

**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**

MOTION RECORD OF THE TRUSTEE
(re Distribution of Funds held by Escrow Agent and other relief)
(returnable February 3, 2020)

January 30, 2020

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TO: THE SERVICE LIST

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(as of January 30, 2020)

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INDEX

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INDEX

<u>Tab</u>	<u>Document</u>
1.	Notice of Motion returnable February 3, 2020
2.	Twenty-Third Report of the Trustee dated January 29, 2020
A	Commitment Letter
B	Deposit Trust Agreement
C	Indemnity Agreement
D	Fifth Report, without appendices
E	Twenty-Second Report, without appendices
F	June 19th Approval Order
G	October 15th Bond Reduction Letter
H	October 28th Bond Reduction Letter
I	Trustee's Statement of Receipts and Disbursements
J	Sixth Report, without appendices
K	October 16th Order
L	Affidavit of Arif Dhanani

TAB 1

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
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**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
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NOTICE OF MOTION

(re Distribution of Funds held by Escrow Agent and other relief
(returnable February 3, 2020))

RSM CANADA LIMITED (“**RSM**”), in its capacity as Court-appointed *Construction Lien Act* (Ontario) trustee in this proceeding (the “**Trustee**”), will make a motion to a Judge of the Commercial List on Monday February 3, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order abridging the time for service of this notice of motion and the motion record so that the motion is properly returnable on February 3, 2020;

- (b) an order authorizing and directing Harris, Sheaffer LLP, in its capacity as escrow agent (the “**Escrow Agent**”), to release \$2,654,733 to the Trustee from the funds it holds in escrow pursuant to the Deposit Trust Agreement (as defined below);
- (c) an order authorizing and directing the Trustee, upon receipt of funds from the Escrow Agent, to distribute \$439,419 to Westmount Guarantee (“**Westmount**”) as managing general agent for Aviva Insurance Company of Canada (“**Aviva**”), and \$2,202,746 to MarshallZehr Group Inc. (“**MZG**”), a secured creditor of 144 Park;
- (d) approving the Twenty-Third Report of the Trustee dated January 29, 2020 (the “**Twenty-Third Report**”) and the activities and conduct of the Trustee as described herein;
- (e) an order approving the Trustee’s interim statement of receipts and disbursements for the period January 22, 2016 to December 31, 2019;
- (f) an order approving the fees and disbursements of the Trustee, as set out in the Twenty-Third Report and the fee affidavits attached as appendices thereto; and
- (g) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. 144 Park Ltd. (“**144 Park**”) was the owner of a 19-storey residential condominium project containing 148 residential units and a guest suite (the “**Project**”).

2. On January 22, 2015, Collins Barrow Toronto Limited (“**CBTL**”) was appointed as Trustee with respect to lands and premises owned by 144 Park pursuant to the Order of The Honourable Mr. Justice Penny dated January 22, 2015 (the “**Appointment Order**”). On December 5, 2017, the Court substituted RSM as Trustee.

Distribution of Amounts held by Escrow Agent

3. In connection with the construction of the Project, 144 Park entered into an agreement with Aviva pursuant to which Aviva issued: a bond in the amount of \$2.98 million in favour of Tarion Warranty Corporation (“**Tarion**”) (the “**Tarion Bond**”); and an excess deposit insurance facility in the amount of \$5.5 million (the “**EDI Facility**”).
4. The purpose of the Tarion Bond and the EDI Facility was to assist with the registration of 144 Park and the Project with Tarion, and to enable the release of purchaser deposits from trust in order that 144 Park could use the deposits as a source of project financing.
5. Pursuant to a Deposit Trust Agreement dated July 18, 2011 between 144 Park, Aviva and the Escrow Agent (the “**Deposit Trust Agreement**”), the Escrow Agent was appointed to hold purchaser deposits (the “**Deposits**”) in trust in accordance with the terms of the agreement.
6. 144 Park granted a security interest in favour of Aviva in the Deposits as security for payment and performance of all present and future indebtedness, liabilities and/or obligations of 144 Park to Aviva incurred or arising under or pursuant to the Tarion Bond, the EDI Facility, the Deposit Trust Agreement and an indemnity agreement dated July 18, 2011.

7. Aviva also issued an advance payment bond dated February 26, 2014 (“**Advance Payment Bond**”) in the amount of \$1.6 million in favour of 81 Capital Inc. (“**81 Capital**”) with respect to an HVAC sale-leaseback transaction entered into between 144 Park and 81 Capital.
8. The principal amount of the Tarion Bond has been reduced to \$200,000. The EDI Facility and the Advance Payment Bond have been cancelled. 144 Park owes Aviva unpaid premiums and claim amounts totaling \$439,419.
9. As at December 31, 2019, the balance in the Deposits trust account held by the Escrow Agent was approximately \$2,854,733. As the Tarion Bond has been reduced to \$200,000, the Escrow Agent is required to maintain \$200,000 in trust until the Tarion Bond is released.
10. After accounting for that amount, there is \$2,654,733 that is available to be released by the Escrow Agent to the Trustee. In the event that the Court authorizes and directs the Escrow Agent to release \$2,654,733 to the Trustee, the Trustee will have \$3,100,138 in its bank account
11. As a result of security interests granted by 144 Park in the Deposits in favour of Aviva and MZG, the Trustee requests that the Court authorize the Trustee to distribute \$439,419 to Aviva or its agent, Westmount, and \$2,202,746 to MZG. The Trustee will continue to retain approximately \$457,973 in its trust account as a reserve for the completion of the administration of this proceeding.

Fees and Disbursements of the Trustee

12. Pursuant to paragraph 20 of the Appointment Order, the Trustee is to be paid its reasonable fees and disbursements at its standard rates and charges. Pursuant to paragraph 21 of the Appointment Order, the Trustee shall pass its accounts.
13. The fees and disbursements of the Trustee are detailed in the Twenty-Third Report and the fee affidavit appended thereto.

General

14. The Twenty-Third Report.
15. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
16. Section 68 of the *CLA*.
17. The inherent jurisdiction of the Court.
18. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Twenty-Third Report and the appendices annexed thereto; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

January 30, 2020

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**Lawyers for RSM Canada Limited,
Court-appointed Trustee**

TO: THE SERVICE LIST

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

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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

NOTICE OF MOTION

(re Distribution of Funds held by Escrow Agent
and other relief)
(returnable February 3, 2020)

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Court-appointed Trustee**

TAB 2

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
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**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
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CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

TWENTY-THIRD REPORT OF THE TRUSTEE

January 29, 2020

Table of Contents

INTRODUCTION AND PURPOSE OF THE TWENTY-THIRD REPORT 1

TERMS OF REFERENCE 2

BACKGROUND 3

BONDS AND EDI FACILITY 5

 Background 5

 A. Tarion Bond and EDI Facility 5

 B. Advance Payment Bond 7

 Update to Status of the Bonds and EDI Facility 8

 Claims by Aviva and Westmount 10

RELEASE OF DEPOSITS HELD BY ESCROW AGENT AND DISTRIBUTION 13

TRUSTEE’S STATEMENT OF RECEIPTS AND DISBURSEMENTS 13

TRUSTEE’S HST ACCOUNT 15

FEES AND DISBURSEMENTS OF THE TRUSTEE 16

TRUSTEE’S REQUEST TO THE COURT 16

Appendices

Appendix A – Commitment Letter

Appendix B – Deposit Trust Agreement

Appendix C – Indemnity Agreement

Appendix D – Fifth Report, without appendices

Appendix E – Twenty-Second Report, without appendices

Appendix F – June 19th Approval Order

Appendix G – October 15th Bond Reduction Letter

Appendix H – October 28th Bond Reduction Letter

Appendix I – Trustee’s Statement of Receipts and Disbursements

Appendix J – Sixth Report, without appendices

Appendix K – October 16th Order

Appendix L – Affidavit of Arif Dhanani

INTRODUCTION AND PURPOSE OF THE TWENTY-THIRD 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 (“**Collins Barrow**”) was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and 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**”).
2. On December 5, 2017, the Court granted an order substituting the name RSM Canada Limited (“**RSM**”) in place of Collins Barrow as Trustee.
3. The purpose of this twenty-third report of the Trustee (the “**Twenty-Third Report**”) is to:
 - (a) provide the Court with an update on matters related to, among other things, the Bonds (as defined below) issued in connection with the Project (as defined below);
 - (b) provide information to the Court with respect to the Trustee’s HST account with Canada Revenue Agency (“**CRA**”);
 - (c) request that the Court grant an order:
 - (i) authorizing and directing Harris, Sheaffer LLP, in its capacity as escrow agent (the “**Escrow Agent**”), to release \$2,654,733 to the Trustee from the funds it holds in escrow pursuant to the Deposit Trust Agreement (as defined below);

- (ii) authorizing and directing the Trustee, upon receipt of funds from the Escrow Agent, to distribute \$439,419 to Westmount Guarantee (“**Westmount**”) as managing general agent for Aviva Insurance Company of Canada (“**Aviva**”) and \$2,202,746 to MarshallZehr Group Inc. (“**MZG**”), a secured creditor of 144 Park;
- (iii) approving the Twenty-Third Report and the activities and conduct of the Trustee as described herein;
- (iv) approving the Trustee’s interim statement of receipts and disbursements for the period January 22, 2015 to December 31, 2019 (the “**R&D**”); and
- (v) approving the fees and disbursements of the Trustee, as set out in the Twenty-Third Report and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

4. In preparing this Twenty-Third Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park and information received from third-party sources, including without limitation 144 Park and other companies within the MADY Group (collectively, the “**Information**”). Certain of the information contained in this Twenty-Third Report may refer to, or is based on, the Information. As the Information has been provided by 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 *Chartered Professional Accountants Canada Handbook* and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

5. Copies of all documents referred to in this Twenty-Third Report that are not attached hereto as appendices can be found on the Trustee's website at <https://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/144-park-ltd.html>, along with copies of all materials served and filed in this proceeding and Court orders and endorsements (with the exception of 148 vesting orders for sold residential units, lockers and parking spaces, and the vesting order for the guest suite).
6. All references to dollars in this Twenty-Third Report are in Canadian currency.
7. Unless otherwise defined in this Twenty-Third Report, defined terms have the meanings ascribed to them in the prior reports of the Trustee.

BACKGROUND

8. As has been previously reported to the Court, 144 Park acquired the Property in September 2011 for the purpose of developing the lands and constructing a 19-storey residential condominium project containing 148 residential units and a guest suite (the "**Project**").
9. 144 Park commenced this proceeding as it was insolvent, and it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of pre-sold units, complete the sale of the unsold units, and distribute the sale proceeds pursuant to Court order.

10. Pursuant to the Appointment Order, the Trustee was authorized and empowered by the Court 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 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; and
 - (d) 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.

11. As of the date of the Trustee's appointment, 144 Park had entered into agreements of purchase and sale with purchasers ("**144 Park Sale Agreements**") for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers. One of the 144 Park Sale Agreements was terminated pursuant to Court order. As a result, there were 128 units that were the subject of 144 Park Sale Agreements, and 20 unsold units (collectively, the "**Unsold Units**").

12. On May 25, 2015, the condominium declaration (the "**Declaration**") and Plan of Condominium 30CDM-13406 were registered and Waterloo Standard Condominium Corporation No. 591 (the "**Condominium Corporation**") was established.

13. The Trustee has closed transactions in respect of all residential units, parking units and storage units, including the Unsold Units.

BONDS AND EDI FACILITY

Background

A. Tarion Bond and EDI Facility

14. Pursuant to a commitment letter dated July 14, 2011 between 144 Park and Aviva (“**Commitment Letter**”), Aviva agreed to provide the following to 144 Park:
 - (a) a bond in the amount of \$2.98 million (the “**Tarion Bond**”) to be issued by Aviva, as surety, in favour of Tarion Warranty Corporation (“**Tarion**”), as obligee; and
 - (b) an excess deposit insurance facility in the amount of \$5.5 million (the “**EDI Facility**”). A copy of the Commitment Letter is attached hereto and marked as **Appendix “A”**.
15. The purpose of the Tarion Bond and the EDI Facility was to assist with the registration of 144 Park and the Project with Tarion, and to enable the release of purchaser deposits from trust in order that 144 Park could use the deposits as a source of project financing.
16. The Tarion Bond was issued to secure Tarion’s obligations to purchasers of units under the *Ontario New Home Warranties Plan Act* and related regulations. The EDI Facility was issued to allow for the release of purchaser deposits in excess of \$20,000 per unit to 144 Park.

17. The bond premium charged by Aviva for the issuance of the Tarion Bond is 1.15% of the amount of the bond. For the EDI Facility, as excess deposits were released, a premium was charged on the outstanding amount in excess of \$20,000 per unit until such time as the units from which the excess deposits are taken were closed and the deposit risk extinguished.
18. As discussed below, the Tarion Bond is still outstanding. The EDI Facility was closed by Aviva's agent, Westmount, on the registration date of the Project.
19. Pursuant to a Deposit Trust Agreement dated July 18, 2011 between 144 Park, Aviva and the Escrow Agent (the "**Deposit Trust Agreement**"), the Escrow Agent was appointed to hold purchaser deposits (the "**Deposits**") in trust in accordance with the terms of the agreement. A copy of the Deposit Trust Agreement is attached hereto and marked as **Appendix "B"**.
20. Section 3.2 of the Deposit Trust Agreement provides that the Escrow Agent is to hold in trust purchaser deposits ("**Deposits**"). Pursuant to section 3.3 of the Deposit Trust Agreement, 144 Park granted a security interest in the Deposits to Aviva as security for the payment and performance of all present and future indebtedness, liabilities and/or obligations of 144 Park to Aviva incurred or arising under or pursuant to the Tarion Bond, the EDI Facility, the Deposit Trust Agreement and an indemnity agreement dated July 18, 2011 (the "**Indemnity Agreement**"). A copy of the Indemnity Agreement is attached hereto and marked as **Appendix "C"**.
21. Pursuant to the Indemnity Agreement, 144 Park agreed to pay all premiums payable in connection with the issuance of any bonds and policies by Aviva.

B. Advance Payment Bond

22. As set out in the Trustee's fifth report to the Court dated October 13, 2015 (the "**Fifth Report**"), in February 2014, 144 Park and 81 Capital Inc. ("**81 Capital**") entered into a builder agreement, pursuant to which 144 Park agreed to sell, and 81 Capital agreed to buy, the HVAC System and related property that had been installed at the Property (the "**HVAC System**") for a purchase price of \$1.6 million. A copy of the Fifth Report, without appendices, is attached hereto and marked as **Appendix "D"**.
23. 81 Capital advanced \$1.6 million to 144 Park and Aviva issued an advance payment bond dated February 26, 2014 in the amount of \$1.6 million in favour of 81 Capital (the "**Advance Payment Bond**" and together with the Tarion Bond, the "**Bonds**").
24. The premium charged by Aviva in respect of the Advance Payment Bond is 1.25% per annum on the outstanding amount of the bond. As is common practice in the construction industry, the HVAC System was then to be leased back to the condominium corporation incorporated to manage the Property after registration of the Project, and the Advance Payment Bond represented the underlying security to ensure that 144 Park took the necessary steps to complete the contemplated sale leaseback transaction following registration of the Project.
25. As set out above, the Declaration was registered on May 25, 2015. The sale leaseback transaction (the "**Transaction**") and the requirement of 144 Park to enter into the agreements with respect to the HVAC System is referred to in the Declaration. The lease payments for the HVAC System were contemplated by 144 Park and incorporated into the budget for the Project that was provided to all purchasers and residents.

26. On October 16, 2015, the Court issued a vesting and approval order (the “**HVAC Vesting and Approval Order**”), which: (i) vested 144 Park’s right, title and interest in the HVAC System in 81 Capital; (ii) approved the Transaction between the Trustee, for and on behalf of 144 Park, and 81 Capital; and (iii) authorized the Trustee to execute such documents as necessary for the completion of the Transaction.

Update to Status of the Bonds and EDI Facility

27. Pursuant to a Court order dated June 19, 2019 (the “**June 19th Approval Order**”), the Court approved a settlement and release agreement entered into on May 17, 2019 between the Trustee and the Condominium Corporation (the “**Settlement and Release Agreement**”). The agreement dealt with outstanding issues related to deficiency claims filed by the Condominium Corporation with Tarion. The Trustee’s twenty-second report dated May 31, 2019 (the “**Twenty-Second Report**”) sets out the background regarding the deficiencies. Copies of the Twenty-Second Report, without appendices, and the June 19th Approval Order are respectively attached hereto and marked as **Appendix “E”** and **Appendix “F”**.
28. As a result of the Court approval of the Settlement and Release agreement, the Trustee contacted Tarion to request the release of the Tarion Bond and the Deposits held in trust by the Escrow Agent. The Escrow Agent has advised the Trustee that at December 31, 2019, the balance in its Deposits trust account is \$2,854,733.
29. On July 25, 2019, Tarion wrote to the Trustee to advise that its legal counsel reviewed the Settlement and Release Agreement and noted that it is only for items in the First and Second-Year Performance Audits. Tarion further advised that even if the Settlement and

Release Agreement included future claims, Tarion would not enforce it as Section 13(6) of the *Ontario New Home Warranties Plan Act* expressly states that the warranties apply despite any agreement or waiver to the contrary. Tarion stated that it would provide the Trustee with an exact amount that Tarion intends to hold back on the security currently in place and that Tarion believed the bulk of the security would be released.

30. On August 15, 2019, Tarion wrote to the Trustee seeking further information on a list of the title transfer/deed registration numbers for the closed units in the Project for its security release review, including unit numbers, purchaser names and title transfer/deed registration numbers for each closed unit. The Trustee sought the assistance of Harris, Sheaffer LLP as condominium law counsel (“**HS**”) with this and on August 18, 2019, HS sent the information requested to Tarion.

31. After further correspondence exchanges among the Trustee’s insolvency counsel, Chaitons LLP, HS and Tarion’s counsel between August 19, 2019 and October 15, 2019, in which Tarion requested further information and clarification regarding warranty coverage over various residential units, Tarion sent a letter dated October 15, 2019 (the “**October 15th Bond Reduction Letter**”) to the Trustee confirming that Tarion agreed to reducing the Bond to \$640,000 from \$2.9 million. In the October 15th Bond Reduction Letter, Tarion advised that the remaining Bond of \$640,000 was for outstanding warranty coverage and occupancy information for 22 residential units and to cover the Major Structural Deficiency (“**MSD**”) common element warranty. A copy of the October 15th Bond Reduction Letter is attached hereto and marked as **Appendix “G”**.

