of 144 and opened the Trustee's HST account;

c) caused to be deposited the occupancy cheques for January and February 2015, and collected and deposited occupancy cheques for March 2015;

d) coordinated requests for April 2015 occupancy cheques to be sent to the Trustee by occupants, which have now been deposited;

e) attended at the offices of Harris Sheaffer LLP, condominium law lawyers for 144, to discuss matters and coordinate tasks;

f) attended at and toured the 144 Park Project;

g) attended to re-establishment and supply of required building services including concierge, security, snow removal and salting, property cleaning and property management;

h) attended to obtaining building insurance and updating insurance coverage;

i) facilitated required major overdue maintenance of HVAC system, which primarily involved top-up of the glycol level in the HVAC system;

j) facilitated required inspection of and repairs to the boiler system as a result of residents reporting a lack of hot water;

k) attended to amending the Shared Facilities Agreement and Condominium Declaration;

l) attended to the issue of leakage from windows in various suites;

m) attended to the issue of a leaking pipe in parking garage;

n) attended two meetings with Tarion Warranty Corporation to discuss the status of the project and a plan to deal with outstanding deficiencies;

o) contacting and engaging contractors to attend to in suite deficiencies;

Building Permit Issues Addressed

p) completed fire stopping;

q) attended to ordering and installation of two PH mechanical room doors;

r) attended to issues with smoke detector protective caps;

s) attended to issue with paint on emergency speakers;

t) attended to installation of missing caps and sleeves on sprinklers and fire safety system;

u) attended to fire inspection and backflow inspection;

v) arranged for landscape inspection and received approval from the City for same; an

w) arranged for relocation of a sprinkler head based on direction from the City's building inspector. The City's building inspector has advised that he is satisfied with all of the items in the building.

City and Region Clearance Conditions

x) held discussions with and coordinated completion of work and execution of a required declaration with Acoustical Engineer, with respect to garage silencer, which declaration was required for City and Region clearance;

y) held discussions with the Structural Engineer of record and coordinated execution of required declaration for City and Region clearance;

z) held discussions with the Architect of record and coordinated execution of required declaration (to be delivered just prior to registration);

aa) received clearance from City on Plan of Condominium;

bb) received clearance from Region for easements regarding utilities and drainage;

cc) received clearance from Region on electrical services provided by Waterloo North Hydro;

dd) received clearance from Region on Undertaking regarding Excess Lands;

ee) received clearance from Region regarding Certification Letter;

ff) received clearance from Region on Undertaking regarding miscellaneous units;

gg) received approval from the City for an amended Shared Facilities Agreement with One 55 Mady Ltd. ("**One 55**") and Condominium Declaration;

hh) caused to be registered the Shared Facilities Agreement;

ii) submitted Region Development Agreement for signing and registration on title;

jj) submitted City Warning Agreement for signing and registration;

kk) submitted Surveyor's final draft plans to City for approval; and

ll) negotiated with the City for the construction and installation of public art at the 144 Park Project.

12. Based on information received from the City on April 16, 2015, the Trustee understands that the items set out below are the remaining outstanding items to obtain the City's approval for formal registration of the Condominium Plan. The status of such issues is also set out below:

a) Architect's Report – Barring any unforeseen issues, the architect should have the report completed and submitted to the City by the end of next week.

b) Payment of Property Taxes – the City is in the process of generating a statement, which shall be paid by the Trustee as soon as possible.

c) Undertaking for Public Art – the City is to confirm the revised wording for the necessary undertaking from the Trustee.

d) Low Steady Water Flow – the City is looking into the issue of a low steady water flow running into the building's sanitary sewer that was recently discovered.

e) Construction Lien on City Land – the City's solicitor has indicated that regardless of clearing all conditions, no formal approval should be provided until the lien is lifted. This issue is discussed in further detail below.

Flooding at the Property

13. On the evening of March 20, 2015, the Trustee was advised by on-site personnel that a flooding incident had occurred at the Property, which was the result of a ball valve breaking in an unoccupied unit on the fifth floor of the 144 Park Project. The ball valve was connected to a heat pump, which is part of the HVAC system installed in the Property by Nelco Mechanical Ltd. (**"Nelco"**).