32. On October 22, 2019, pursuant to HS' direction to do so, the Trustee investigated and provided HS with the information Tarion was seeking in respect of the 22 residential units and this information was sent to Tarion by HS on the same day.
33. On October 29, 2019, Tarion sent to the Trustee a letter dated October 28, 2019 (the "**October 28th Bond Reduction Letter**") confirming that Tarion agreed to further reducing the Bond to \$200,000, which security would be maintained until the expiry of the MSD common element warranty on May 25, 2022. A copy of the October 28th Bond Reduction Letter is attached hereto and marked as **Appendix "H"**.
34. The Trustee wrote to Tarion to request that the entire Tarion Bond and Deposits be released; however, Tarion has maintained its position that it will retain the \$200,000.

Claims by Aviva and Westmount

35. Upon receipt of Tarion's October 15th Bond Reduction Letter, the Trustee called HS to discuss the release of Deposits held by the Escrow Agent in respect of the Tarion Bond and HS advised that Westmount must provide HS with a direction on the timing and amount of any release of funds. Westmount has agreed to provide such direction to HS after the Court's approval of the distributions to be made and issuance of an order confirming same.
36. In speaking with Westmount, it advised the Trustee that it had several amounts payable to it as managing general agent for Aviva for bond premiums and/or claims that were made against the Tarion Bond, the EDI Facility and the Advance Payment Bond. A summary of the claims made by Westmount is below and details of same are set out thereafter:

Tarion Bond premiums	\$146,588
EDI Facility premiums	31,052
Advance Payment Bond premiums	22,884
Advance Payment Bond claim	208,613
Tarion claims	30,282
Total	\$439,419

- (a) **Tarion Bond premiums** – as set out above, there is a 1.15% per annum bond premium charge levied on the outstanding amount of the Tarion Bond. The outstanding Tarion Bond premiums payable to Westmount for the period August 24, 2015 to May 25, 2022, being the date that Tarion’s security in respect of the MSD warranty will expire and the Bond will be released, as calculated and invoiced by Westmount, total \$146,588;
- (b) **EDI Facility premiums** – there is a 1% per annum premium charge levied on the outstanding amount of the EDI Facility. The outstanding premiums payable to Westmount in respect of this facility for the period April 1, 2014 to May 25, 2015, the date this facility was retired, as calculated and invoiced by Westmount, total \$31,052.
- (c) **Advance Payment Bond premiums** – as set out above, there is a 1.25% per annum premium charge levied on the outstanding amount of the Advance Payment Bond. The outstanding premiums payable to Westmount in respect of the Advance Payment Bond for the period February 26, 2014 to March 1, 2016, the date the

Advance Payment Bond was released, as calculated and invoiced by Westmount, total \$22,884.

- (d) **Advance Payment Bond claim** – As set out above, the Trustee, upon authorization by the Court, proceeded to complete the Transaction with 81 Capital, through its assignee, Maxium Financial (“**Maxium**”). The Trustee came to learn from Aviva that sometime after completion of the Transaction, the Condominium Corporation renegotiated the lease with Maxium and Maxium claimed from Aviva the present value of the difference in the revenue stream from the lease, which totaled \$208,613. The Trustee was not informed of or a party to this renegotiation and only came to learn of it after Aviva paid Maxium under the Advance Payment Bond. Aviva further informed the Trustee that as a result of the issue raised by the Condominium Corporation and renegotiation of the lease, Maxium had the option to call on the entire Advance Payment Bond of \$1.6 million, but chose not to do so in light of 144 Park’s insolvency.
- (e) **Tarion Claims** - At the outset of the Trustee’s appointment and prior to the Trustee’s discussions with Tarion regarding its role, upon notification that 144 Park was in an insolvency proceeding, Tarion commenced rectifying certain in-suite deficiencies claimed by occupants of the Project. The Trustee, upon learning of this, had a call with Tarion and its external legal counsel and came to an agreement that prior to doing any deficiency work at the Project, Tarion would refer deficiency claims to the Trustee and afford the Trustee the opportunity to rectify the deficiencies, if they were warranted by Tarion. However, by the time the Trustee

had its discussion with Tarion, Tarion had already submitted claims totaling \$30,282, which were paid by Aviva.

37. The Trustee has reviewed the foregoing and does not dispute that such amounts can be released to Aviva/Westmount by the Escrow Agent from the Deposits.

RELEASE OF DEPOSITS HELD BY ESCROW AGENT AND DISTRIBUTION

38. As noted above, as at December 31, 2019, the balance in the Deposits trust account held by the Escrow Agent was \$2,854,733.

39. As the Tarion Bond has been reduced to \$200,000, the Escrow Agent is required to maintain \$200,000 in trust until the Tarion Bond is released. After accounting for that amount, there is \$2,654,733 to be released by the Escrow Agent to the Trustee.

TRUSTEE'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

40. Attached hereto and marked as **Appendix "I"** is the Trustee's statement of receipts and disbursements (the "**R&D**") for the period January 22, 2015 to December 31, 2019. During this period, receipts, including \$500,000 advanced to the Trustee by MZG, totaled \$50.7 million. Disbursements totaled \$50.3 million, including repayment of the amount advanced by MZG with interest of \$17,062 and a facility fee of \$25,000 and payments to secured lenders and lien claimants of \$38.1 million. The most significant disbursement made by the Trustee since the time of its last reporting is the settlement payment made to the Condominium Corporation in respect of the Settlement and Release Agreement. The net cash balance in the Trustee's bank account as at December 31, 2019 is \$445,405.

41. In the event that the Court authorizes and directs the Escrow Agent to release \$2,654,733 to the Trustee, the Trustee will have \$3,100,138 in its bank account, before consideration of additional interest that may be earned on those amounts.
42. The Trustee requests that the Court authorize the Trustee to distribute \$439,419 to Westmount and \$2,202,746 to MZG. As has previously been reported to the Court, MZG was the third mortgagee of the Property and acquired all of the debt and security owed by 144 Park to Laurentian Bank of Canada, which held the first ranking mortgage on the Property.
43. The Trustee has obtained an opinion from Chaitons that MarshallZehr has valid and enforceable security against the personal property of 144 Park, which includes the Deposits held by the Escrow Agent.
44. In the event the relief sought by the Trustee is granted by the Court and the foregoing distributions are made, the Trustee will have approximately \$457,973 remaining in its trust account.
45. The Trustee is holding such amount in its trust account as a reserve for, among other things, the fees and costs associated with completing the remaining tasks associated with its administration in order for the Trustee to be in a position to seek its discharge from the Court after Tarion's MSD common element warranty expires and the balance of the funds held by the Escrow Agent is approved by the Court to be released and distributed, as appropriate.

TRUSTEE'S HST ACCOUNT

46. Upon its appointment, the Trustee contacted CRA and requested that a "program account" for HST be opened in respect of the Trustee's activities. The Trustee has since filed HST returns as required up to and including the period ending December 31, 2019 and has remitted to CRA all amounts payable that were reflected on those returns.
47. As set out in the Trustee's sixth report dated November 30, 2015 (the "**Sixth Report**"), the Trustee terminated sale agreements for: (i) two units due to purchaser defaults; and (ii) four units in accordance with the terms of the Order of Justice Newbould dated October 16, 2015 (the "**October 16th Order**"). A copy of the Sixth Report, without appendices, and the October 16th Order are attached hereto as Appendices "**J**" and "**K**", respectively. The units to which the terminated sale agreements apply are referred to hereinafter as the "**Units**".
48. At the time the sale agreements for the Units were terminated, the Units were occupied by the purchasers that had initially entered into sale agreements with 144 Park for the respective Units. After these parties vacated the Units, the Trustee marketed and resold the Units.
49. The Trustee was advised by its real estate counsel that HST was not chargeable on the subsequent sale of the Units as the Units had been previously occupied. Accordingly, upon the closing of the sales of each of the Units, HST was not charged or collected by the Trustee.

50. As the Trustee does not anticipate collecting any HST from now until its discharge, the Trustee intends to close its HST account after the return for the period ending March 31, 2020 return is filed.

FEES AND DISBURSEMENTS OF THE TRUSTEE

51. Pursuant to paragraph 20 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts before the Court.
52. The fees and disbursements of the Trustee for the period from November 14, 2014 to March 31, 2019 were previously approved by the Court pursuant to Orders of the Court dated August 5, 2015, October 16, 2015, November 14, 2016, February 23, 2017, February 14, 2018 and June 19, 2019.
53. The total fees for the Trustee for the period from April 1, 2019 to December 31, 2019 were \$24,274.00, plus disbursements of \$9.78, plus HST of \$3,156.89, for a total of \$27,440.67. The time spent by the Trustee is more particularly described in the Affidavit of Arif Dhanani sworn January 29, 2020, which is attached hereto and marked as **Appendix "L"** and contains copies of invoices that set out the services provided during this time period.

TRUSTEE'S REQUEST TO THE COURT

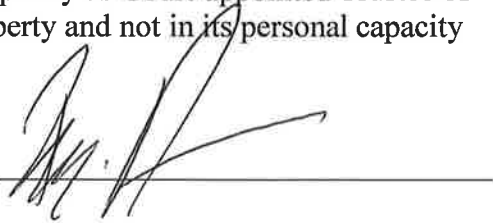
54. Based on the foregoing, the Trustee respectfully requests that the Court grant the orders described in paragraph 3(b) above.

All of which is respectfully submitted to this Court as of this 29th day of January, 2020.

RSM CANADA LIMITED

in its capacity as Court-appointed Trustee of
the Property and not in its personal capacity

Per: _____

A handwritten signature in black ink, appearing to read 'Bryan A. Tannenbaum', is written over a horizontal line. The signature is stylized and cursive.

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT

Title: President

APPENDIX A



Aviva Insurance Company of Canada 2200 Eglinton Avenue East Scarborough Ontario M1L 4S8 Tel: (416) 229-8517 Toll Free 1-800-363-6330
Fax (416) 229-5429 (416) 225-5972

July 14, 2011

144 Park Ltd.
c/o Mady Development Corporation
100-8791 Woodbine Avenue
Toronto, ON L3R 0P4

Attention: Greg Puklicz

Dear Mr. Puklicz:

Re: Tarion Warranty Corporation Bond and Deposit Insurance
For: 144 Park Ltd.
Project: A 149 unit Tarion type D Condominium Project located at 144 Park Street, Waterloo known as "144 Park Uptown Waterloo" (Hereinafter referred to as the "Project")

Subject to your acceptance, and to the terms and conditions held within this letter (the Commitment Letter), Aviva Insurance Company of Canada ("Aviva") is pleased to confirm that it will provide a Tarion Bond and Deposit Insurance Facility as detailed below:

ENTITY BONDED:

- 144 Park Ltd. (hereinafter referred to as the "Principal").

FACILITIES APPROVED:

- Tarion Bond: \$2,980,000
- Deposit Insurance Facility Approved: \$5,500,000

PURPOSE:

- To assist with the registration of the Principal and Project with Tarion, and to enable the release of deposits from trust so that they may be used as a source of project financing.

FEES & PREMIUM:

- Commitment fee payable upon acceptance of these terms: \$7,500
- Annual premium rate for Tarion Bond: 1.15%
- Annual premium for deposits insured above Tarion coverage: 1.00%

INSURANCE BROKER:

- Petrela, Winter & Associates

LEGAL REPRESENTATION AND SECURITY REQUIREMENTS:

The Principal acknowledges and accepts that the law firm selected to act for Aviva with respect to registration of its security, the role of Escrow Agent and other matters shall be Harris Sheaffer LLP, attention: Gary Harris.

The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm, and shall pay all costs with respect to preserving Aviva's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of Aviva.

Aviva Security

As general and continuing security for the payment of present and future indebtedness, obligations and liabilities of the Principal to Aviva, Aviva shall require the registration and/or execution of the following security (the "Aviva Security"). This offer for a Bond and/or Deposit Insurance Facility shall expire should the Aviva Security not be registered by September 30, 2011 (the "Expiration Date"). Aviva may extend the Expiration Date at its sole discretion.

Indemnity Agreement

The Principal consents to provide the unlimited, joint and several indemnities of the following corporations and people in Aviva's Standard form, along with all other resolutions, etc. deemed necessary by Aviva's solicitor:

- 144 Park Ltd.
- To be determined*

**The Principal agrees to provide Aviva with satisfactory financial/personal net worth statements for all indemnitors. Should the construction lender require indemnities beyond those provided to Aviva, the Principal agrees to provide Aviva with those same additional indemnities.*

Should the company from which title to purchasers will be transferred not be the Principal Company or an indemnitor noted on page one of the Commitment Letter ("Declarant"), the Principal further consents to provide the indemnity of the Declarant under the same terms noted above. (Declarant company: 144 Park Ltd.)

The Principal and each of the Indemnitors listed above agree to provide Aviva with year end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal indemnitors shall arrange to supply Aviva with updated net worth statements annually.

Trust Account Agreement

The Principal shall execute a Deposit Trust Agreement in Aviva's standard form between the Principal, Aviva and the Escrow Agent with respect to the control and operation of the trust account. Aviva shall require a first charge and security interest over the account and in those deposits contained within that account and will require a PPSA Financing statement registered in first position for a term not less than 10 years.

Collateral Mortgage

The Principal consents to providing Aviva with a collateral first mortgage on the subject project and property in the amount of **\$8,500,000**. Aviva will require an opinion from its Solicitor that it has a valid and enforceable charge over the project and property.

Aviva will fully postpone its mortgage position to a Construction lender providing project financing that has been approved by Aviva. The Principal shall not further encumber the project unless approval is given in writing by Aviva.

Aviva will discharge its collateral mortgage upon the final closing of units and the discharge will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of Aviva's security, which shall be the Principal's responsibility. Aviva shall require evidence of transfer of title from the Principal/Declarant to purchasers as a condition of discharge.

Upon full payment of any prior encumbrances to Aviva's mortgage, and at Aviva's sole discretion, Aviva may require as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in trust as added security for any outstanding bonds and/or policies.

Prior to the execution of a partial discharge for any of the last 4 remaining units in the Project after the full payment of any prior encumbrances to Aviva's mortgage, Aviva will require payment of \$125,000 per discharge, which will be held as security against any warranty obligations under the Tarion Bond. All amounts retained by Aviva shall be returned to the Principal upon return of the Tarion Bond to Aviva for cancellation, less any costs incurred by Aviva on behalf of the Principal.

Insurance Requirements

The Principal shall provide evidence of all risk insurance including course of construction, business interruption, earthquake and flood. The policy(s) shall provide for full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement. The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the construction lender as First Mortgagee and loss payee, then Aviva as Second Mortgagee and loss payee as per the Standard Mortgage Clause.

Additional Security

The Principal consents to provide Aviva with all such other certificates, documents and opinions as Aviva or its solicitors shall reasonably require.

DEPOSIT RELEASE TERMS:

Subject to the registration of Aviva's Security and adherence by the Principal to all terms and conditions held within this Commitment Letter, Aviva shall authorize the release of purchaser deposits from trust in the following manner:

- Deposits of \$1,000,000 will be made available for the purposes of reducing the capital contributions of Allen Street Holdings Inc., resulting in the discharge of its mortgage over the property.
- amount of \$2,000,000 will be made available to fund project costs as evidenced by the Principals internal reporting. ^{Additional deposits in the} and/or reimburse
- All remaining deposits shall be made available to fund project costs on a 1:1 ratio of construction lender advances to deposits released as recommended by the cost consultant.

GENERAL CONDITIONS:

Fees and Premiums:

The Principal shall pay to Aviva the non-refundable Commitment Fee as directed on page one of this Commitment Letter. The Commitment Fee shall be deemed earned upon the acceptance of this Commitment Letter.

Premium for the Tarion Bond will be based on the annual rate outlined in this Commitment Letter. The first, one year term will be payable on or prior to the date the Bond is released to the Principal for delivery to Tarion. All future premium terms will be billed at this rate unless stipulated otherwise, and will be deemed payable as of the invoice date.

After condominium registration and at the expiry of the next bond invoice term, Aviva will entertain reducing the premium term to a minimum four (4) month term. Should any further reductions in the Bond take place during the reduced term, adjustments will be considered at the next premium term renewal.

The premium charged for all deposit insurance will be at the annual rate outlined in this Commitment Letter. Premium for deposit insurance shall be billed quarterly and payable upon receipt of invoice.

Aviva reserves the right to deduct outstanding premiums and/or fees from future deposits releases.

Tarion:

The Principal shall provide Aviva with a copy of its Builder Registration Certificate once the bond has been given to Tarion.

The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the Ontario New Home Warranties Plan Act, its regulations and bulletins issued pursuant thereto until such time Tarion returns the Bond to Aviva.

If the project is governed under Tarion Builder Bulletin #19, the Principal undertakes and agrees to authorize the Field Review Consultant to provide Aviva with copies of all reports.

Aviva's authorization to release funds from trust shall be conditional upon the Escrow Agent receiving Tarion Deposit Receipts.

The Principal and/or its Solicitor agree to provide upon final closing of sales, information to Tarion to facilitate the release/reduction of the Bond in accordance with Tarion Builder Bulletin's #19 and #28.

Tarion Authorization to Provide Project Information

The Principal shall execute an Authorization directing Tarion to provide Aviva with any information that may alter Aviva's exposure under the Bond and/or Policies.

The Principal shall provide Aviva with access to the Principal's on-line Tarion files, and any related electronic information from Tarion, through the Principal's Builder Portal. The Principal shall provide Aviva with a user ID and password to access the Builder Portal. (User ID: _____ Password: _____)

Tarion Builder Bulletin #47

The Principal shall provide Aviva with the following information in respect to the required addendum to the agreement of purchase and sale called "Statement of Critical Dates":

- the date the Vendor has obtained formal zoning approval for the building;
- the actual date of commencement of construction, which is to be provided at the same time the Vendor provides notice to purchasers;
- the date established as the Final Tentative Closing Occupancy Date, which date is to be set no later than 30 days after completion of the roof slab or the roof trusses and sheathing of the building;
- the Principal and/or its Solicitor undertakes and agrees to provide any required statutory declarations and undertakings with respect to compliance to Tarion Bulletin #47;
- the Principal and/or its Solicitor undertakes to provide information prior to either interim or final closing regarding whether delayed closing compensation is owing or was paid to each purchaser.