14. The ball valve break resulted in significant leakage of a mixture of water and glycol, a chemical used in the HVAC system, accumulating in the unoccupied unit and spreading to adjacent units on the fifth floor, certain units on the fourth floor, the third floor and in-suite elevators of two townhouse units and a portion of the third floor parking garage. A total of six units in the Property, portions of the hallways on the fourth and fifth floors and the ceiling of third floor parking garage were damaged. The Trustee was advised that the fire department was on site and was providing direction to on site staff and residents.

15. Upon being advised of the incident, the Trustee immediately directed on site staff to contact Nelco to attend at the Property to stop the flooding and replace the ball valve in the fifth floor suite and an emergency restoration services provider to attend to doing what was necessary to clean up the discharge and commence drying out affected units

and common areas. Nelco and IBX Services ("**IBX**"), an emergency services provider, attended the same evening to attend to matters.

16. On March 21, 2015, the Trustee notified its insurer (the "**Insurer**") of the incident and advised that an emergency services provider had been called out to attend to clean up and damages. The Insurer confirmed with the Trustee that all measures taken by the Trustee were appropriate, that an incident report had been logged and that a representative of the Insurer would be in contact with the Trustee on March 23, 2015 to discuss the matter.

17. On March 24, 2015, the Trustee attended at 144 Park with two representatives of the Insurer and the Insurer's emergency services provider, Strone Restoration Services ("**Strone**") to view the damages and determine how to best proceed. The Insurer advised that it wished to continue emergency and restoration services with Strone rather than IBX, which the Trustee consented to. The Trustee toured the affected areas with the Insurer, Strone and on-site staff. Strone advised that it would take approximately 6-8 weeks to deal with the emergency work and restore the suites and common areas of the Property to the state they were in prior to the flooding incident. The insurer advised that under the building insurance policy, the Trustee's deductible would be $50,000 and that the Insurer may require that the deductible be paid immediately. The Insurer has not yet advised the Trustee to pay the deductible.

18. Since that time, Strone has been working diligently to attend to remedying the damage that occurred as a result of the flood. The Insurer re-attended at the Property during the week of April 6-10, 2015 to view the work Strone had completed to date and obtain a

detailed understanding of the remaining work to be done. The Insurer has advised that restoration of the affected areas is progressing as expected.

Occupancy Fees

19. Occupancy fees from various residents continue to be outstanding for certain months. These residents have informed the Trustee that they are of the view that they do not need to pay occupancy fees as a result of their dissatisfaction with the following:

    a) the fact that registration of the condominium plan has not yet occurred and that the period of time that has elapsed from the time initial occupancy was provided has been excessive;

    b) the delay in rectifying in-suite deficiencies. The Trustee has engaged a number of trades and they are currently working through rectifying in-suite deficiencies; and

    c) the delay in rectifying common area deficiencies. The Trustee will attend to common area deficiencies after registration.

20. The Trustee continues to pay for utilities and other services required to appropriately maintain the property with occupancy fees that have been paid and from funds borrowed by the Trustee. The Trustee intends to recoup the unpaid occupancy fees upon closing of the units.

TERMINATION OR DISCLAIMER OF AGREEMENT FOR UNIT 1503

21. Pursuant to an agreement of purchase and sale dated December 5, 2014 (the "**1503 APS**"), Brody Wall System Ltd. ("**Brody**") agreed to purchase Unit 1503 ("**Unit 1503**")

in the 144 Park Project from 144. The 1503 APS lists a purchase price of $324,000. A copy of the 1503 APS with all schedules and amendments is attached as **Appendix "C"**.

22. Schedule "X" to the 1503 APS provides that the consideration for the purchase of Unit 1503 is the partial satisfaction the indebtedness of 144 and other MADY entities to Brody in the amount of $324,000. As a result, no cash consideration is contemplated in the 1503 APS.

23. Brody is a construction contractor that performed work on the 144 Park Project and other MADY projects. According to the books and records of 144, Brody is owed $32,532.50. Brody registered a construction lien against the Property on January 21, 2015 in the amount of $113,327.50, a copy of which is attached as **Appendix "D"**.

24. The 1503 APS was entered into less than sixty (60) days prior to the appointment of the Trustee and at a time when 144 was insolvent.

25. In the Trustee's view, the sale of Unit 1503 to Brody pursuant to the 1503 APS, if completed, would result in Brody obtaining an unjust preference over other creditors of 144. As a result the Trustee is seeking the Court's authorization to terminate or disclaim the 1503 APS.

26. In the event that the Court authorizes the Trustee to terminate or disclaim the 1503 APS, the Trustee intends to market Unit 1503 for sale in order to realize the maximum value for all stakeholders.

PARKING AGREEMENT

27. As noted above, 144 acquired the Property in September 2011. Another company in the MADY Group, One 55, acquired the lands adjacent to the Property and municipally known as 155 Caroline Street South, Waterloo (the "**155 Caroline Lands**") in May 2011.

28. One 55 was to construct a 19 story residential condominium tower on the 155 Caroline Lands containing 178 residential units ("**155 Uptown Waterloo Project**"). It was intended that the 155 Uptown Waterloo Project would constitute a second phase to the 144 Park Project, and the two projects would share certain facilities, including parking.

29. One 55 has pre-sold 83 units in the 155 Uptown Waterloo Project. Because of the MADY Group's financial difficulties, no construction work has been commenced on the 155 Caroline Lands.

30. With respect to parking, there are presently 149 parking units located at the 144 Park Project, which was originally comprised of 132 parking units for residents of 144 Park and 17 visitor parking spaces. It was originally contemplated that certain unit owners in the 144 Park Project would be allocated permanent parking units in the 155 Uptown Waterloo Project.

31. The 17 visitor parking spaces in the 144 Park Project were eventually converted to parking units, and 144 has agreed to sell these units to purchasers of the 129 pre-sold residential units.

32. To date, 144 has agreed to sell a total of 156 parking units to the purchasers of the 129 pre-sold residential units. As a result, 144 has sold 7 more parking units to the purchasers of the 129 pre-sold residential units than are currently available at the 144 Park Project.

33. The Unsold Units will also require a number of parking units in order for them to be effectively marketed for sale. Some of the Unsold Units are penthouse units and larger suites, which will likely each require two parking units. The Trustee, in consultation with Charles Mady, the President of 144, has determined that a total of 28 parking units are required for the Unsold Units.

34. Therefore, the 144 Park Project currently requires an additional 35 parking units.

35. Following numerous discussions between One 55 and the Trustee, the parties have agreed, pursuant to an agreement dated April 17, 2015, a copy of which is attached as **Appendix "E"** (the "**Parking Agreement**") and is subject to the approval of the Court, that One 55 will transfer, when constructed, 35 parking units to 144 for consideration of $250,000 (inclusive of HST).

36. The acquisition of the additional parking units is necessary in order for the Trustee to market and complete the sales of the Unsold Units.

37. If the Court approves the agreement with One 55, the Trustee intends to register the agreement on title to the 155 Caroline Lands, so that any purchaser of the 155 Caroline Lands will be required to take title to the lands subject to the agreement and will be bound by its terms.

TURNER ARCHITECTS

38. The Trustee has been informed by representatives of the Corporation of the City of Waterloo (the "**City**") that a construction lien has been registered against lands owned by the City adjacent to the Property and the 155 Caroline Lands by Turner Fleischer Architects ("**Turner Architects**"). Based on Turner Architects' construction lien, the Trustee understands that Turner Architects provided architectural services to One 55. A copy of Turner's construction lien is attached hereto as **Appendix "F"**.

39. As noted above, the Trustee has been focused since its appointment on completing the necessary steps for registration of the condominium plan for the 144 Park Project in order to close the 129 pre-sold units. Although the work completed by Turner Architects had nothing to do with the 144 Park Project, the City has taken the position that the Trustee must have the lien removed from the City lands before it is prepared to finally approve the condominium plan for the 144 Park Project..

40. If the Parking Agreement is approved by the Court, the Trustee and One 55 have agreed that the funds One 55 will receive will be used in part to bond off the Turner Architects construction lien registered against the City lands. This will allow for the final steps for the registration of the condominium plan to be completed, which is to the benefit of all of 144's stakeholders.

TRUSTEE BORROWINGS

41. In accordance with the authority granted to it under the Appointment Order, to date the Trustee has borrowed $500,000 from MarshallZehr pursuant to the commitment letter

dated April 2, 2015 (the "**Commitment Letter**"), a copy of which is attached hereto as **Appendix "G"**.

42. So that the Trustee may complete the agreement with One 55 with respect to the parking units, it requires additional financing. As a result, the Trustee is requesting that the Court increase the borrowings available to the Trustee under the Appointment Order from $500,000 to $750,000, and approve the Trustee borrowing such funds from MarshallZehr on the same terms of the Commitment Letter.