The Condominium Act:

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

Master Deposit Insurance Policy:

All Deposits to be insured under the Deposit Insurance Facility shall be held in Trust by a prescribed Trustee as required under the Act.

The Principal shall provide Aviva or its authorized representative with all information necessary and in a format acceptable to Aviva to prepare the schedule of insured purchasers that will form part of the Master Deposit Insurance Policy.

Purchaser Release, Assignment and/or Default:

The Principal, when allowing a purchaser to cancel a deal, shall require the purchaser to execute a Mutual release and Termination Agreement in Aviva's prescribed format as a condition of requesting the deposit to be released from the Trust Account. Should the purchaser deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the deposit refund and shall supply Aviva with a copy of the negotiated refund cheque.

For purchasers of units who are in default, the Principal shall notify Aviva of the default and request permission to remarket the unit. All deposits from the defaulting party shall remain in trust until Aviva is satisfied the dispute has been settled. If the deposit monies from the defaulting purchaser have been released to the Principal, deposit monies from new purchasers shall remain in trust until Aviva is satisfied the dispute has been settled with the original purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to obtain a release in favour of Tarion and Aviva and provide details of the assignment to Aviva as a condition of insuring the new party's deposit. Additional premium shall be charged should the new deposit be insured and released from trust.

Project Financing:

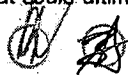
The Principal shall provide Aviva with copies of all discussion papers and the final accepted construction loan financing commitment. The terms of those commitments shall be satisfactory to Aviva and permit the project to be completed in a timely matter. If the terms of the said commitment do not contemplate the facility provided by Aviva or do not compliment the facility provided by Aviva, all terms in this facility shall either be re-negotiated or terminated.

The Principal shall take full responsibility to advise and obtain consent from any construction lender of the involvement and/or security requirements by Aviva on this project.

Cost Overruns:

Aviva's authorization to release funds shall be conditional upon the Principal dealing with cost overruns to the satisfaction of both the construction lender and Aviva and that construction of the subject project proceed without any major construction problems identified by the Cost Consultant that could ultimately affect Aviva's exposure under the bond and/or policies.

Consultant



Project Construction and Bonding of Major Trades:

The Principal shall notify Aviva of any key construction staff changes and/or changes in plans regarding retention of a General Contractor or Construction Manager from those that were contemplated and revealed to Aviva prior to these terms being offered.

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. Aviva highly recommends that any major trades involved in these areas provide the Principal contract performance and labour and material bonds with a two year maintenance period to offset any liability for deficiencies that may be discovered in the first year condominium performance audit.

Project Monitoring:

The Principal agrees to authorize the cost consultant to provide copies of all reports to Aviva as and when provided to the construction lender. Both the Cost consultant firm and the content of the report shall be acceptable to Aviva for the purposes of fulfilling its obligations under this bonding facility.

Occasionally, Aviva may request its own "Project Status Report", which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of Aviva shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded project.

Material Change in the Information Supplied to Aviva:

If at any time prior to the execution and/or release of any bond or policy or release of deposits from trust, Aviva determines there is a material adverse change or implication to the information that the Principal had previously supplied to Aviva, including, but not limited to: project viability, ownership of the project or financial ability of the Principal and/or the Indemnitors, Aviva may suspend the issuance of bonds, policies or release of monies from Trust until the matter is resolved to the satisfaction of Aviva.

The Principal shall notify Aviva immediately of any material change in respect of the project or its financial condition.

Consent and Acknowledgement to Collection, Use and Disclosure of Information:

The Principal and all Indemnitors consent to Aviva obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that Aviva may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all Indemnitors further consent to the disclosure of this information to any credit grantor or re-insurer by Aviva if Aviva is requested to do so.

Electronic Execution of Documents:

It is expressly acknowledged and agreed that the execution of this Commitment Letter may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.

Each of the parties hereto further acknowledges and agrees that the Commitment Letter may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the parties that have signed the Commitment Letter shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of the Commitment Letter may be relied upon by all of the parties that have signed the Commitment Letter to the same extent as if it were an original executed version addressed specifically to each of them.

All the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written or verbal consent of Aviva. Failure to observe this condition may result in either Aviva withdrawing or altering this commitment.

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with any applicable fees, on or before July 29, 2011.

Aviva Insurance Company of Canada



Brian Argue
Senior Developer Surety Specialist
Developer Surety

I have the authority to bind the Corporation.

Accepted this 14th day of JULY, 2011.

144 PARK LTD.

Name: Brian Puncioz
Title: SUP.

Name:
Title:

I/We have the authority to bind the Corporation

APPENDIX B



DEPOSIT TRUST AGREEMENT

(issued in triplicate)

THIS AGREEMENT is effective as of July 18, 2011.

AMONGST:

144 PARK LTD.

(hereinafter referred to as the "**Principal**")

OF THE FIRST PART

- and -

AVIVA INSURANCE COMPANY OF CANADA

(hereinafter referred to as the "**Surety**")

OF THE SECOND PART

- and -

HARRIS SHEAFFER LLP, BARRISTERS & SOLICITORS

(hereinafter referred to as the "**Escrow Agent**")

OF THE THIRD PART

WHEREAS

- A) The Principal intends to construct and develop a **149** unit condominium complex located at **21 Allen Street West** in the City of **Waterloo**, Ontario and marketed or known as "**144 Park Uptown Waterloo**" (hereinafter referred to as the "**Project**");
- B) Purchasers of Units have paid (or will pay) Deposits to the Principal's solicitor or a prescribed trustee pursuant to the provisions of the Purchase Agreements, in accordance with Section 81(1) of the Condominium Act 1998, S.O. 1998, as amended;
- C) Section 81(7) of the Condominium Act 1998, S.O. 1998, as amended, requires the declarant's solicitor or a prescribed trustee to hold the Deposits in trust, until delivery of prescribed security to the Purchasers for repayment of their respective Deposits;
- D) Deposit receipts executed by the Warranty Corporation that provide for compensation to Purchasers in accordance with Section 22 of Ontario Regulation 48/01, constitute prescribed security pursuant to subsection 20(2)[2] of Ontario Regulation 48/01 to the Condominium Act 1998, S.O. 1998, as amended;
- E) Under the combined Vendor/Builder Agreement or either of the Vendor Agreement or the Builder Agreement heretofore entered into with the Warranty Corporation, the Principal has agreed to perform diligently (or cause to be performed) certain obligations imposed on the Principal under the Act and the Plan, including all obligations imposed under any agreement made by the Principal with the Warranty Corporation;
- F) The Principal has requested the Surety to issue either a Tarion Warranty Corporation Bond (hereinafter referred to as the "**Bond**") and/or Excess Condominium Deposit Insurance Policies (hereinafter collectively referred to as the "**ECDI**");
- G) For the purposes of evidencing and securing the obligations of the Principal to the Surety arising under (or in connection with) the Bond and/or the ECDI, the Principal and one or more indemnitors have entered into (or will hereafter enter into) an agreement pursuant to which they jointly and severally agree to indemnify the Surety (hereinafter referred to as the "**Indemnity Agreement**") from and against any and all losses, claims, expenses and/or liabilities which the Surety may incur or sustain in respect of the Bond and/or the ECDI;
- H) The Principal covenants and agrees that all monies heretofore or hereafter payable or owing on account of an agreement of purchase and sale of a proposed unit in the Project shall be made payable to the Escrow Agent, and shall correspondingly be delivered by or on behalf of the Principal to the Escrow Agent forthwith following the expiry of the applicable rescission period contemplated under section 73 of the Condominium Act 1998, S.O. 1998, as amended, and all such monies (together with all interest earned or accrued thereon) shall be held in trust by the Escrow Agent in a separate trust account in Ontario at a bank listed in Schedule I or II to the Bank Act (Canada) R.S.C. 1990, as amended, as may be designated by the Principal with the consent of the Surety (hereinafter referred to as the "**Designated Trust Account**"), in conformity with the provisions of section 80(4) of the Condominium Act 1998, S.O. 1998, as amended, and all such monies (together with all interest earned or accrued thereon) shall continue to be held by the Escrow Agent in trust for the Surety and the Principal in accordance with the terms and provisions of this Agreement;
- I) The Principal covenants and agrees that the Excess Closing Proceeds shall be made payable to the Escrow Agent, if required by the Surety, and all such monies shall be held in the Designated Trust Account in accordance with the terms and conditions of this Agreement; and

- J) The Escrow Agent hereby confirms that it is qualified to act as an escrow agent for Deposits with respect to the Project pursuant to section 20(1) of Ontario Regulation 48/01, for the purpose of complying with subsections 81(1) and (6) of the Condominium Act 1998, S.O. 1998, as amended, and the Escrow Agent has agreed to hold all monies received on account of an agreement of purchase and sale of a proposed unit in the Project entered into between the Principal and each of the respective unit purchasers (together with all interest earned or accrued thereon) as well as any Excess Closing Proceeds that are available in the Designated Trust Account in trust, as a general and continuing collateral security to the Surety for the payment of the present and future indebtedness and liabilities of the Principal to the Surety arising out of (or in connection with) the Indemnity Agreement, the Bond and/or the ECDI.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada now paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Principal hereby confirms the veracity and accuracy of the foregoing recitals, and the parties hereto hereby covenant and agree, to and with each other, as follows:

SECTION I - INTERPRETATION

1.1 Definitions

In addition to those words, terms or phrases specifically defined elsewhere in this Agreement, the words, terms or phrases set out below shall have the meanings respectively ascribed to them as follows, whenever same are used or referred to in the recitals or elsewhere in this Agreement;

- a) "**Act**" means The Ontario New Home Warranties Plan Act R.S.O. 1990, or any amendment thereto or substitution therefore;
- b) "**Agreement**" means this agreement and any other agreement(s) which supplement(s), amend(s) or confirm(s) this agreement;
- c) "**Builder Agreement**" means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **builder**, as such term is defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated there under, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal;
- d) "**Certificate of Completion and Possession**" has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- e) "**Deposit**" or "**Deposits**" shall respectively have the meaning ascribed to the term "**Deposit**" in Part I (1) of Regulation 892 to the Act;
- f) "**Deposit Receipt**" means a deposit receipt executed by the Warranty Corporation in accordance with Section 22 of Ontario Regulation 48/01 to the Condominium Act 1998, S.O. 1998, or any amendment thereto or substitution therefore;
- g) "**Excess Closing Proceeds**" means all monies which are received from Purchasers on the final closing of the unit sales and any accrued interest earned thereon and which remain after the mortgagees with security interest in priority to the Surety's are paid off, and which monies shall be in an amount in aggregate as designated by the Surety as required to cover all present and future indebtedness and liabilities of the Principal to the Surety arising out of (or in connection with) the Indemnity Agreement, the Bond and/or the ECDI.
- h) "**Excess Condominium Deposit Insurance Policy** or "**ECDI**" means the policy of insurance referred to or contemplated in Section 20(2)[1] and Section 21 of Ontario Regulation 48/01 to the Condominium Act 1998, S.O. 1998, or any amendment thereto or substitution therefore, which insures all deposit monies paid under an agreement of purchase and sale with respect to the acquisition of one or more units in the Project in excess of \$20,000.00 (or in excess of any other amount which may hereafter be covered by the Warranty Corporation under a Deposit Receipt);
- i) "**hereof**", "**hereto**", "**hereunder**" and similar terms mean and refer to this Agreement as a whole, and not to any particular section or subsection;
- j) "**Plan**" means the Ontario New Home Warranties Plan;
- k) "**Purchase Agreement**" has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- l) "**Purchaser**" has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- m) "**Section**" or "**Subsection**" followed by a number, means and refers to the specified section or subsection hereof;
- n) "**Unit**" has the meaning ascribed to it in Section 1(1) of the Condominium Act 1998, S.O. 1998, or any amendment thereto or substitution therefore;
- o) "**Vendor Agreement**" means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **vendor**, as such term is defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated there under, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal;
- p) "**Vendor/Builder Agreement**" means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **vendor** and/or a **builder**, as such terms are respectively defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated there under, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal; and

q) "**Warranty Corporation**" means Tarion Warranty Corporation.

1.2 **Plural Etc.**

In this Agreement, the singular includes the plural, and vice versa.

1.3 **Headings**

Headings of sections or subsections are provided for convenience of reference only, and do not define, limit or enlarge the construction or interpretation hereof.

1.4 **Currency**

All references to monetary amounts are references to Canadian Dollars.

1.5 **Schedules**

Schedule "A" annexed hereto forms an integral part of this Agreement.

1.6 **Recitals**

The Principal hereby covenants and agrees that the Recitals are true and correct and shall be incorporated into this Agreement.

SECTION 2 - REPRESENTATION AND WARRANTIES

2.1 **Representations of the Principal**

The Principal hereby represents and warrants to the Surety that, as of the date hereof;

- a) it is a registered builder and/or vendor under the Act, or has applied to become a registered builder and/or vendor under the Act;
- b) Schedule "A" contains a full and complete record of all the names of all of the Purchasers of Units in the Project, the Units purchased, the dates of all Purchase Agreements, the amount of all Deposits received by the Principal from such Purchasers with respect to such Units in accordance with their respective Purchase Agreements, and the purchase price with respect to each of such Units;
- c) the Principal has received value from the Surety;
- d) no other creditor of the Principal has any security interest or other claim in or to the Deposits or Excess Closing Proceeds (except in the case of Excess Closing Proceeds, a creditor approved by the Surety) ranking prior to or *pari passu* with the security interests granted to the Surety pursuant to this Agreement, and the Principal will obtain and deliver to the Surety from time to time, upon request of the Surety, acknowledgments or postponements, in form and substance satisfactory to the Surety, from creditors of the Principal evidencing that any security interest or other claims of such creditors do not attach or pertain to the Deposits or Excess Closing Proceeds, or rank behind the security interests of the Surety in and to the Deposits or Excess Closing Proceeds; and
- e) the Principal has (or will have) prior to delivery of any amounts in respect thereof to the Escrow Agent, rights in and to the Deposits and Excess Closing Proceeds.

2.2 **Survival of Warranties**

The representations and warranties contained in Section 2.1 hereof shall survive and continue in full force and effect for the benefit of the Surety, for so long as the Surety has any outstanding obligation or liability (whether vested, contingent or otherwise) to the Warranty Corporation arising under the Bond and/or the ECDI.

SECTION 3 - THE DESIGNATED TRUST ACCOUNT

3.1 **Reports Etc.**

The Principal hereby covenants and agrees with the Surety that:

- a) as soon as the Principal has received any funds representing a Deposit in respect of any Purchase Agreement, and the corresponding statutory 10-day rescission period with respect thereto (and arising pursuant to Section 73 of the Condominium Act 1998, S.O. 1998, as amended) has expired without the Principal or its solicitor having received any notice of rescission in connection therewith, the Principal shall forthwith deliver such funds to the Escrow Agent for immediate deposit into the Designated Trust Account and to thereafter be held in accordance with the terms of this Agreement;

It is hereby understood and agreed that any default in respect of the foregoing obligation shall constitute a breach or an event of default under the security documentation and instruments now or hereafter executed by the Principal to and in favour of the Surety (which security documentation and instruments are hereinafter collectively referred to as the "**Collateral Security Instruments**").

- b) upon the Surety's request, and in any event every month commencing from and after the effective date of this Agreement, and continuing throughout the duration of this Agreement, the Principal shall provide to the Surety an up-to-date report confirming the amount of all Deposits received by the Principal since the previous monthly report, including all Deposits remitted to the Escrow Agent for deposit in the Designated Trust Account, and which up-dated monthly report shall contain all of the details specified in Subsection 2.1(b) hereof;
- c) the Principal shall provide to the Surety copies of all Deposit Receipts issued with respect to the Project under the Act, forthwith after receipt by the Principal thereof; and
- d) The Principal shall direct all Excess Closing Proceeds to be payable to the Escrow Agent for deposit

into the Designated Trust Account, if required by the Surety, and to thereafter be held in accordance with the terms of this Agreement. It is hereby understood and agreed that any default in respect of the foregoing obligations shall constitute a breach or an event of default under the Collateral Security Documents.

The Escrow Agent hereby covenants and agrees with the Surety that:

- e) as soon as the Escrow Agent has received any funds representing a Deposit delivered to it by or on behalf of the Principal in accordance with Section 3.1(a) hereof, the Escrow Agent shall forthwith deposit and retain such funds in the Designated Trust Account at Laurentian Bank of Canada (having account number 08421-090220-501), and within 10 days of depositing any such monies in the Designated Trust Account the Escrow Agent shall, on behalf of the Principal and in accordance with the provisions of subsection 81(6) of the Condominium Act 1998, S.O. 1998, as amended, provide to the person or persons who paid such monies written evidence of compliance with subsections 81(1) and (4) of the Condominium Act 1998, S.O. 1998, as amended, by completing and delivering to each of them within said time frame a Form 4, as prescribed by Section 39 of Ontario Regulation 49/01 to the Condominium Act 1998, S.O. 1998, as amended.

The Surety hereby consents to the Escrow Agent placing the funds referred to in Section 3.1(e) hereof in a term deposit or guaranteed investment certificate, if so instructed by the Principal, provided that such placement of funds does not contravene the overriding requirement of Section 81(4) of the Condominium Act 1998, S.O. 1998, as amended [in terms of such monies still constituting trust monies held in a separate trust account at a bank listed in Schedule I or II of The Bank Act (Canada)]. The Principal shall be solely responsible for any shortfall in interest required to be repaid to any of the Purchasers, in the event that the Project is cancelled and the Deposits, together with all interest accrued thereon as prescribed by the Condominium Act 1998, S.O. 1998, as amended, are to be refunded to any of the Purchasers.

3.2 Trust

The Escrow Agent hereby agrees with the Surety to retain and hold all amounts now or at any time hereafter deposited in the Designated Trust Account (currently amounting to \$5,110,578.19), on the express understanding that the Designated Trust Account shall be opened and maintained in the name of the Escrow Agent, and whose signing authority for authorizing withdrawals therefrom resides exclusively with the Escrow Agent (and specifically two or more solicitors who are employees, associates or partners of the law firm comprising the Escrow Agent). It is also agreed that the Escrow Agent shall only be required to retain and hold the Deposits received by it, together with all interest earned or accrued thereon, less those funds released in accordance with the provisions of Section 4 hereof.

3.3 Security Interest

The Principal hereby grants to the Surety a security interest in its ownership of (or beneficial interest in) all Deposits received, together with all interest earned or accrued thereon, plus any Excess Closing Proceeds less any funds released in accordance with the provisions of Section 4 hereof, which security interest shall be and constitute a general and continuing security for the payment and/or performance of all present and future indebtedness, liabilities and/or obligations of the Principal to the Surety incurred or arising under or pursuant to the indemnity Agreement, the Bond, the ECDI and/or this Agreement.

The Principal hereby covenants and agrees that it shall not create or grant any security interest in the Deposits or Excess Closing Proceeds to or in favour of any third party or parties which would purport to claim priority over (or rank *pari passu* with) the Surety's security interests in and to the Deposits or Excess Closing Proceeds, and hereby expressly acknowledges and agrees that a breach of this covenant shall constitute a breach or an event of default under the Collateral Security Instruments. In respect of Excess Closing Proceeds, this shall not apply to any third party approved by the Surety.

The Principal and the Escrow Agent agree with the Surety that:

- a) if: (i) the Principal is in breach of any of its obligations contained in the Indemnity Agreement, the Bond, any of the Collateral Security Instruments, the ECDI and/or this Agreement; or
- (ii) A. the interest of the Principal in the Project shall at any time be seized or taken in execution by any creditor of the Principal, and such continues for a period of 10 days; or
- B. if an act of bankruptcy [as defined in the Bankruptcy and Insolvency Act (Canada), as amended or replaced from time to time] shall occur in respect of the Principal, or if the Principal shall become bankrupt or insolvent (in each case as defined in the Bankruptcy and Insolvency Act (Canada) as amended or replaced from time to time); or
- C. if the Principal shall make a general assignment for the benefit of its creditors, or shall liquidate or pass a resolution to liquidate or wind-up its business; or
- D. if a receiver or a receiver/manager in respect of the Principal (or with respect to any substantial part of the Principal's property and assets) is appointed, either with or without the consent or acquiescence of the Principal, and any such appointment shall remain unvacated and unstayed for a period of 30 days thereafter; or
- E. if any power of sale, foreclosure or judicial sale proceedings are commenced or initiated by any outstanding mortgagee or other encumbrancer (or by any receiver or manager on behalf of any outstanding mortgagee or other encumbrancer) in respect of the lands (or any portion thereof) upon which the Project is being developed (irrespective of whether such mortgagee or encumbrancer has a registered charge or other encumbrance in priority to, or subordinate to, the charge or other security interests of the Surety thereto), including without limitation, the issuance of any notice of sale under any such outstanding mortgage or other encumbrance affecting such lands or any portion thereof; or

- F. if any construction lien (or any other claim for lien) is now or hereafter registered against the lands (or any portion thereof) upon which the Project is being developed, and such lien (together with any corresponding certificate of action, if applicable) has not been formally discharged or vacated from the title to such lands by a court order or a discharge/release from the lien claimant; or
- G. if any instrument evidencing any claim, interest, restriction, covenant, deficiency notice, stop work order, notice of violation, judicial decree or court order, or any other encumbrance is now or hereafter registered against the lands (or any portion thereof) upon which the Project is being developed, and such instrument prohibits or restricts (or may likely prohibit or restrict) the development and/or completion of the Project on said lands, or the sale and final closing of the unit sale transactions in respect of the Project, in whole or in part;

then, in any of the foregoing circumstances or events, the security interest granted by the Principal to the Surety pursuant to this Agreement shall, at the sole option or discretion of the Surety (which shall not be challenged or questioned under any circumstances whatsoever), become immediately enforceable in accordance with the terms and provisions of this Agreement and the provisions of The Personal Property Security Act R.S.O. 1990, as amended;

- (b) in the event the security interest granted by the Principal to the Surety pursuant to this Agreement has become enforceable, all Deposits received, together with all interest earned or accrued thereon and Excess Closing Proceeds less any funds previously released in accordance with the provisions of Section 4 hereof (or any part thereof from time to time), shall be released in accordance with Section 4, as and when the Surety thinks fit, and without notice to the Principal, without prejudice to the Surety's rights, powers and/or claims against the Principal for any deficiency;
- (c) the Principal shall not be entitled to withdraw any funds from the Designated Trust Account, by cheque or otherwise;
- (d) the Escrow Agent shall not pay or withdraw any funds from the Designated Trust Account without the prior written consent of the Surety;
- (e) the security created by this Agreement is in addition to, and without prejudice to, any other security now or hereafter held by the Surety; and
- (f) the Escrow Agent shall hold the funds in the Designated Trust Account on behalf of the Surety, for the purpose of perfecting the security interest granted to the Surety in respect of the Deposits, and Excess Closing Proceeds, and not as agent of or for the Principal.

3.4 **Signing Authority**

The Escrow Agent shall have the sole signing authority for withdrawals or cheques drawn on the Designated Trust Account.

3.5 **Condominium Act**

No transfer or withdrawal of funds representing any Deposit(s) shall be made (or be directed to be made by the Surety or the Principal) which would render the Escrow Agent liable to any of the Purchasers for a breach of Section 81 of the Condominium Act 1998, S.O. 1998, or any amendment thereto or substitution therefore.

SECTION 4 - RELEASE OF FUNDS

4.1 **Deposits Refunded to Purchaser(s) When Purchase Agreement(s) Rescinded or Terminated**

Upon request by the Principal made to the Surety in writing, stating that a Purchaser is entitled to a full or partial refund of his or her Deposit(s), and the production of such evidence as the Surety may reasonably require to confirm same, the Surety hereby agrees to promptly deliver a written direction to the Escrow Agent instructing the latter to issue a cheque drawn on the Designated Trust Account payable to the named Purchaser in the amount of such refund, together with all prescribed interest earned or accrued thereon. It will be a condition precedent to the delivery of such cheque to the Purchaser that the Purchaser sign a release in favour of the Principal, the Surety, the Warranty Corporation and the Escrow Agent, in a form approved by the Surety, unless the Purchaser's entitlement to the return of his or her Deposits is predicated on the exercise of the Purchaser's rescission rights pursuant to Section 73 of the Condominium Act 1998, S.O. 1998, as amended, in which case no formal release will be required but the Principal shall nevertheless be obliged to confirm in writing to the Surety and the Escrow Agent that such rescission rights have been duly exercised by the Purchaser.

In the event that a purchase and sale transaction has been terminated under circumstances entitling the Principal to retain the Deposit as its liquidated damages, then the Deposit shall nevertheless remain in the Designated Trust Account until such time as:

- (a) The Warranty Corporation has released the Bond for cancellation; or
- (b) The Principal has provided the Surety with a release evidencing or confirming such termination and the corresponding forfeiture of the Purchaser's Deposit(s) to and in favour of the Principal, duly executed by the Purchaser in favour of the Principal, the Surety, the Warranty Corporation and the Escrow Agent, in a form approved by the Surety.

Without limiting the generality of the foregoing, it is understood and agreed by the parties hereto that all deposit monies held in the designated trust account which comprise deposits that have been forfeited to the Principal as its liquidated damages (and not as a penalty) following the Principal's termination of the unit sale transaction in which said deposits were paid, as a consequence of the purchaser's outstanding default, and which forfeited deposits are not the subject of (nor covered by) an executed mutual release & termination agreement between the Principal and the defaulting unit purchaser, shall remain in the designated trust account until two years after the earlier of the registration of the condominium or the

termination or abandonment of the development and/or construction of the project, and the Principal's refund of all deposit monies theretofore paid to each of the respective unit purchasers in good standing.

4.2 **Payment to the Warranty Corporation, any Purchaser(s) or the Surety for Claims and/or Costs**

If at any time the Warranty Corporation calls upon the Surety to make a payment under (or in connection with) the Bond, then the Surety shall thereupon be entitled, without notice to (and without the consent of) the Principal, to deliver a written direction to the Escrow Agent instructing the latter to issue one or more cheques drawn on the Designated Trust Account payable directly to the Warranty Corporation in the amount so demanded by it. If at any time a Purchaser makes a claim for payment under (or in connection with) any excess condominium deposit insurance policy issued by the Surety on behalf of the Principal, then the Surety shall thereupon be entitled, without notice to (and without the consent of) the Principal, to deliver a written direction to the Escrow Agent instructing the latter to issue one or more cheques drawn on the Designated Trust Account payable to such Purchaser, in such amounts as may be directed by the Surety (but in no event exceeding the maximum insured amount under said policy). In addition, in the event that the Surety has already made a payment directly to the Warranty Corporation or to any such Purchaser (as the case may be), out of its own funds or resources, or in the event that the Surety has a claim against the Principal for unpaid premiums, legal fees, disbursements and/or any other outstanding expenses or charges incurred by the Surety in respect of the Bond, the ECDI, the Indemnity Agreement, any of the Collateral Security Instruments and/or this Agreement, then in each of such cases the Surety may likewise deliver a written direction to the Escrow Agent, without notice to (and without the consent of) the Principal, instructing the Escrow Agent to issue a cheque drawn on the Designated Trust Account payable to the Surety, in an amount sufficient to reimburse the Surety for all such payments, claims and/or expenses.

4.3 **Deposits Released Into the Project**

If the Principal and the Surety have heretofore agreed (or hereafter agree) that a portion of the Deposits, in respect of which the Surety has a security interest, may be released and withdrawn from the Designated Trust Account to assist the Principal in either funding approved project costs or repaying any outstanding indebtedness (in whole or in part) to any prior mortgagee(s) or encumbrancer(s) in respect of the Project, then provided the Principal is not in default of its obligations hereunder (nor with respect to any obligations of the Principal set out in the Indemnity Agreement or any of the Collateral Security Instruments), the Surety will issue an authorization to the Escrow Agent to release the said funds to the Principal (or to such other party or parties as may be directed in writing by the Principal) at such times and in such amounts as so agreed to by the Surety and the Principal. The Principal shall also be required to consent in writing to any such release of Deposits.

4.4 **Collapsing the Designated Trust Account**

If at any time the Surety ceases to be liable under the Bond and/or the ECDI in accordance with the terms of the Bond and/or the ECDI, then the Surety shall thereupon deliver a written direction to the Escrow Agent instructing the latter to issue:

- a) a cheque drawn on the Designated Trust Account made payable to the Surety, in an amount equivalent to the aggregate of all remaining or outstanding financial obligations of the Principal to the Surety, including without limitation, the amount of any unpaid fees or premiums payable to the Surety, and the Surety's out of pocket expenses incurred in obtaining and/or enforcing any security held by the Surety under (or in connection with) the Bond, the ECDI, the Indemnity Agreement, any of the Collateral Security Instruments and/or this Agreement; and
- b) a cheque drawn on the Designated Trust Account made payable to the Principal (or to whomsoever and in whatsoever manner the Principal may in writing further direct), in the amount of all funds remaining in the Designated Trust Account.

4.5 **Compliance with Directions**

The Escrow Agent shall promptly comply with all written directions given by the Surety pursuant to the foregoing provisions of this Section 4.

SECTION 5 - GENERAL

5.1 **Further Assurances**

Each of the Principal, the Escrow Agent and the Surety shall, forthwith upon the request of any party or parties hereto made from time to time, do, make and execute all such further documents, acts, matters and/or things as may be required in order to give effect to this Agreement and the transactions referred to herein.

5.2 **Escrow Agent's Liability**

In consideration of the Escrow Agent acting as the escrow agent hereunder and payment of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, each of the other parties hereto agrees to hold the Escrow Agent free, harmless and fully indemnified from and against all claims which may be made against the Escrow Agent arising out of (or in connection with) the performance of the duties of the Escrow Agent set out in this Agreement, including without limitation, all expenses incurred by the Escrow Agent in complying with the terms and provisions of this Agreement, provided that the Escrow Agent has acted honestly, in good faith and not negligently in the performance and fulfillment of such duties, and is not in breach of any terms or provisions of this Agreement.

5.3 **Notices**

Any notice or other communication required or desired to be given hereunder (a "notice") shall be in writing and may be effectively given by delivering same by courier or personally at the addresses hereinafter set forth, or by sending the same by prepaid registered mail to the parties at such addresses, or by telefax transmission. Any notice so mailed shall be deemed to have been received on the third banking day next following the date of mailing/posting thereof, provided the postal service is in operation during such time, or on the next business day following the date of such personal delivery (or delivery by courier) or telefax

transmission. During any interruption of postal service, all notices shall be delivered personally or by courier, or by telefax transmission. The addresses of the parties for the purposes hereof shall respectively be:

- (i) in the case of notice to the Principal
144 PARK LTD.
100-8791 Woodbine Avenue
Toronto, ON L3R 0P4
Attention: Greg Puklicz
Fax Number: 905-944-0916
- (ii) in the case of notice to the Surety:
AVIVA INSURANCE COMPANY OF CANADA
2200 Eglinton Avenue East
Scarborough, ON M1L 4S8
Attention: Brian Argue
Fax Number: 416-229-5429
- (iii) in the case of notice to the Escrow Agent:
HARRIS SHEAFFER LLP
Barristers & Solicitors
610-4100 Yonge Street
Toronto, ON M2P 2B5
Attention: Gary Harris
Fax Number: 416-250-5300

Any party hereto may from time to time notify each of the other parties hereto, in accordance with the foregoing provision hereof, of any change of address or fax number which thereafter, until changed by like notice, shall be the address or fax number (as the case may be) of such party, for all purposes of this Agreement.

5.4 **Binding on Successors and Permitted Assigns**

This Agreement shall be binding upon, and correspondingly enure to the benefit of, each of the parties hereto and their respective successors and assigns, provided however that neither the Principal nor the Escrow Agent shall be entitled to assign their respective rights and/or obligations under this Agreement to any party or parties without the express written consent of the Surety, and which consent may be denied or withheld arbitrarily and for any reason whatsoever.

5.5 **Governing Law**

This Agreement, the transactions referred to herein, and all other documents delivered hereunder shall be construed and interpreted in accordance with (and shall be correspondingly governed by) the laws of the Province of Ontario, and each of the parties hereto shall attorn to the jurisdiction of the Superior Court of Justice for the Province of Ontario.

5.6 **Time**

Time shall be the essence of this Agreement, and with respect to the performance and fulfillment of all obligations provided or contemplated herein.

5.7 **Not Partners**

Nothing contained herein shall be construed so as to make the Surety, the Escrow Agent and the Principal partners of one another.

5.8 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and, except as herein stated and in the documents to be executed and delivered pursuant hereto, this Agreement contains all of the representation, undertakings and agreements of the respective parties hereto.

There are no verbal representations, undertakings or agreements of any kind between or amongst the parties hereto with respect to the subject matter hereof, except as stated herein. This Agreement may not be modified or amended except with the written consent of all parties hereto.

5.9 **Receipt of Copy**

Each of the Principal and the Escrow Agent acknowledges receipt of an executed copy of this Agreement.

6.0 **Electronic Execution of the Agreement**

It is expressly acknowledged and agreed that the execution of this Agreement may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.

Each of the parties hereto further acknowledges and agrees that this Agreement may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the undersigned parties shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of this executed Agreement may be relied upon by all of the undersigned parties to the same extent as if it were an original executed version addressed specifically to each of them.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement and it becomes effective as of the day and year first above written.

144 PARK LTD.

Per: _____
Name: Charles Mady
Title: President

I have authority to bind the Corporation

AVIVA INSURANCE COMPANY OF CANADA

Per: _____
Name: Brian Argue
Title: Senior Developer Surety Specialist

I have authority to bind the Corporation

HARRIS SHEAFFER LLP

Per: _____
Name: GARY H. HARRIS
Title:

I have authority to bind the firm acting as Escrow Agent

NAME OF PARTNER IN (OR PRINCIPAL SOLICITOR OF) ESCROW AGENT
(INCLUDING FIRST NAME, INITIAL AND LAST NAME)

NAME: GARY H. HARRIS

ADDRESS: 22 Bamboo Grove, Don Mills, ON M3B 2C5

APPENDIX C



INDEMNITY AGREEMENT

BY:

144 Park Ltd.

(hereinafter called the "Principal")

AND BY:

2173170 Ontario Inc.

David Mady Investments (2008) Inc.

D. Mady Holdings Inc.

Mady Development Corporation

Mega GC Holdings Company Limited

D. Mady Investments Inc.

David Mady

Charles Mady

(each of whom is hereinafter called an "Indemnitor")

IN FAVOUR OF:

Aviva Insurance Company of Canada

(hereinafter called the "Surety")

IN CONSIDERATION OF THE ARRANGEMENT AND ISSUE BY THE SURETY OF BONDS AND/OR POLICIES AS DEFINED HEREUNDER AND IN ACCORDANCE WITH AN AGREED UPON SURETY FACILITY, THE UNDERSIGNED COVENANT AND AGREE AS FOLLOWS:

1. *Date and place of execution of the present agreement* - The present agreement, for all legal intents and purposes, is deemed to have been executed the 18th day of July, 2011, in the Province of Ontario.
2. *The "Principal"* - All references herein to the "Principal" mean one or the other or each of the parties designated hereinabove as the "Principal".
3. *The "Indemnitors"* - For purposes of the present agreement, "Indemnitors" means:
 - a) all the parties designated as the "Principal" and, should the case arise, and
 - b) the other signatories of the present agreement.
4. *Purpose of the present agreement and definition of "Bonds and/or Policies"* - The purpose of the present agreement is:
 - a) to set forth the rights of the Surety and other beneficiaries,
 - b) to set forth the rights and obligations of the Indemnitors, and
 - c) flowing from the execution of one or several bonds and/or policies to guarantee the obligations of any Principal or other forms of guarantee or obligation or one or several policies of insurance (herein called the "Bonds and/or Policies"); the word "Bonds and/or Policies" includes any alteration, renewal, continuance, replacement or extension of such bonds or policies of insurance.
5. *Bonded Obligations* - For purposes of the present agreement, any reference to "Bonded Obligations" means obligations or undertakings in respect of which one or more Bonds and/or Policies have been issued.