43. As set out in the Commitment Letter:

a) the purpose of the facility is to fund the costs of this proceeding;

b) the term of the facility is the earliest of demand and 3 months from the date of the initial advance;

c) the annual rate of interest is 12% calculated on the daily outstanding balance of the facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments; and

d) a facility fee of 5% ($37,500) shall be payable to MarshallZehr (the "Facility Fee").

CONSTRUCTION LIEN CLAIM PROCESS AND VETTING COMMITTEE

44. As noted above, 144 sought the appointment of the Trustee to take all necessary steps to register the condominium plan and complete the sale of the 129 pre-sold units. In the event that the relief sought by the Trustee on this motion is granted by the Court, the

Trustee expects for the condominium plan to be registered in May 2015 and the sale of the 129 pre-sold units to close in early June 2015.

45. As set out in paragraph 5 of the Appointment Order, the Trustee, as soon as practical following the sale of at least 65 of the 129 pre-sold units, is required to bring a motion for interim distribution of the net proceeds.

46. As noted above, at the time 144 commenced these proceedings there were approximately $3.0 million in construction liens registered against the Property. The Trustee has been informed by its counsel that, as of March 30, 2015, 21 lien claimants had registered construction liens against the Property in a total aggregate amount of approximately $4.33 million.

47. As a result of the existence of the construction liens, and the need for all construction liens against the Property to be asserted so that the Trustee can make a recommendation to the Court as to the parties entitled to the net sale proceeds, it is necessary, in the Trustee's view, to establish a claims process for the submission, review and determination of all *CLA* lien claims for the provision of services and materials prior to January 22, 2015 with respect to the Property, and that this process be the exclusive process by which all construction lien claims and their priority are determined.

48. The Trustee is proposing the following construction lien claim process be approved by the Court:

a) a claims bar date of May 15, 2015 be established, by which date all lien claimants must provide to the Trustee specified documentation with respect to their claims, otherwise their claims are forever barred and extinguished;

b) counsel for three construction lien claimants, along with counsel to Laurentian Bank of Canada as first mortgagee (or its assignee or successor) and counsel to the Trustee, be appointed as a committee (the "**Vetting Committee**") to, in consultation with and subject to the supervision of the Trustee, administer the claim process, including the review, determination, acceptance, revision, disallowance and/or settlement of any claim;

c) the Vetting Committee shall, if it reaches a consensus with respect to a claim, recommend to the Trustee to accept, revise and/or disallow a claim by delivering a notice of determination to the claimant including the reasons for such determination;

d) any determination or disposition by the Trustee, based on a recommendation made by the Vetting Committee, shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*;

e) a claimant may appeal the revision and/or disallowance of its claims as set out in a notice of determination by delivering a dispute notice to the Trustee within 10 days of delivery of the notice of determination from the Trustee. Any claimant who does not deliver a dispute notice within 10 days of delivery of the notice of determination with respect to its claim shall be deemed to have accepted the

determination as set out in the notice of determination, which shall be final and binding; and

f) any appeal of a notice of determination as set out in a dispute notice for which the Vetting Committee and the Trustee cannot reach a consensus with the claimant, shall either be referred to a claims officer to be appointed by further order of the Court in recommendation by the Vetting Committee and the Trustee, or be heard by the Court. Any appeal hearing before the claims officer shall be conducted as a hearing *de novo* and any appeal of any decision of the claims officer shall be heard by this Court on a timetable approved by this Court.

49. The Trustee is of the view that the construction lien claim process and the establishment of the Vetting Committee will allow for a timely and cost effective adjudication of the claims of the construction lien claimants, and is in the best interest of all of 144's stakeholders.

TRUSTEE'S REQUEST TO THE COURT

50. Based on the foregoing, the Trustee respectfully requests that the Court issue an Order:

a) approving the First Report and the Trustee's conduct and activities for the period from January 22, 2015 to April 16, 2015 as described therein;

b) authorizing the Trustee to terminate or disclaim the 1503 APS;

c) approving the increase of the Trustee's borrowings amount from $500,000 to $750,000 and approving the MarshallZehr Commitment Letter and payment of the Facility Fee;

d) authorizing the Trustee to enter into the Parking Agreement with One 55; and

e) approving the Construction Lien Claims Process and the establishment of the Vetting Committee.

All of which is respectfully submitted to this Court as of this 17th day of April, 2015.

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

Per: _____
Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP
Title: President

I have the authority to bind the corporation

APPENDIX "E"

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Mr.	)	THURSDAY, THE 23rd DAY
	)	
JUSTICE Wilton - Siegel	)	OF APRIL, 2015

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

ORDER

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and legally described in **Schedule "A"** attached hereto, pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Trustee dated April 17, 2015 and the Appendices thereto (the "**First Report**"), and on hearing the submissions of counsel for the Trustee and counsel for those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn April 20, 2015, filed,

SERVICE

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

APPROVAL OF ACTIVITIES OF THE TRUSTEE

2. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Trustee as set out in the First Report, be and are hereby approved.

TRUSTEE'S BORROWINGS

3. **THIS COURT ORDERS** that the Trustee is hereby authorized and empowered to borrow from MarshallZehr Group Inc. ("**MarshallZehr**") under the commitment letter dated April 2, 2015 between the Trustee and MarshallZehr (the "**Commitment Letter**") and to perform its obligations thereunder, and the Commitment Letter is hereby approved.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 23 2015
NB

SCHEDULE "A"

PIN 22417-0135 (LT)
LRO # 58

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, Being Part 1 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

PIN 22417-0134 (LT)
LRO # 58

Property Description: Lots 2 & 3, Part of Lots 1, 4, 5, & 6 Plan 186, Being Part 2 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Sam Rappos (LSUC #51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Trustee

APPENDIX "F"

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Mr.	)	THURSDAY, THE 23rd DAY
	)	
JUSTICE Wilton-Siegel	)	OF APRIL, 2015

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

ORDER

(re Construction Lien Claims Process)

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and legally described in **Schedule "A"** attached hereto (the "**Property**"), pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Trustee dated April 17, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and counsel for those other

parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn April 20, 2015, filed,

CLAIMS PROCESS

1. **THIS COURT ORDERS AND DECLARES** that the process set out in this Order (the "**Construction Lien Claims Process**") for the submission, review and determination of all lien claims (each, a "**Claim**") pursuant to the *Construction Lien Act* (Ontario) (the "***CLA***") for the provision of services and materials prior to January 22, 2015 with respect to the improvement (the "**Improvement**") located on the Property is hereby approved and is the exclusive process by which all Claims shall be determined, and all Claims shall attorn to the Construction Lien Claims Process.

2. **THIS COURT ORDERS** that the Trustee shall implement and administer the Construction Lien Claims Process, including the review, determination (including, but not limited to, the determination of the quantum and timeliness of all liens), acceptance, revision, disallowance and/or settlement of any Claims by any party filing a Claim pursuant to the provisions of this Order (each, a "**Lien Claimant**"), and may take any steps which the Trustee believes are incidental or necessary for the implementation of the Construction Lien Claims Process.

3. **THIS COURT ORDERS AND DIRECTS** all Claims shall be administered pursuant to the Construction Lien Claims Process by the Trustee, under the supervision of this Court, and any determination or disposition of any Claim by the Trustee shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*. The Trustee shall, as necessary, consult with 144 Park Ltd. ("**144 Park**") with respect to the quantum and timeliness

of all Claims. The Trustee may retain any consultant or assistant as it may require to assist in the review and determination of any Claim.

4. **THIS COURT ORDERS AND DIRECTS** that in order to file a Claim pursuant to the Construction Lien Claims Process, a Lien Claimant shall provide, if it has not done so to date, the following to the Trustee on or before 5:00 p.m. Toronto time on May 29, 2015 (the "**Claims Bar Date**"):

(a) copies of the Lien Claimant's Statement of Claim and Certificate of Action;

(b) copies of the applicable Land Registry Construction Lien and Certificate instruments;

(c) a copy of any contract or subcontract including the names of the parties to any contract or subcontract, any change orders, amendments, purchase orders, documentation evidencing the last date on which the Lien Claimant provided services or materials to the Improvement or other related documents on which such Claim is asserted;

(d) the contract price and a statement of account, including the dates and amounts of payments received;

(e) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor; and

(f) any other documents or information as the Trustee may reasonably request for the purpose of assessing and determining any Claims in accordance with this Order.

5. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to make recommendations to the Court regarding the determination of holdback(s) and priorities with respect to the Improvement and the Property, including priorities with respect to any proceeds of the sale of the Property. The Trustee shall serve its report to the Court setting out such recommendations on the Service List in this proceeding no less than 10 days prior to the return date of any motion where the Court will be asked to make a determination as to the holdbacks and priorities with respect to the Improvement and the Property.