6. *Indemnitors' interest in the Principal* - The Indemnitors acknowledge that the present agreement will remain in full

force and effect and continue to bind them even if they never had (or no longer have) any interest in the Principal or each of them.

7. *Consideration for the present agreement* - The Indemnitors acknowledge that the Surety requires their signatures to the present agreement in consideration:
- a) of the issue of Bonds and/or Policies, whether past, present and future, by the Surety or by others referred to in paragraph 8 herein, directly or indirectly,
 - b) of the Surety refraining from cancelling such Bonds and/or Policies, and
 - c) (outside the Province of Quebec), of the sum of Two Dollars and other good and valuable consideration paid and furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged).
8. *Additional beneficiaries of the present agreement* - All of the terms and conditions of the present agreement are for the benefit of:
- a) any successors or assigns of the Surety, including as a result of mergers, acquisitions of portfolios, or otherwise, and
 - b) any surety, joint or several, any re-insurance company and any other surety procured by the Surety upon the request of the Principal to issue Bonds and/or Policies, whether or not such Bonds and/or Policies are issued by the Surety or whether or not the Surety retains any interest in any such Bonds and/or Policies.
9. *Parties bound by the present agreement* - Each of the Indemnitors acknowledges that it is bound by all of the terms and conditions of the present agreement, as are its representatives, successors and assigns.
10. *Joint and several obligation of the Indemnitors* - The Indemnitors agree that they bind themselves jointly and severally with respect to all of the obligations assumed hereunder; this means that each of the Indemnitors may be compelled separately to perform all of the Indemnitors' obligations hereunder.
11. *Waiver of the benefit of division* - The Indemnitors specifically waive the benefit of division, which would, in the absence of the present waiver, permit any one Indemnitor to require the Surety to divide its claim proportionately amongst all the Indemnitors.
12. *Waiver of the benefit of discussion* - The Indemnitors specifically waive the benefit of discussion, which would, in the absence of the present waiver, permit the Indemnitors to require the Surety to exhaust its recourses against the Principal, before calling upon the Indemnitors under the present agreement.
13. *Obligations in respect of Bonds and/or Policies, Bonded Obligations and the present agreement* - The Principal agrees to fulfill and the Indemnitors, other than the Principal, agree to cause the Principal to fulfill all of the Principal's obligations under:
- a) Bonds and/or Policies, and
 - b) Bonded Obligations.
- The Indemnitors undertake to do nothing which could give rise to a claim or a default under the terms of the present agreement, of any Bond and/or Policy or of any Bonded Obligation.
14. *Indemnification of the Surety* - The Indemnitors undertake to indemnify the Surety in full for any loss or damages that it may suffer arising from the issue of one or several Bonds and/or Policies, or arising from a decision of the Surety not to issue any Bond and/or Policies, or arising from any default by the Indemnitors under the present agreement. The present undertaking includes, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which it might be called upon to pay:
- a) as a result of a judgment, arbitration award or settlement;
 - b) as damages of any nature, including punitive and exemplary damages, as the case may be;
 - c) in respect of any claim, liability or loss;
 - d) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters and consultants;

- e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale and legal fees of claimants' counsel;
 - f) as administration costs related to claims under Bonds and/or Policies and under this agreement.
15. *Obligation to pay the premium* - The Indemnitors undertake to pay to the Surety:
- a) the initial premium for the issue of any Bond and/or Policy, in conformity with the Surety's tariff in force, or such other tariff as may be agreed upon with the Principal; and
 - b) thereafter, any additional or other premium, in conformity with the Surety's tariff in force or such other tariff as may be agreed upon with the Principal until such time as the Surety receives proof to its satisfaction, confirming its complete release from all Bonds and/or Policies issued by it, and from the renewal or extension of such Bonds and/or Policies.
16. *Reduction of obligations* - The Indemnitors' obligations hereunder, may be reduced to zero from time to time without affecting the validity, perfection or enforceability of this Indemnity Agreement for subsequent obligations until this Indemnity Agreement is terminated in accordance with the terms hereof.
17. *Subordination of Indemnitors* - None of the Indemnitors shall enforce any rights of contribution or indemnity against any Principal or its property and undertakings until such Principal's obligations to the Surety under this agreement have been satisfied in full.
18. *Indemnitors' obligation to advance funds required by the Surety to meet its obligations* - In order to permit the Surety to meet its obligations under the Bonds and/or Policies, the Indemnitors undertake to advance to the Surety upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds, which could be subject to indemnification under the terms of the present agreement, even before any payment has been made by the Surety to a third party. Without limiting the generality of the foregoing, the Indemnitors undertake to advance funds or furnish guarantees, as soon as the Surety establishes or increases a reserve with respect to a claim or a situation relating to any Bonds and/or Policies, up to the amount of such reserve which will be established by the Surety in its sole discretion.
19. *Advance and payment to the Surety when the Principal requires the Surety to take part in an action or a defence* - The Indemnitors undertake to advance and pay to the Surety funds sufficient to satisfy any judgment or arbitration award which could be rendered against the Surety, as well as disbursements or costs incurred by the Surety or awarded against it, including judicial or extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale, when the Principal requires the Surety to take part in any legal action or in the defense of any legal proceedings. The Indemnitors undertake to make further advances and payments when required by the Surety.
20. *Investment and use of advances to the Surety* - The Surety may hold any advance made by any Indemnitor, in such form as the Surety may in its sole discretion decide, and shall have no obligation to invest, or provide any income or return on any such advance. The Surety may use all or any part of such advance and any income earned thereon, in payment or compromise of any of the Indemnitors' obligations hereunder.
21. *Decision as to the payment of claims* - The Indemnitors acknowledge that the Surety will have the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a Bond, without any obligation to consult or advise the Indemnitors in advance of so doing.
22. *Proof of payments made by the Surety* - The Indemnitors acknowledge their obligation to indemnify the Surety in virtue of the present agreement, upon presentation by the latter of a release or a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and of the Surety's right to make such payment as a result of the issue of the Bonds and, consequently, its right to demand reimbursement from the indemnitors under the terms of the present agreement.
23. *Surety's right of access to the books and records of the Indemnitors* - The Indemnitors hereby grant to the Surety full right of access to, examination of and making of copies of, during normal business hours, their books, records, files, computer records and accounts, for such period as any rights and obligations under Bonds remain in effect or so long as the Indemnitors are potentially or actually indebted to the Surety for any sum or sums whatsoever.
24. *Undertaking to furnish certain information* - The Indemnitors undertake to furnish to the Surety, on demand, all information or pertinent documentation required by the Surety relevant to:
- a) the Indemnitors' financial position;
 - b) any modification to the corporate or partnership structure of any of the Indemnitors, particularly any change of name, merger, amalgamation, etc.
25. *Undertaking to deliver certain documents to the Surety* - So long as the Surety has any potential liability under any Bond, the Indemnitors undertake, without delay, to deliver to the Surety copies of the following documents:
- a) the annual or interim financial statements of each Indemnitor;
 - b) any petition for a receiving order, petition in bankruptcy or proceeding for arrangement with its creditors made against or by an Indemnitor;
 - c) any proposal by an Indemnitor to its creditors; and

- d) any notice of default or action involving an Indemnitor, which could result in a claim under a Bond and/or Policy and every letter, document advice, statement of claim or writ received by an Indemnitor on behalf of any person who asserts or threatens any claim against a Bond, Policy or an Indemnitor.
26. *Co-operation and discharge* - The Indemnitors undertake to cooperate with the Surety in any way which may assist the Surety in limiting, reducing or discharging its obligations under any Bond and/or Policy in accordance with its terms and particularly in respect of any proceeding taken against the Surety, without any obligation on the Surety's part to indemnify them. The present undertaking includes that of being present at any examination or trial relating to any Bond and/or Policy or to any right granted to the Surety under the present agreement. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond and/or Policy.
27. *Information concerning the Indemnitors* - The Indemnitors specifically authorize the Surety to obtain any credit or any other information, including, without limitation, personal information concerning any or all Indemnitors which it desires and which is pertinent to the conclusion or the execution of the present agreement and to the issue of any Bond and/or Policy, and any person, credit bureau, bank, financial institution, obligee and accountant possessing any such information is, by this agreement, authorized to communicate such information to the Surety, on demand, during the life of the present agreement and, if necessary, thereafter. In so doing, the Indemnitors expressly acknowledge and agree that they are hereby giving their individual consents to the Surety to obtain, use and distribute such personal information, in compliance with all applicable federal and provincial privacy legislation.
28. *Authorization to the Surety to make changes* - The Surety is hereby authorized to make the following changes, without notice to the Indemnitors:
- a) in the terms of any Bond and/or Policy or Bonded Obligations;
 - b) in the designation of any obligee of a Bond and/or Policy;
 - c) respecting any renewal, continuation, replacement, reinstatement or extension of any Bond and/or Policy;
 - d) correcting errors in and executing any substitute to any Bond and/or Policy with the same or different conditions, provisions, amounts and obligees; and
 - e) for the purpose of completing the present agreement or any Bond and/or Policy or of correcting errors of declaration or description of Bonds and/or Policies or of the present agreement.
29. *Validity of the present agreement notwithstanding the absence of the signatures of one or more Indemnitors or witnesses* - The present agreement will be and will remain in full force, even if one or more of the Indemnitors designated herein, or one or more of the witnesses have not signed the present agreement or their signature has been adjudged invalid.
30. *Failure of the Principal to sign or deliver any Bond and/or Policies* - The Indemnitors are fully responsible under the present agreement even in the event that the Principal has not signed any Bond and/or Policy signed by the Surety or that a Bond and/or Policy has not been delivered to an obligee, without prejudice to the Surety's right to assert that it is not liable under such Bond and/or Policy.
31. *Settlement with one or several Indemnitors* - In the event of a claim by the Surety against the Indemnitors in virtue of the present agreement or in virtue of any other rights of the Surety, the Indemnitors specifically authorize the Surety to settle such claim with one or several of the Indemnitors, without reference to the others and such settlement shall not affect or reduce the obligations of such others. The Indemnitors expressly renounce and waive any rights which they may have to be discharged from their obligations or to have such obligations reduced by reason of the discharge of one or several Indemnitors.
32. *Surety's rights following settlement with one Indemnitor* - The Indemnitors agree that any settlement made by the Surety with one of them will not effect novation of the obligations of the Indemnitor in question (i.e. substituting or extinguishing its obligations) and the present agreement will retain all of its force in the event of a default by such Indemnitor to honour the terms of the settlement and without prejudice to all of the Surety's rights against the other Indemnitors.
33. *Interest rate* - All sums due by the Indemnitors in virtue of the present agreement will bear interest in favour of the Surety, on the thirtieth (30th) day following the demand for payment from the Surety, at the rate of eighteen (18%) percent per annum, with such interest to be calculated monthly not in advance, and any unpaid interest shall be added to the outstanding sums due, and same shall collectively bear interest in the same manner and at the same rate, with interest on overdue interest to be calculated and compounded monthly at the same rate, until such time as the entire sums due are paid in full to the Surety.
34. *Persons authorized to request the execution of Bonds and/or Policies* - Requests to the Surety to execute any Bond and/or Policy may be made by any of the Principal or (where a Principal is not an individual) any officer, employee or partner of any of the Principal, or by an agent or broker which the Surety reasonably believes represents any Principal, or by any Indemnitor. Such requests, whether made in writing (mailed, delivered or telecopied), by telegraph, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond and/or Policy.
35. *Surety's right to refuse to issue a Bond and/or Policy* - The Indemnitors acknowledge that the Surety, in its sole and entire discretion, has the right to refuse to issue, furnish or procure any Bond and/or Policy and the Indemnitors renounce and waive any recourse against the Surety resulting from such refusal.

36. *Notice of issue of Bonds and/or Policies* - The Indemnitors expressly agree that the Surety is not obliged to advise them of the issue of any Bond and/or Policy nor to deliver a copy to the Indemnitors.
37. *Notice of changes in any Bonds and/or Policies or any Bonded Obligations* - The Indemnitors expressly agree that the Surety is not obliged to advise them of any change, addition, substitution or extension made to any Bond and/or Policy or Bonded Obligations; moreover, the Indemnitors renounce any right to raise such changes, additions, substitutions or extensions for the purpose of reducing or eliminating their obligations by virtue of the present agreement.
38. *Termination of the present agreement and its effect upon outstanding Bonds and/or Policies* - The present agreement shall only be terminated by any Indemnitor, upon prior written notice to the Surety by registered mail at its head office, at least thirty days prior to its effective date; however, the said prior notice of termination will not modify, nor exclude, nor discharge the Indemnitors' obligations relating to Bonds and/or Policies issued prior to the effective date of termination or Bonds and/or Policies issued after the effective date of termination by reason of undertakings by the Surety prior to such date; the present agreement will remain in full force and effect as regards the other Indemnitors without any obligation on the part of the Surety to advise such other Indemnitors of such termination.
39. *Effect of the execution of a new indemnity agreement* - The execution of a new indemnity agreement with respect to any Principal, shall not have the effect of terminating the present agreement which shall remain in full force and effect, unless expressly terminated in writing according to the terms hereunder.
40. *Events not affecting the obligations of the Indemnitors* - The Indemnitors acknowledge that the following events are in addition to any other rights of the Surety under the present agreement and shall not in any way release, waive or abridge any right or remedy of the Surety under the present agreement:
- a) the fact that another guarantee has been or will be given to the Surety (particularly any other security or indemnity agreement); or
 - b) the fact that the Surety has consented to any action taken by the Principal; or
 - c) any action, judgment, arbitration award or settlement arising from the present agreement; or
 - d) the fact that the Surety has renounced or waived any recourse against whomsoever or has given to whomsoever a release in virtue of the present agreement or other agreements or in respect of any security.
41. *Surety's additional rights* - The rights of the Surety by virtue of the present agreement are in addition to any rights which the Surety may have by law or otherwise.
42. *Surety's right to intervene* - In the event of: any default of the Principal under any Bond and/or Policy; or any default of the Indemnitors or any of them under the present agreement; or any action by the Indemnitors or any of them which could affect the rights of the Surety under any bond or under the present agreement; or any act of bankruptcy of the Indemnitors or any of them or the insolvency of the Indemnitors or any of them or the making by the Indemnitors or any of them of any arrangement with its creditors; or any default by the Indemnitors or any of them with respect to any of its secured creditors; or any other act, event, circumstance or occurrence which, in the Surety's reasonable discretion, gives rise to any concern as to the enforcement of its right hereunder, the Surety may, without notice of default, intervene in any project for the purpose of assuming its obligations and exercising any of its rights under the Bonds and/or Policies.
43. *Modifications of the terms of the present agreement* - No derogation from the terms of the present agreement, nor any modification of such terms, may be set up against the Surety without the prior written consent of one of its officers.
44. *Applicable law* - The present agreement will be interpreted in accordance with the laws in force in the Province named in Paragraph 1 hereof.
45. *Seal and corporate resolution* - The Indemnitors agree that the absence of any corporate seal or corporate resolution will not invalidate the obligations of any Indemnitor under the present agreement.
46. *Gender and number* - In the present agreement the singular form includes the plural and the plural includes the singular; also the feminine includes the masculine and the masculine includes the feminine.
47. *Headings* - The insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
48. *Language* - The parties hereto have requested that the present agreement be drafted in the English language. Les parties aux présentes ont requis que la présente convention soit rédigée dans la langue anglaise.
49. This agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original, but all of which together shall be constitute one and the same instrument.

THE UNDERSIGNED ACKNOWLEDGE HAVING RECEIVED A COPY OF THE AGREEMENT, CAREFULLY READ IT AND THAT THEY UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THE PRESENT AGREEMENT AND THAT THERE EXIST NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY COULD LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

PERSONAL INDEMNITORS SIGN HEREUNDER.

Witness: DAVID MADY
Name in block letters
[Signature]
Signature of Witness

Address: 8791 Woodbine Ave
Suite 100 Markham
ON L3R 0P4

Witness: DAVID MADY
Name in block letters
[Signature]
Signature of Witness

Address: 8791 Woodbine Ave
Suite 100 Markham ON
L3R 0P4

DAVID MADY
[Signature]
Signature of Personal Indemnitor

Address: 3200 Deziel Dr, Suite 209
Windsor, ON N8W5K8

CHARLES MADY
[Signature]
Signature of Personal Indemnitor

Address: 5 Laureleaf Road
Thornhill, ON L3T 2X2

CORPORATE INDEMNITORS AND / OR PARTNERSHIPS SIGN HEREUNDER. IF THE UNDERSIGNED IS A CORPORATION, EXECUTE IN FULL CORPORATE NAME BY PROPER OFFICER(S) AND ATTACH CORPORATE RESOLUTION(S). IF THE UNDERSIGNED IS A PARTNERSHIP, SET FORTH NAME IN FULL, WITH THE SIGNATURE(S) OF THE PARTNER(S) EXECUTING ON ITS BEHALF SET OUT IMMEDIATELY BELOW. EACH PARTNER SHOULD ALSO SIGN SEPARATELY AS A PERSONAL INDEMNITOR.

Name of Corporation: 2173170 ONTARIO INC.

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

[Signature]
Signature

DAVID MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

[Signature]
Signature

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Name of Corporation: DAVID MADY INVESTMENTS (2008) INC.

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

[Signature]
Signature

DAVID MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

[Signature]
Signature

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Name of Corporation: D. MADY HOLDINGS INC.

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

[Signature]
Signature

DAVID MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

[Signature]
Signature

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Name of Corporation: **MADY DEVELOPMENT CORPORATION**

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

Signature 

DAVID MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

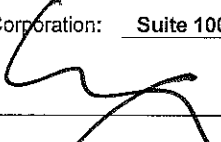
Signature _____

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Name of Corporation: **MEGA GC HOLDINGS COMPANY LIMITED**

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

Signature 

CHARLES MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

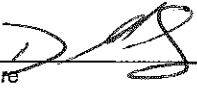
Signature _____

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Name of Corporation: **D. MADY INVESTMENTS INC.**

Address of Corporation: Suite 100, 8791 Woodbine Avenue, Markham, ON L3R 0P4

Signature 

DAVID MADY - PRESIDENT
Name & Title of Authorized Signing Officer (in block letters)

Signature _____

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

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**

FIFTH REPORT OF THE TRUSTEE

October 13, 2015

INTRODUCTION AND PURPOSE OF THE FIFTH 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) (the “**CLA**”) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144**”) and 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”**.

2. The purpose of this Fifth Report of the Trustee (the “**Fifth Report**”) is to:
 - (a) report to the Court on the Trustee’s activities since July 30, 2015, being the date of the Trustee’s Third Report to the Court (the “**Third Report**”), a copy of which (without appendices) is attached hereto and marked as **Appendix “B”**;

 - (b) request that the Court grant an Order (or Orders):
 - (i) approving a sale-leaseback transaction entered into by the Trustee, for and on behalf of 144, and 81 Capital Inc. (“**81 Capital**”) with respect to the heating, ventilation and air conditioning system (“**HVAC System**”) that has been installed at the 144 Park Project (as defined below), authorizing, *nunc pro tunc*, the execution by the Trustee of all documents related to the transaction, and vesting in 81 Capital the right, title and interest of 144 in the HVAC System free and clear of any and all claims and encumbrances;

- (ii) authorizing the Trustee to make distributions to construction lien claimants of holdback amounts in the aggregate amount of \$932,948.74 pursuant to section 78(2) of the *CLA*, with the source of such funds being the net sale proceeds of the Property totaling approximately \$5.4 million currently being held by the Trustee in an interest bearing account pursuant to an order of the Court dated August 5, 2015 (the “**August 5th Order**”);
- (iii) authorizing the Trustee to make an interim distribution of up to \$6 million of the net sale proceeds of the Property (other than funds being held by the Trustee pursuant to the August 5th Order) to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and
- (iv) approving the fees and disbursements of the Trustee, and its insolvency law counsel Chaitons LLP (“**Chaitons**”), as set out in the Fifth Report and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

3. In preparing this Fifth 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 of companies, and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fifth 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.

TRUSTEE'S ACTIVITIES SINCE THE THIRD REPORT

4. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the Third Report:

- (a) attending numerous calls with Chaitons and Harris Sheaffer LLP (“**Harris Sheaffer**”) regarding the Trustee’s motion on parking reallocation and potential termination of agreements of purchase and sale (“**APS**”);
- (b) arranging for the interim distribution of \$14 million to LBC pursuant to the August 5th Order, a copy of which is attached hereto as **Appendix “C”**;
- (c) attending to discussions and emails with First Service Residential of Ontario regarding status certificates to be executed by members of the condominium corporation board of directors;¹
- (d) arranging for a meeting room in Waterloo, Ontario and attending a “town hall” meeting on August 17, 2015 with residents of the Property who had agreed to purchase two parking units with their residential units to discuss parking shortage issues;

¹ Three of the Trustee’s partners and staff agreed to act as board members prior to turnover of the condominium corporation to resident owners on September 28, 2015. As a result of resident owners being elected to the board, the Trustee’s partners and staff have resigned as members of the board effective September 28, 2015.

- (e) reviewing and approving documents related to the condominium corporation turnover meeting, arranging for a meeting room in Waterloo, Ontario, and attending the condominium corporation turnover meeting on September 28, 2015;
- (f) reviewing emails from various residents of the Property regarding potential alternate parking solutions, considering the practicality of implementing the solutions including drafting and releasing correspondence to owners that have closed their sale transactions to determine if they are willing to sell or lease their parking spots and contacting the City of Waterloo regarding the ability to have outdoor parking on Park Street;
- (g) reviewing the books and records of 144 with Harris Sheaffer to ascertain the total deposits and upgrade monies paid by purchasers who agreed to purchase two parking units with their residential unit in the event that termination of their APS is required;
- (h) attending to all matters necessary to close the sale of condominium units, including reviewing final closing statements of adjustments, reviewing and executing Trustee's Certificates, discussing various matters with Harris Sheaffer and calculating net proceeds of sale and harmonized sales tax and property tax reserves;
- (i) doing all things necessary to continue rectifying in-suite and common area deficiencies, including approving quotes for services and materials, discussing specific issues with on-site personnel and facilitating payments, as appropriate, to trades and consultants;

- (j) reviewing, amending and discussing with legal counsel documentation related to listing agreements for unsold units at the Property, discussing changes with Mint Realty and executing amended listing agreements for the unsold units;
- (k) discussing with and providing instructions to Harris Sheaffer regarding termination of the APS for unit 1009, where the purchaser was unable to close the transaction;
- (l) reviewing documentation relating to the HVAC system sale and leaseback with 81 Capital, including discussions with Chaitons and Harris Sheaffer regarding required amendments to documents, sending amended documents to 81 Capital and attending a conference call with 81 Capital and Aviva Insurance Company of Canada (“Aviva”);
- (m) attending to emails and calls with the City of Waterloo regarding completion and installation of public art, including obtaining direction on and completing an application for a building permit to install the public art;
- (n) providing copies of emails and documentation to litigation counsel for Northbridge Insurance in relation to flooding incident in March 2015 and potential recoveries from HVAC installer, heat pump manufacturer and heat pump parts supplier;
- (o) reviewing and discussing with Chaitons the application filed in Kitchener Court by purchaser of units 1407 and 1408 for termination of APSs and return of deposit

and other monies, including transfer of proceeding to the Commercial List in Toronto;

- (p) attending to numerous calls and emails with mortgagees, including LBC, National Bank of Canada and MarshallZehr Group Inc. (“**MarshallZehr**”);
- (q) drafting materials for the Fourth Report to the Court dated September 25, 2015 and reviewing, amending and discussing same with Chaitons;
- (r) reviewing and responding to questions posed by certain purchasers in connection with the Trustee’s Fourth Report;
- (s) drafting materials for this Fifth Report and reviewing, amending and discussing same with Chaitons; and
- (t) doing all things necessary with respect to the Trustee’s mandate under the Appointment Order and the *CLA*.

HVAC AND 81 CAPITAL

5. As has been previously reported to the Court, an HVAC System was installed at the residential condominium tower located on the Property (the “**144 Park Project**”) by Nelco Mechanical Limited.
6. On February 26, 2014, prior to the Trustee’s appointment, 144 and 81 Capital entered into a Builder Agreement, pursuant to which 144 agreed to sell, and 81 Capital agreed to buy, the HVAC System and related property for a purchase price of \$1.6 million. A copy of the Builder Agreement is attached hereto and marked as **Appendix “D”**.

7. In connection with the Builder Agreement, 81 Capital advanced \$1.6 million to 144 and Aviva issued an Advance Payment Bond dated February 26, 2014 in the amount of \$1.6 million with respect to 144's obligations to take steps to complete the sale leaseback transaction following the registration of the condominium.
8. As has been previously reported, the condominium Declaration for the 144 Park Project was registered on May 25, 2015. The sale leaseback transaction and the requirement of 144 to enter into the agreements with respect to the HVAC System is referred to in the Declaration.
9. The lease payments for the HVAC System were contemplated by 144 and incorporated into the budget for the 144 Park Project, which was provided to all purchasers and residents.
10. The Trustee understands that, if the sale leaseback transaction that was agreed to by 144 is not completed, 81 Capital had the ability to seek recourse from Aviva and call on the \$1.6 million bond. The bond is secured by deposits currently being held in trust by Harris Sheaffer. As a result, not completing the sale leaseback transaction with 81 Capital will be to the detriment of all of 144's stakeholders as it will greatly reduce the amount of the deposits currently being held by Harris Sheaffer, which may become available for payment to stakeholders at a later date.
11. The Trustee and 81 Capital executed the following documents with respect to the sale leaseback transaction (collectively, the "**81 Capital Documents**"), which are collectively attached hereto and marked as **Appendix "E"**:

- (a) Bill of Sale made as of September 1, 2015;
 - (b) Confirmation dated September 1, 2015;
 - (c) Lease Agreement made as of September 1, 2015;
 - (d) Condo Assumption Agreement made as of September 1, 2015; and
 - (e) Undertaking made as of September 15, 2015.
12. 81 Capital has requested that a vesting order be obtained in connection with the sale leaseback transaction, to ensure that it acquires the HVAC System free from all claims and encumbrances.
13. The Trustee is of the view that completing the sale leaseback transaction with 81 Capital is for the benefit of all of 144's stakeholders, and is requesting that it be authorized by the Court to execute the 81 Capital Documents and complete the transaction, and that the Court grant an Order vesting the HVAC System in 81 Capital free and clear of all claims and encumbrances.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

14. Attached hereto and marked as **Appendix "F"** is a copy of a statement of receipts and disbursements prepared by the Trustee for the period from January 22 to September 25, 2015 (the "**R&D Statement**").

CONSTRUCTION LIEN CLAIMS PROCESS

15. Construction liens had been registered against the Property in a total amount of approximately \$4.3 million. Attached as **Appendix "G"** is a chart that sets out the

twenty (20) parties (collectively, the “**Construction Lien Claimants**”) that registered twenty one (21) construction liens against the Property, and the total amount of such liens.

16. Pursuant to the Order (re Construction Lien Claims Process) of Mr. Justice Wilton-Siegel dated April 23, 2015, the Trustee is to implement and administer a construction lien claims process (the “**Construction Lien Claims Process**”). A copy of the Order is attached and marked as **Appendix “H”**.
17. The Trustee has received documentation with respect to the construction liens of each of the Construction Lien Claimants.
18. Pursuant to the August 5th Order, the Trustee was authorized and directed to retain \$5.4 million from net sale proceeds of the Property in an interest bearing trust account in respect of construction lien claims pending further order of the Court. This amount represents approximately 125% of the total face value amounts of the registered construction liens.
19. The Trustee and Chaitons have reviewed the claims filed by the Construction Lien Claimants pursuant to the Construction Lien Claims Process. The Trustee has discussed the quantum of each claim with former employees of 144 to confirm whether the amounts claimed by the Construction Lien Claimants were consistent with the amounts set out in 144’s books and records.

20. Based on such review, it has been determined that each of the Construction Lien Claimants entered into a contract directly with 144, and there was no general contractor with respect to the 144 Park Project.
21. The Trustee has been advised by Chaitons that, pursuant to section 22 of the *CLA*, 144 was required to maintain a holdback for each Construction Lien Claimant of ten per cent (10%) of the price of services and materials as they were actually supplied. The Trustee understands that, as of the date of its appointment, there were no funds still being held by 144 with respect to holdback amounts.
22. The Trustee has also been advised by Chaitons that, pursuant to section 78(2) of the *CLA*, a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that 144 was required to retain under the *CLA*.
23. Based on numerous discussions and correspondence between Chaitons and counsel to Construction Lien Claimants, and a review of 144's books and records, the Trustee understands that nine (9) Construction Lien Claimants, details for which are set out in the below chart have properly perfected construction lien claims and have agreed to the quantum of the holdbacks, as determined by the Trustee:

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Global Fire Protection Ltd.	85,645.54
J & I Gaweda Construction Limited	103,632.60
T.I.C. Contracting Ltd.	292,217.30
Global Precast Inc.	115,179.62
2050491 Ontario Inc. o/a The Downsview Group	54,202.46
Weston Flooring Limited	68,639.79
Great Pyramid Aluminum Ltd.	9,410.75
DKS Stone Fabrication & Design Inc.	42,087.16

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Aluminum Window Design Installations Inc.	161,933.52
TOTAL	\$932,948.74

24. The Construction Lien Claimants set out above represent 9 of the 20 Construction Lien Claimants. The Trustee and Chaitons will continue to have discussions with remaining 11 Construction Lien Claimants in an effort to confirm whether such parties have properly perfected construction liens and the amount of holdbacks.
25. The Trustee anticipates being in a position to provide, by the end of October 2015, a recommendation to the Court regarding:
- (a) the holdback amounts to be distributed to the remaining 11 Construction Lien Claimants;
 - (b) the total amount of the claims of the Construction Lien Claimants that have been accepted by the Trustee under the Construction Lien Claims Process; and
 - (c) the priority between the mortgagees and the Construction Lien Claimants with respect to amounts other than holdback amounts.
26. The Trustee will be consulting with counsel on the service list for this proceeding regarding a motion date to be scheduled in November 2015 to deal with these matters.
27. At this time, the Trustee is proposing to distribute to the 9 Construction Lien Claimants identified in the chart set out in paragraph 23 above the holdback amounts set out in the

chart. The Trustee is seeking the authorization of the Court to make such interim distributions.

DISTRIBUTION TO LBC

28. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of approximately \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank by the then three prior registered mortgagees (Allen Street Holdings Inc., Aviva and MarshallZehr), the Bank has the first ranking mortgage against the Property.
29. The Trustee obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first mortgage against the Property.
30. Pursuant to the August 5th Order, the Trustee was authorized to distribute \$14 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$14 million to the Bank.
31. The Trustee has been informed that, as of September 22, 2015, the Bank was owed \$26,418,889 in connection with the credit facilities it extended to 144.
32. As set out in the R&D Statement, the Trustee is proposing to distribute up to \$6 million to the Bank from the net sale proceeds of the Property currently being held by the Trustee (this does not include the \$5.4 million that the Trustee is holding with respect to the construction lien claims, as discussed above).

33. The Trustee is seeking the authorization of the Court to make an interim distribution to LBC up to the amount of \$6.0 million. The Trustee is of the view that the interim distribution is to the benefit of 144's stakeholders, as it reduces the indebtedness of 144 to the Bank which continues to accrue interest, and there is no prejudice to the lien claimants given the \$5.4 million that is being retained by the Trustee pending further Order of the Court.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

34. Pursuant to paragraph 20 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
35. The total fees for Trustee for the period of July 1, 2015 to September 30, 2015 were \$94,191.50, plus disbursements of \$1,256.60, plus HST of \$12,408.26, for a total of \$107,856.36. The time spent by the Trustee is more particularly described in the Affidavit of Bryan Tannenbaum sworn October 13, 2015, which is attached hereto and marked as **Appendix "I"** and contains copies of invoices that set out the services provided during this time period.
36. The total fees of Chaitons, as insolvency counsel to Trustee, for the period of June 26, 2015 to August 31, 2015, were \$71,258, plus disbursements of \$695.18, plus HST of \$9,325.60, for a total of \$81,278.78. The time spent by Chaitons is more particularly described in the Affidavit of Sam Rappos sworn October 13, 2015, which is attached

hereto and marked as **Appendix “J”** and contains, among other things, copies of invoices that set out the services provided during this period of time.

37. The Trustee is of the view that the fees and disbursements charged by Chaitons are fair and reasonable.

TRUSTEE’S REQUEST TO THE COURT

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

- (a) approving the sale-leaseback transaction entered into between the Trustee and 81 Capital with respect to the HVAC System, authorizing, *nunc pro tunc*, the execution by the Trustee of the 81 Capital Documents, and vesting in 81 Capital the right, title and interest of 144 in the HVAC System free and clear of any and all claims and encumbrances;
- (b) authorizing the Trustee to make interim distributions to the lien claimants with respect to holdback amounts as set out above;
- (c) authorizing the Trustee to make an interim distribution of up to \$6 million to LBC; and
- (d) approving the fees and disbursements of the Trustee and Chaitons.

All of which is respectfully submitted to this Court as of this 13th day of October, 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. Lannenbaum, 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)**

**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**

TWENTY-SECOND REPORT OF THE TRUSTEE

May 31, 2019

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE OF THE TWENTY-SECOND REPORT	1
TERMS OF REFERENCE	3
BACKGROUND	4
WARRANTY ASSESSMENT REPORT AND DEFICIENCIES	6
Warranty Assessment Report Update	6
Current Status of Deficiency Repairs and Settlement Discussions	12
Ball Valve Warranty	14
HVAC System Warranty	14
Unit 1903 Heat Pump Purchase and Installation Warranty	20
Elevator Vibration Warranty	21
Warranty of Window Deficiencies	23
Fire Panel Warranty	24
Substituted Materials Claim	26
SHARED FACILITIES	32
TRUSTEE’S STATEMENT OF RECEIPTS AND DISBURSEMENTS	35
FEEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL.....	35
TRUSTEE’S REQUEST TO THE COURT	37

Appendices

Appendix A – February 14, 2018 Common Element Meeting Summary

Appendix B – February 27, 2018 Tarion Report

Appendix C – March 23, 2018 Release Agreement

Appendix D – Repair Agreement #1

Appendix E – September 2018 Claim Inspection Report

Appendix F – July 2018 Warranty Assessment Report

Appendix G – Repair Agreement #2

Appendix H – MH March 2019 Report

Appendix I – Pro-Air Report

Appendix J – LAT Appeal Materials

Appendix K – January 2019 LAT Letter

Appendix L – March 4, 2019 LAT Case Conference Report

Appendix M – March 4, 2019 LAT Order

Appendix N – April 4, 2019 LAT Case Conference Report

Appendix O – April 4, 2019 LAT Order

Appendix P – Settlement and Release Agreement (redacted)

Appendix Q – 144 Park Declaration

Appendix R – Shared Units Parcel Registers

Appendix S – Shared Facilities Agreement and Notice

Appendix T – Trustee’s Statement of Receipts and Disbursements

Appendix U – Affidavit of Arif Dhanani

Appendix V – Affidavit of Sam Rappos

Appendix W – Affidavit of Ari Katz

Confidential Appendix

Settlement Agreement (unredacted)

INTRODUCTION AND PURPOSE OF THE TWENTY-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 (“**Collins Barrow**”) was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and 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 “**144 Park Property**”).
2. On December 5, 2017, the Court granted an order substituting RSM Canada Limited (“**RSM**”) in place of Collins Barrow as Trustee.
3. The purpose of this twenty-second report of the Trustee (the “**Twenty-Second Report**”) is to:
 - (a) provide the Court with an update on:
 - (i) progress made by the Trustee after completion of the conciliation inspection conducted by Tarion Warranty Corporation (“**Tarion**”) and issuance by Tarion of its July 25, 2018 Warranty Assessment Report (the “**July 2018 Warranty Assessment Report**”) in respect of various common element deficiencies claimed by Waterloo Standard Condominium Corporation 591 (the “**144 Park Condominium Corporation**”);

- (ii) the Trustee's progress with regard to rectifying any remaining deficiencies warranted by Tarion; and
 - (iii) the Trustee's efforts to reach a financial settlement with the 144 Park Condominium Corporation on all of its remaining claims;
- (b) provide the Court with information on certain common parking and recreational areas to be shared by the 144 Park Condominium Corporation with the condominium corporation (the "**155 Caroline Condominium Corporation**") to be established in connection with the condominium being constructed on the 155 Caroline Property (as defined below) pursuant to a shared facilities agreement; and
- (c) request that the Court grant orders:
 - (i) sealing the Settlement and Release Agreement (as defined below) until further Order of the Court;
 - (ii) approving the Settlement and Release Agreement and authorizing the Trustee to execute the agreement and pay the settlement amount to the 144 Park Condominium Corporation;
 - (iii) vesting the right, title and interest of 144 Park in the Shared Units (as defined below) in the 144 Park Condominium Corporation and 155 Uptown Ventures Inc. ("**155 Uptown Ventures**"), the proposed declarant of the 155 Caroline Project (as defined below);

- (iv) approving the Twenty-Second Report and the activities and conduct of the Trustee as described herein;
- (v) approving the Trustee's interim statement of receipts and disbursements for the period January 22, 2015 to March 31, 2019 (the "**R&D**"); and
- (vi) approving the fees and disbursements of the Trustee and its insolvency law counsel, Chaitons LLP ("**Chaitons**"), and real estate counsel, Harris Sheaffer LLP ("**Harris Sheaffer**"), as set out in the Twenty-Second Report and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

4. In preparing this Twenty-Second Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park and information received from third-party sources, including without limitation 144 Park and other companies within the MADY Group (collectively, the "**Information**"). Certain of the information contained in this Twenty-Second Report may refer to, or is based on, the Information. As the Information has been provided by 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.