DETERMINATION OF CLAIMS

6. **THIS COURT ORDERS** that the Trustee shall accept, revise and/or disallow a Claim as set out in a Lien Claimant's Statement of Claim by delivering a notice of determination including the reasons for such determination (a "**Notice of Determination**"), and all documentation, if any, referred to in the Notice of Determination to such Lien Claimant.

DISPUTE NOTICE AND APPEALS

7. **THIS COURT ORDERS** that a Lien Claimant may appeal the revision and/or disallowance (as the case may be) of its Claim as set out in a Notice of Determination by delivering a Dispute Notice to the Trustee substantially in the form attached to this Order as **Schedule "B"** (a "**Dispute Notice**") within 10 days of the sending of such Notice of Determination by the Trustee. Any Lien Claimant who does not deliver a Dispute Notice within 10 days of the sending of a Notice of Determination with respect to its Claim shall be deemed to have accepted the Trustee's determination as set out in the Notice of Determination, which shall be final and binding, and any portion, or the whole, of the Claim (as the case may be) which is

disallowed in the Notice of Determination shall be forever barred and extinguished pursuant to this Order.

8. **THIS COURT ORDERS AND DIRECTS** that any appeal or dispute of a Notice of Determination as set out in a Dispute Notice, shall be referred to a claims officer to be appointed by further order of this Court on recommendation by the Trustee (the "**Claims Officer**") or brought before this Court for adjudication. Any appeal or dispute of a Notice of Determination as set out in a Dispute Notice shall be conducted as a hearing *de novo* and any appeal of any decision of the Claims Officer shall be heard by this Court on a timetable approved by this Court and shall be final and binding on all parties with no further appeal thereof.

CLAIMS BAR PROVISIONS

9. **THIS COURT ORDERS** that any Claim:

(a) the particulars of which are not delivered to the Trustee by the Claims Bar Date in accordance with paragraph 4 above; or

(b) for which a Dispute Notice is not delivered within 10 days of the sending of a Notice of Determination by the Trustee but only with respect to any portion, or the whole (as the case may be) of any such Claim which is disallowed,

shall be forever barred and extinguished and such Lien Claimant submitting the Claim shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Property and 144 Park except that nothing in this Order shall bar or extinguish any Claim in its entirety or any part thereof which has been accepted by the Trustee, or approved by the Claims Officer or this Court, as applicable.

10. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the Construction Lien Claims Process.

NOTICES AND COMMUNICATION

11. **THIS COURT ORDERS** that, except as otherwise provided herein, the Trustee may deliver any notice or other communication to be given under this Order to Lien Claimants by forwarding true copies thereof by e-mail to such Lien Claimants or parties at the address on the Service List, and that any such service or notice by e-mail shall be deemed to be received on the day the e-mail is sent by the Trustee.

12. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by e-mail addressed to:

COLLINS BARROW TORONTO LIMITED
11 King St. West Suite 700, Box 27
Toronto, ON M5H 4C7
Attention: Arif Dhanani
Email: andhanani@collinsbarrow.com

- with a copy to –

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Attention: Sam Rappos
Email: samr@chaitons.com

13. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Construction Lien Claims

Process and/or such further order or orders as this Court may consider necessary or desirable to amend or supplement this Order.

G. Hainey J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 23 2015

NB

SCHEDULE "A"

PIN 22417-0135 (LT)
LRO # 58

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, Being Part 1 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

PIN 22417-0134 (LT)
LRO # 58

Property Description: Lots 2 & 3, Part of Lots 1, 4, 5, & 6 Plan 186, Being Part 2 on 58R-17836; Subject to an easement as in WR666363; City of Waterloo

SCHEDULE "B"

Dispute Notice Re: 144 Park Ltd.

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Construction Lien Claims Process Order dated April 23, 2015. Pursuant to paragraph 7 of the Construction Lien Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination dated _____ issued by Collins Barrow Toronto Limited as Trustee of the Property in respect of our Claim.