5. Copies of all documents referred to in this Twenty-Second Report that are not attached hereto as appendices can be found on the Trustee's website at <https://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/144-park-ltd.html>, along with copies of all materials served and filed in this proceeding and Court orders and endorsements (with the exception of 148 vesting orders for sold residential units, lockers and parking spaces, and the vesting order for the guest suite).
6. All references to dollars in this Twenty-Second Report are in Canadian currency.
7. Unless otherwise defined in this Twenty-Second Report, defined terms have the meanings ascribed to them in the prior reports of the Trustee.

BACKGROUND

8. As has been previously reported to the Court, 144 Park acquired the 144 Park Property in September 2011 for the purpose of developing the lands and constructing a 19-storey residential condominium project containing 148 residential units and a guest suite (the "**144 Park Project**"). 144 Park is part of the MADY Group, which was a diversified real estate development group with commercial and residential business operations across North America.

9. Another company in the MADY Group, One 55 Mady Ltd. (“**One 55 Mady**”), was the owner of the lands adjacent to the 144 Park Property and municipally known as 155 Caroline Street South, Waterloo (the “**155 Caroline Property**”).
10. One 55 Mady intended to construct a 19-storey residential condominium tower on the 155 Caroline Property (the “**155 Caroline Project**”), which would constitute a second phase to the 144 Park Project, and the two projects would share certain facilities, including parking.
11. 144 Park commenced this proceeding as it was insolvent, and it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of pre-sold units, complete the sale of the Unsold Units (defined below), and distribute the sale proceeds pursuant to Court order.
12. Pursuant to the Appointment Order, the Trustee was authorized and empowered by the Court to, among other things:
 - (a) act as receiver and manager of the 144 Park Property;
 - (b) take possession and control of the 144 Park Property and any and all proceeds, receipts and disbursements arising out of or from the 144 Park Property;
 - (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 144 Park Property; and

- (d) complete and register the condominium declaration and do whatever else is necessary in order to cause the registration of the proposed condominium at the 144 Park Property.
13. As of the date of the Trustee's appointment, 144 Park had entered into agreements of purchase and sale with purchasers ("**144 Park Sale Agreements**") for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers.
14. One of the sale transactions was a 144 Park Sale Agreement with a construction lien claimant, Brody Wall System Ltd., dated December 5, 2014 with respect to residential unit known as suite 1503, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of The Honourable Mr. Justice McEwen dated April 29, 2015.
15. As a result, there were 128 units that were the subject of 144 Park Sale Agreements, and 20 unsold units (collectively, the "**Unsold Units**").
16. As at the date of this Twenty-Second Report, the Trustee has closed transactions in respect of all residential units, parking units and storage units, including the Unsold Units and the guest suite.

WARRANTY ASSESSMENT REPORT AND DEFICIENCIES

Warranty Assessment Report Update

17. As set out in the Trustee's Twenty-First Report dated February 6, 2018, the Ontario New Home Warranty Program, was created by the Government of Ontario in 1976 to administer

the *Ontario New Home Warranties Plan Act*. Its primary purpose is to protect consumers of new homes by ensuring that builders abide by the provincial legislation. As the regulator of Ontario's new home building industry, Tarion registers new home builders and vendors, enrolls new homes for warranty coverage, investigates illegal building practices, resolves warranty disputes between builders/vendors and homeowners, and promotes high standards of construction among Ontario's new home builders. A more comprehensive description of Tarion's role with respect to real property developers and purchasers can be found in the Trustee's Sixteenth Report dated February 15, 2017 (the "**Sixteenth Report**").

18. As set out in the Trustee's Nineteenth Report dated June 8, 2017, Tarion conducted an on-site conciliation inspection of all Year 1 Deficiencies and Year 2 Deficiencies claimed to be outstanding by the 144 Park Condominium Corporation in connection with the 144 Park Project. The initial common area deficiency listings provided by the 144 Park Condominium Corporation included 1,415 Year 1 Deficiencies and 154 Year 2 Deficiencies (the "**PATS Lists**"). The Trustee rectified certain of these claimed deficiencies prior to commencement of and during Tarion's conciliation inspections. Tarion concluded its on-site inspections in or about February 2017 and indicated that it would issue its warranty assessment reports at the end of March 2017.
19. As set out in the Sixteenth Report, the issuance by Tarion of a warranty assessment report provides for an independent third-party determination of which items on the PATS Lists are warranted deficiencies (the "**Warranted Deficiencies**") in accordance with the

Construction Guidelines for the Ontario Home Building Industry. As a result of the volume of deficiencies reported by the 144 Park Condominium Corporation and the complexities associated with making a determination on whether to warrant certain reported deficiencies, Tarion's warranty assessment reports (the "**Warranty Assessment Reports**") were not released by Tarion until December 19, 2017.

20. Tarion had provided the Trustee until March 31, 2018 to rectify the Warranted Deficiencies or agree upon and execute a financial settlement with the 144 Park Condominium Corporation. Tarion advised the Trustee that, should it be required, Tarion would discuss an appropriate timeline with the Trustee for the Trustee to address certain Warranted Deficiencies that relate to items outside the building, as the season and weather, at that time, may not have allowed for the completion of those items.
21. The Board of Directors of the 144 Park Condominium Corporation (the "**Board**") requested that Tarion re-evaluate certain items that Tarion did not designate as being warranted in the Warranty Assessment Reports.
22. On February 14, 2018, Tarion scheduled a meeting with the Trustee and the Board at the 144 Park Project. During that meeting, the parties reviewed outstanding deficiencies as well as certain items that the Board requested Tarion to re-evaluate. Based on its discussions with its general contractor, the Trustee advised Tarion and the Board that the remaining warranted deficiencies, as set out in the Warranty Assessment Reports, would

be completed by the end of March 2018, except for those warranted items that were exterior items. At that time, a further meeting was scheduled for March 16, 2018.

23. Subsequent to the February 14, 2018 meeting, Tarion examined the items it was asked to re-evaluate. A copy of the common element meeting summary dated February 21, 2018, prepared by Tarion is attached hereto as **Appendix "A"**.
24. On February 28, 2018, Tarion provided the Trustee and the Board with a copy of its report dated February 27, 2018 (the "**February 27, 2018 Tarion Report**") in which Tarion re-assessed certain items discussed during the meeting on February 14, 2018. A copy of the February 27, 2018 Tarion Report is attached hereto as **Appendix "B"**.
25. On March 16, 2018 and April 18, 2018, Tarion, the Board and the Trustee met again at the 144 Park Project to discuss the status of various warranted items that were either outstanding or for which the repairs conducted were not satisfactory to the Board. During that period, the Trustee, through its general contractor, continued to rectify Warranted Deficiencies.
26. In March 2018, the Trustee also discussed a possible financial settlement with the Board for a limited number of warranted items that the Trustee understood would be changed by the 144 Park Condominium Corporation, notwithstanding the Trustee's rectification of those items. The Trustee ascertained its costs to rectify those deficiencies and made an offer to the Board. The offer was ultimately accepted and documented in a release, waiver

and indemnity agreement dated March 23, 2018 (the “**March 23, 2018 Release Agreement**”). A copy of March 23, 2018 Release Agreement is attached hereto as **Appendix “C”**.

27. On May 17, 2018, Tarion, the Board and the Trustee met again at the 144 Park Project in order to agree on and execute, at Tarion’s request and in accordance with its normal process, a repair agreement having a deadline date of July 31, 2018 (the “**Repair Completion Date**”) in which all known outstanding warranted repairs were to be completed (“**Repair Agreement #1**”). If as of the Repair Completion Date all warranted items were not completed or if the Board was not satisfied with the repairs, the Board had the right to request a conciliation inspection by Tarion. If there were warranted items found by Tarion that did not meet Tarion’s standards, Tarion would issue a claim assessment setting out the monetary compensation to be offered by Tarion to the 144 Park Condominium Corporation. A copy of Repair Agreement #1 is attached hereto as **Appendix “D”**.

28. After expiry of Repair Agreement #1, the Board advised Tarion that it was not satisfied with a number of the repairs performed by the Trustee’s general contractor. Tarion asked the Board whether the 144 Park Condominium Corporation was willing to extend the Repair Completion Date. On August 8, 2018, the Board confirmed that it was not willing to extend the Repair Completion Date.

29. On September 10, 2018, Tarion conducted its conciliation inspection and issued a claim inspection report on September 26, 2018 (the “**September 2018 Claim Inspection Report**”). Tarion found a number of unresolved warranted items, the majority of which related to scratched or poor finishes on suite doors (the “**Suite Doors**”). While the Trustee’s general contractor attempted to refinish the doors, Tarion advised that the refinishing work did not meet Tarion’s standard. A copy of the September 2018 Claim Inspection Report is attached hereto as **Appendix “E”**.
30. Tarion investigated several avenues to address the state of the Suite Doors, including having a direct discussion with the manufacturer. The manufacturer advised that the only manner in which to address the issue with the door finishes was to replace the Suite Doors.
31. Tarion obtained several quotes to replace the Suite Doors and complete the other remaining few Warranted Deficiencies that were not completed to the Board’s satisfaction and selected the lowest quote, which was for approximately \$94,000. Tarion advised the Trustee that its contractor’s quote on the purchase of the Suite Doors was based on a bulk purchase for the replacement of the Suite Doors at a significant discount. Tarion further advised the Trustee that considering the insolvency of 144 Park and the circumstances, and in order to allow the Trustee to be in the same position as if it had completed the replacement of the Suite Doors itself, Tarion would waive its 15% administration charge. On this basis, Tarion issued an invoice to the Trustee for \$93,575, which the Trustee paid in January 2019.

32. During the period up to the Repair Completion Date, Tarion was assessing various deficiencies that it had not rendered a decision on with regard to whether or not to warrant them. On July 25, 2018, Tarion released the July 2018 Warranty Assessment Report on the items for which it had not previously rendered a decision. A copy of the July 2018 Warranty Assessment Report is attached hereto as **Appendix "F"**.

Current Status of Deficiency Repairs and Settlement Discussions

33. The Trustee attended to all but a few remaining Warranted Deficiencies. In October 2018, the Board, Tarion and the Trustee met again at the 144 Park Project to discuss the remaining outstanding warranted items and executed another repair agreement on October 9, 2018 ("**Repair Agreement #2**"), which agreement expires on May 31, 2019. A copy of Repair Agreement #2 is attached hereto as **Appendix "G"**.
34. A list of the significant warranted items in respect of Repair Agreement #2 and one further issue in respect of a claim by the 144 Park Condominium Corporation that is not warranted is set out below:
- (a) Tarion's warranty coverage of the failure in December 2017 of a second ball valve in the building;
 - (b) Tarion's warranty coverage in respect of the HVAC system in the building and specifically the clearing of debris in the HVAC system and balancing of same, and

the costs for servicing the lockout of heat pumps due to debris build up in the system and/or balancing;

- (c) Tarion's warranty coverage over the purchase and installation of a heat pump in a unit that was purchased by an owner from the Trustee on an "as is, where is" basis;
- (d) Tarion's warranty coverage in relation to elevator vibration experienced by residents in one of the elevators at the 144 Park Project;
- (e) Tarion's warranty coverage over various deficiencies relating to windows and accessories thereto that were manufactured, supplied and installed by Aluminum Window Designs Ltd. ("AWD");
- (f) Tarion's warranty coverage in respect of the fire panel at the 144 Park Project and specifically the Board's request for documentation from the Trustee's contractor, which documentation confirms and supports the work done; and
- (g) the denial by Tarion of warranty coverage for claims made by the 144 Park Condominium Corporation in relation to the utilization of substandard materials used throughout the building by 144 Park during the construction of the 144 Park Project.

Details with regard to each of the above items and its status are discussed below.

Ball Valve Warranty

35. As set out in the Trustee's First Report dated April 17, 2015, a ball valve connected to the HVAC system in Unit 502, an unoccupied unit at the time, failed and resulted in a significant leakage of glycol and water in the building. The Trustee facilitated the attendance of: (i) an emergency services provider to perform immediate clean up of the 144 Park Project; and (ii) Nelco Mechanical Ltd., the party that installed the HVAC system at the 144 Park Project, to remove and replace the failed ball valve. The Trustee's insurer thereafter attended to remediation and rectification of the damage that occurred at the 144 Park Project.
36. In December 2017, the 144 Park Condominium Corporation advised the Trustee that a second ball valve had failed, which resulted in damage at the 144 Park Project. The 144 Park Condominium Corporation's insurer attended to remediation and rectification of the damage that resulted therefrom. The 144 Park Condominium Corporation's deductible, which it paid, was \$7,500. Tarion has warranted this payment and has requested that the Trustee pay the \$7,500 to the 144 Park Condominium Corporation prior to or upon the expiry of Repair Agreement #2.

HVAC System Warranty

Flushing and Balancing

37. Prior to the Trustee's appointment, as result of 144 Park's insolvency, the HVAC system at the 144 Park Project appears not to have been maintained regularly. This appears to

have resulted in the build up of debris in the system and consequently the occurrence of lock outs of various heat pumps in a number of suites at the 144 Park Project. Heat pump lockouts were being experienced by residents of the 144 Park Project since the outset of the Trustee's appointment in which heat pumps would stop working and not allow suites to be heated or cooled.

38. Upon being informed that heat pumps were locked out, the Trustee would request of its HVAC services provider at the time, Cool Team Service Corp. ("**Cool Team**"), which was recommended by the 144 Park Condominium Corporation's property manager, that Cool Team attend at the 144 Park Project to inspect the locked out heat pumps and do what was necessary to fix them, which primarily consisted of clearing debris from the heat pump orifice and resetting the heat pump.
39. The Trustee also sought a permanent solution to this issue and Cool Team recommended that a filter be installed in the HVAC system. The Trustee facilitated the installation of the filter; however, heat pump lockouts continued to be experienced by the residents of the 144 Park Project. Cool Team subsequently changed its name to Neelands Group Limited ("**Neelands**").
40. In or about July 2016, the Trustee changed HVAC system service providers from Neelands to Keith's Plumbing and Heating Inc. ("**Keith's**"). Keith's rates were significantly lower than Neelands' rates and certain personnel of Keith's previously worked for the distributor of the heat pumps that 144 Park had installed at the 144 Park Project. Keith's continued to

service the Trustee's HVAC system needs, including attending to heat pump lockouts, until the end of June 2017. Based on Tarion's advice, the Trustee stopped servicing HVAC heat pump lockouts one month after expiry of the Tarion warranty over the HVAC system, which warranty expired on May 25, 2017. Thereafter, the 144 Park Condominium Corporation utilized the services of Neelands to attend to HVAC system requirements, as needed.

41. During the transition phase between Keith's and Neelands servicing the 144 Park Project, Keith's found that Neelands was back flushing into the HVAC system debris from locked out heat pumps with a view to having the installed filter catch the debris, rather than removing heat pumps from suites and flushing them into a separate receptacle or drain. The Trustee understands that this practice of back flushing debris into the system has resulted in a significant delay in the clearing of debris from the HVAC system, notwithstanding that the 144 Park Condominium Corporation has instituted a regular maintenance program, and has resulted in continued heat pump lockouts. On Keith's advice, the Trustee advised the 144 Park Condominium Corporation that Neelands should discontinue this practice and flush heat pumps in the manner recommended by Keith's. The Trustee understands that Neelands no longer back flushes debris into the HVAC system.
42. The Trustee was asked by the 144 Park Condominium Corporation and Tarion whether it was able to find an HVAC system balancing report to confirm that balancing was

performed by 144 Park. The Trustee reviewed the books and records of 144 Park and was not able to locate a balancing report. Tarion advised that if the system was not previously balanced by 144 Park, this may be a factor contributing to the lockout of heat pumps.