Name of Creditor: _____

Reasons for Dispute (attach additional sheets and copies of all supporting documentation, if necessary):

_____

_____

_____

_____

Signature of Authorized Signing Officer: _____

Date: _____

(Please print name) _____

Telephone Number: ( ) _____ Facsimile Number: ( ) _____

Full Mailing Address: _____

E-mail Address: _____

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY E-MAIL, TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 10 DAYS AFTER SENDING OF THE NOTICE OF DETERMINATION BY THE TRUSTEE TO:

COLLINS BARROW TORONTO LIMITED
11 King St. West Suite 700, Box 27
Toronto, ON M5H 4C7
Attention: Arif Dhanani
Email: andhanani@collinsbarrow.com
- with a copy to –

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Attention: Sam Rappos
Email: samr@chaitons.com

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

(re Construction Lien Claims Process)

CHAITONS LLP
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Sam Rappos (LSUC #51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Trustee

APPENDIX "G"

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Apr 23/15

Court File No. CV15-10843-00CL

Apr 23/15.
S. Rappos for the Trustee
A. Iqbal for Lawentzen Bank

All parties have been served. With respect to the claims process order, all parties have either consented or indicated that they will not oppose. Order re claims process to go in the form attached. With respect to the order approving the activities of the Trustee, no party has objected, it being understood that the order does not affect the rights or positions of any of the parties with respect to the remaining matters addressed in this motion record. Such matters are scheduled to be heard on April 30/15 (½ hr.) Order to go in the form attached.

G. Hainey J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD
(returnable April 23, 2015)

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APPENDIX "H"

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

SUPPLEMENT TO THE FIRST REPORT OF THE TRUSTEE
DATED APRIL 29, 2015

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TO: THE SERVICE LIST

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

SUPPLEMENT TO THE FIRST REPORT OF THE TRUSTEE

April 29, 2015

INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) dated January 22, 2015, Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule "A" to the Appointment Order.

2. This report (the "**Supplementary Report**") is a supplement to the First Report of the Trustee dated April 17, 2015 (the "**First Report**"), and should be read together with the First Report. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in the First Report.

3. The purpose of the Supplementary Report is to provide an update to the Court on the status of matters related to Turner Architects and the Parking Agreement.

TURNER ARCHITECTS

4. As noted in the First Report, Turner Architects provided architectural services to One 55 and registered a construction lien against lands owned by One 55, and the City in the amount of $165,886.80 (the "**Construction Lien**").

5. The City took the position that the Trustee was required to have the Construction Lien removed from the City lands before it would be prepared to fully approve and formally register the condominium plan for the 144 Park Project.

6. The Trustee, One 55, the City and Turner Architects have agreed to the following steps taking place with respect to the Construction Lien:

(a) the Trustee will pay, on behalf of One 55, $26,180 to Turner Architects, the payment of which shall reduce the amount of the Construction Lien. The Trustee shall pay such amount from funds that have been borrowed from MarshallZehr;

(b) Turner Architects will consent to an order to be obtained by the Trustee vacating the Construction Lien against the City lands and dismissing Turner Architect's action against the City without costs; and

(c) One 55 shall grant a charge to the Trustee over the 155 Caroline Lands as security for its obligation to repay $26,180 to the Trustee.

7. This agreement will allow for the final steps for the registration of the condominium plan to be completed, which is to the benefit of all of 144's stakeholders.

PARKING AGREEMENT AND TRUSTEE'S BORROWINGS

8. In the First Report, the Trustee requested that the Court approve the increase of the Trustee's borrowings amount from $500,000 to $750,000 and authorize the Trustee to enter into the Parking Agreement. The increase in the borrowings was necessary so that the Trustee could complete the transaction for parking units set out in the Parking Agreement.

9. The relief sought by the Trustee with respect to the Parking Agreement was opposed by COB GP Inc., a mortgagee of the 155 Caroline Lands. As a result of the opposition, the Trustee agreed to an adjournment of matters related to the Parking Agreement and the Trustee's borrowings to April 30, 2015.

10. At this time, the parties continue to discuss the possibility of a resolution that would be acceptable to all parties and would result in a parking agreement being entered into that would be registered on title to the 155 Caroline Lands and result in parking units being available to residents of the 144 Park Project once the 155 Caroline Lands are eventually developed. The Trustee remains committed to finding a solution to the parking situation at the 144 Park Project.

11. As a result, the Trustee is not seeking approval of the existing Parking Agreement or an increase in the borrowings amount at this time.

All of which is respectfully submitted to this Court as of this 29th day of April, 2015.

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

Per: _____
Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP
Title: President

I have the authority to bind the corporation

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

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

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SUPPLEMENT TO THE FIRST REPORT OF THE TRUSTEE

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