43. In its July 2018 Warranty Assessment Report, Tarion warranted the HVAC system for the clearance of debris and balancing of same. As support for its warranty, Tarion provided a report from its engineer, Morrison Hershfield Limited (“MH”), which attended at the 144 Park Project to perform various tests on the HVAC system. MH recommended that the HVAC system be flushed and balanced. Tarion recommended that the Trustee retain MH to have an appropriate scope of work drafted and oversee the flushing and balancing procedures.
44. The Trustee retained MH and obtained a scope of work, which included provision of the results of a test of a sample of glycol, prior to flushing the HVAC system, in order to ascertain whether the glycol in the system could be filtered or if it had to be replaced.
45. The Trustee, through Keith’s, obtained a sample of glycol in December 2018 and sent it to Rochester Midland Corporation (“RMC”) for testing. The results of the testing showed that the debris in the glycol was well below average. The Trustee forwarded this test result to MH and requested further guidance on the flushing and balancing procedure.
46. On March 13, 2019, MH issued a revised report (the “**MH March 2019 Report**”) setting out that, based on the results of the test performed by RMC, there was no need to flush the

HVAC system and that only balancing the system was required. A copy of the MH March 2019 Report is attached hereto as **Appendix "H"**.

47. On March 25, 2019, Pro-Air Testing Inc. ("**Pro-Air**"), the balancing agent recommended by MH, attended at the 144 Park Project to perform the system balancing. Pro-Air's report on the system balancing was received by the Trustee on April 9, 2019 (the "**Pro-Air Report**"). The Trustee forwarded the Pro-Air Report, a copy of which is attached hereto as **Appendix "I"**, to MH for comment. On April 26, 2019, MH wrote to the Trustee by email and said "MH has reviewed the report and find the results to be aligned with the base building design. MH is in acceptance of the report. Since the water chemistry of the condenser water loop has been deemed acceptance under past email cover, and the balancing of the loop is meeting design, MH finds that the project requirements have been satisfied."

48. While Tarion has advised that it believes that the Trustee has completed its obligations in respect of this warranted item, Tarion has further advised that it will warrant, for a period of one year, from the date the system was balanced, issues related to heat pump lockouts that result from and can be proven to be attributable to debris in the system or balancing. Tarion has advised the 144 Park Condominium Corporation that it will need to continue its regular maintenance program of the HVAC system and that if heat pump lockout issues are experienced in the future, the 144 Park Condominium Corporation will have to produce satisfactory records of such maintenance in order to make claims under Tarion's warranty.

49. On April 1, 2019, the 144 Park Condominium Corporation advised that several heat pumps were locked out and that the 144 Park Condominium Corporation believed this was related to the balancing that was performed on March 25, 2019. On April 2, 2019, Pro-Air attended at the 144 Park Project, reviewed the issue and adjusted one valve that was not set to specification. The Trustee understands this issue was rectified that day. The Trustee has not, since that repair, been contacted by the 144 Park Condominium Corporation about any further heat pump lockouts since then to date.

Costs for Servicing of Heat Pump Lockouts

50. As discussed previously herein, the Trustee, based on Tarion's advice, stopped servicing heat pump lockouts approximately one month after expiry of the HVAC system warranty in May 2017.
51. In its July 25, 2018 Warranty Assessment Report, Tarion set out that it would warrant the costs incurred by the 144 Park Condominium Corporation from July 2017 forward for the service of heat pump lockouts that could be demonstrated to result from debris or flow related issues.
52. To date, the 144 Park Condominium Corporation has provided the Trustee with invoices totaling \$30,785 to support the costs for service of, among other things, heat pump lockouts resulting from debris and flow related issues. The Trustee has reviewed the invoices provided by the 144 Park Condominium Corporation and the Trustee is of the view that the eligible costs for reimbursement total \$15,974. If an appropriate agreement cannot be

reached between the Trustee and the 144 Park Condominium Corporation on the total costs to be reimbursed for this item, the Trustee will likely look to Tarion for further guidance and/or a determination of the costs to be reimbursed.

Unit 1903 Heat Pump Purchase and Installation Warranty

53. In early March 2017, the Trustee sold unit 1903 to a purchaser (the “**Unit 1903 Purchaser**”) on an “as is, where is” basis, the sale of which unit closed on April 21, 2017. The unit requires three heat pumps and two had been installed by 144 Park.

54. Some time later, when the Unit 1903 Purchaser was completing the unit, it contacted the Trustee to purchase a heat pump from the Trustee’s inventory of heat pumps. While the Trustee was drafting a bill of sale for the heat pump for the Unit 1903 Purchaser, the 144 Park Condominium Corporation intervened to state that it believed the purchase and installation of the heat pump was the Trustee’s responsibility because it was part of the common elements of the 144 Park Project and not part of unit 1903. The Trustee took the position that the Unit 1903 Purchaser was responsible to purchase and install the heat pump because: (i) unit 1903 was sold on an as is, where is basis; (ii) the Unit 1903 Purchaser knew of the missing heat pump and the Trustee’s expectation that the Unit 1903 Purchaser would purchase and install it; and (iii) the Trustee was in the process of drafting a bill of sale between the Trustee and the Unit 1903 Purchaser for the sale of a heat pump.

55. After reviewing the Trustee's position and the 144 Park Condominium Corporation's position, Tarion indicated that it would warrant the purchase and installation of the heat pump for Unit 1903.
56. After receipt of Tarion's decision in this regard, the Trustee advised Tarion and the 144 Park Condominium Corporation that the Trustee had heat pumps in inventory and would cause the heat pump to be installed. The 144 Park Condominium Corporation advised the Trustee that the Unit 1903 Purchaser already purchased from and had a heat pump installed by Neelands. Upon examination of the invoice provided by Neelands, the Trustee found that the charges levied by Neelands were approximately 45% higher than those charged by Keith's. The Trustee advised Tarion of this; however, Tarion indicated that the Trustee was required to reimburse the Unit 1903 Purchaser for its out of pocket costs prior to or upon the expiry of Repair Agreement #2, notwithstanding that the Trustee had heat pumps in inventory and the charges levied by Neelands for the cost and installation of the heat pump were considered by the Trustee to be excessive.

Elevator Vibration Warranty

57. The 144 Park Condominium Corporation, in its first-year performance audit listing, claimed that one of the elevators at the 144 Park Project was not operating properly, as there was a vibration that was heard and felt in the elevator when it went up or down. The Trustee observed this vibration on one or more of its attendances at the 144 Park Project.

58. The books and records of 144 Park contained a warranty from Delta Elevator Co. Ltd. (“Delta”), which the Trustee provided to the Board. The 144 Park Condominium Corporation diligently worked with Delta to try and resolve the issue; however, the Trustee was advised by the Board that on several occasions after Delta serviced the elevator the vibration would stop and then return some time later.
59. In the October 9, 2018 meeting among Tarion, the Board and the Trustee, Tarion advised the Trustee that the Trustee needed to get involved to have the issue resolved with Delta and added this item to Repair Agreement #2. The Trustee requested of the 144 Park Condominium Corporation’s property manager that it get in touch with Delta to come out to the 144 Park Project to ascertain the current status of the elevator repairs and thereafter to provide the Trustee with a status update, contact information and any documentation exchanged between the 144 Park Condominium Corporation and Delta in order that the Trustee could get involved.
60. The Trustee had not received any status update or documentation from the property manager and followed up with the property manager on February 26, 2019 to confirm that the Trustee had not received any information from the property manager in relation to the elevator issues. The property manager responded by email saying “Sorry I did not follow up. We have been in contact with Delta Elevator. They assure us that if vibrations arise again they will address it. So as far as Tarion involvement nothing further is required.” Based on the property manager’s email and the fact that the 144 Park Condominium

Corporation has not contacted the Trustee subsequently regarding any issues with the elevator, the Trustee considers this matter closed.

Warranty of Window Deficiencies

61. In its first-year performance audit listing, the 144 Park Condominium Corporation advised that there were a number of window related deficiencies that needed to be addressed. Upon review of 144 Park's books and records, the Trustee ascertained that the trade that installed the windows at the Property was AWD. Upon contacting AWD, the Trustee's general contractor was advised that AWD would not assist the Trustee unless the balance of its account was paid in full, notwithstanding AWD's collection of the holdback portion of its outstanding account.
62. The Trustee was able to source various parts with alternative suppliers to rectify a number of deficiencies; however, the few remaining parts required are manufactured by AWD. The Trustee contacted its counsel and requested that it contact AWD's counsel to see if AWD could be persuaded by its counsel to cooperate with the Trustee to provide the few remaining parts.
63. The Trustee's counsel initially contacted AWD's counsel on August 24, 2018 and has diligently continued to follow up since then without significant progress. On October 22, 2018, AWD's counsel provided the Trustee with the specific colour codes used by AWD at the 144 Park Project.

64. On November 14, 2018, the Trustee's counsel sent to AWD's counsel specifications for two windows and a window latch that were required to rectify the remaining deficiencies. On November 22, 2018, the Trustee's counsel was provided with a copy of an email from AWD to its counsel, which stated that AWD will review the list that needs to be serviced and that a quote would be emailed to AWD's counsel. The email further stated that AWD would need to be paid 100% up front before it ordered any material or scheduled a service man to go on site and complete service.
65. On November 22, 2018, the Trustee's counsel wrote to AWD's counsel to request that a quote be provided and that the Trustee would review it. Since that time, the Trustee's counsel has continued to follow up with AWD's counsel, but has not yet received any quote, nor has AWD's counsel responded in any substantive manner.
66. Tarion has advised that in the event that AWD does not cooperate, Tarion may have to have the parts made by a specialty manufacturer and charge the Trustee for same. The Trustee's counsel is continuing to try and make progress through AWD's counsel.

Fire Panel Warranty

67. In its first-year performance audit listing, the 144 Park Condominium Corporation reported a number of faults with the fire panel at the 144 Park Project. After discussions with the 144 Park Condominium Corporation regarding the faults, the Trustee engaged Vital Safety Services ("**Vital**"), the trade utilized and preferred by the 144 Park Condominium

Corporation, to look into the faults and report to the Trustee's general contractor regarding what needed to be done in order to rectify the faults.

68. Vital did not diagnose the issues and report back to the Trustee's general contractor, but instead chose to attempt to fix the issue without authorization from the Trustee. The faults on the fire panel were not rectified and Vital indicated that it would have to return to the 144 Park Project at a later date.
69. The Trustee followed up with Vital on several occasions regarding re-attending at the 144 Park Project, but was not able to arrange a date for same with Vital. On this basis, the Trustee engaged Forest City Fire Protection ("FCFP") a trade recommended by its general contractor to complete the necessary work.
70. FCFP diagnosed the issues with the fire panel, including certain software issues. FCFP rectified all hardware issues with the fire panel and contacted Mircom Technologies Ltd. ("Mircom"), the programmer of the fire panel software, and arranged to have Mircom attend on site to rectify any software and programming issues.
71. In its October 9, 2018 meeting, the 144 Park Condominium Corporation insisted that the Trustee have FCFP provide a letter confirming the work it performed and that nothing in the system was bypassed. The Trustee obtained the requested letter from FCFP and sent it to the Board on January 18, 2019. The Trustee has heard nothing further from the 144 Park Condominium Corporation regarding the fire panel issue and considers this matter closed.

Substituted Materials Claim

72. The 144 Park Condominium Corporation, in its first-year performance audit listing, included a claim for the utilization by 144 Park of substandard materials in all common element areas of the 144 Park Project (the “**Substandard Materials Claim**”).

73. The Substandard Materials Claim, in summary, claims that the materials used by 144 Park in the construction of the 144 Park Project are subpar in comparison to those presented in marketing materials and artists’ renderings that were showcased at 144 Park’s presentation centre in 2009 when pre-sale purchase and sale agreements were being executed by purchasers. The Substandard Materials Claim further alleges that a designer, Gordana Carr, was engaged by 144 Park to design the common element areas of the 144 Park Project. After registration of the condominium and constitution of the Board, the Board advises that it invited Ms. Carr back to the 144 Park Project to view the common element areas. In an affidavit obtained by the Board as evidence of its claim, Ms. Carr sets out her view that the finishes used in the construction of the 144 Park Project were not the same as those she recommended for use.

74. Tarion has reviewed the Substandard Materials Claim and has denied warranty of same, on several occasions, after being asked a number of times by the Board to re-examine the claim. The basis for Tarion’s denial of warranty over this claim is that the 144 Park Condominium Corporation refers to marketing brochures and rendering photos for finishes of the common element areas such as finishes of suite doors of the GPH level. Tarion states

that the condominium declaration document has no indication or illustration of any quality or specific finishing materials to be installed in the common element areas. Tarion has determined that there is no substitution and, therefore, no breach of the substitution warranty.

75. The Trustee also contacted Charles Mady, the former principal of 144 Park, to obtain some insight from the developer as to Ms. Carr's role and whether any documentation on common element finishes existed. Mr. Mady advised the Trustee that: (i) Ms. Carr's role was that of a consultant and that she was engaged, among a number of other consultants, to provide advice on the finishes to be included in the common areas of the 144 Park Project; (ii) 144 Park was under no obligation to complete the 144 Park Project with the designs or advice provided by Ms. Carr; and (iii) the documentation alleged by the Board to be "missing" in respect of the common element finishes never existed.
76. On January 21, 2019, the Trustee received the 144 Park Condominium Corporation's appeal to the License Appeal Tribunal (the "**LAT**") with respect to Tarion's decision to deny warranty coverage of the Substituted Materials Claim (the "**LAT Appeal Materials**"). A copy of the LAT Appeal Materials are attached hereto as **Appendix "J"**.
77. On January 24, 2019, the Board, without notice to the Trustee, wrote to the LAT in response to Tarion's request to have 144 Park added as a party to the proceeding. The 144 Park Condominium Corporation requested that Tarion's request to add 144 Park (in this case the Trustee) not be granted.

78. In its letter, the 144 Park Condominium Corporation sets out its position, including that:
- (a) as a result of 144 Park being deemed “unwilling and unable” and “not a registrant in good standing”, the Board considered its claim to be against Tarion only and as such, Tarion should be able to act alone in the appeal without fear of recourse from 144 Park;
 - (b) 144 Park is no longer in business and will not be directly affected by the outcome of the 144 Park Condominium Corporation’s appeal and should therefore not have a significant interest in the proceeding;
 - (c) Tarion’s decision to deny the 144 Park Condominium Corporation’s claim was based in part on the lack of original specification of materials. The Trustee was not able to produce any original specifications evidence to Tarion or the 144 Park Condominium Corporation in the past and is not expected to produce such or any other relevant evidence at this stage;
 - (d) the Trustee representing the interests of 144 Park is a Construction Lien Trustee with the obligation to represent all parties, including the 144 Park Condominium Corporation, equally without bias to any one party. As a party to the LAT proceeding, the Construction Lien Trustee would be arguing on behalf of other debt holders against the 144 Park Condominium Corporation, which would place the Construction Lien Trustee in a conflict of interest position; and

- (e) in the past and during several collective meetings amongst the 144 Park Condominium Corporation, Tarion and the Trustee, the Trustee made it clear that it would not repair or settle any deficiencies unless those deficiencies have been clearly identified as warranted by Tarion. Therefore, in the absence of a vendor in good standing, it is the 144 Park Condominium Corporation's opinion that the presence of the Construction Lien Trustee in the appeal discussion will only stand in the way of negotiations with Tarion towards a potential resolution without a hearing.

A copy of the 144 Park Condominium Corporation's correspondence is attached hereto as **Appendix "K"**.

- 79. Tarion has advised the Trustee that any monetary award or settlement in favour of the 144 Park Condominium Corporation in respect of the Substituted Materials Claim would be charged to the bond held by Tarion. In the Trustee's view, exclusion of the Trustee in this matter would be prejudicial to 144 Park's other stakeholders.
- 80. On February 8, 2019, Tarion filed a Declaration of Representative, in which Tarion appointed one of its internal legal counsel as its representative for the subject LAT proceeding.
- 81. On March 4, 2019, the LAT held a case conference by telephone in which counsel to the Trustee, a representative of the Board and Tarion's counsel participated. The case

conference was adjourned on the basis that the 144 Park Condominium Corporation had not designated a representative. Once a representative was appointed by the 144 Park Condominium Corporation, the parties could discuss a possible settlement in advance of a hearing. The case conference was rescheduled to April 4, 2018. The LAT issued a case conference report and Order in respect of the March 4, 2019 case conference, copies of which are respectively attached hereto as **Appendix “L”** and **Appendix “M”**.

82. On March 6, 2019, the 144 Park Condominium Corporation filed its notice of representative in which it designated the firm of Duncan Linton LLP as its representative.
83. On March 12, 2019, counsel for the Trustee, the 144 Park Condominium Corporation and Tarion engaged in a conference call in which each party discussed its views on the subject matters.
84. On April 2, 2019, counsel to the Trustee wrote to counsel for the 144 Park Condominium Corporation in which it conveyed a possible financial settlement in respect of all warranted and non-warranted items in order to effectively and efficiently deal with all remaining outstanding matters. Counsel for the 144 Park Condominium Corporation responded by saying that it could not obtain a response from its client prior to the scheduled case conference. The parties to the case conference agreed to adjourn the case conference to May 10, 2019 on the basis that a possible financial settlement might be negotiated before that date.

85. On April 4, 2019, the LAT held a case conference by telephone in which counsel to the Trustee, counsel to the Board, and Tarion's counsel participated. The case conference was adjourned to May 10, 2019 so that the parties could discuss the possibility of settlement. The LAT issued a case conference report and Order in respect of the March 4, 2019 case conference, copies of which are respectively attached hereto as **Appendix "N"** and **Appendix "O"**.
86. Between April 4, 2019 and May 15, 2019, counsel to the Trustee and the Condominium Corporation exchanged settlement correspondence and drafts of settlement agreements. The Trustee discussed the proposed settlement amount with MarshallZehr Group Inc. ("**MZG**"), the senior secured lender of 144 Park and the only creditor that will be affected by the settlement. MZG has advised that it supports payment of the settlement amount in exchange for an appropriate release in favour of the Trustee and Tarion, among others.
87. On May 10, 2019, the LAT held a case conference by telephone in which counsel to the Trustee, counsel to the Board, and Tarion's counsel participated. The conference was adjourned to May 23, 2019 on the basis that the parties were closing to finalizing a settlement.
88. On May 15, 2019, the parties confirmed that they had agreed to a settlement and release agreement (the "**Settlement and Release Agreement**"). On May 17, 2019, the 144 Park Condominium Corporation's counsel advised that its client has signed the Settlement and Release Agreement and that counsel would be holding the document in escrow pending

receipt of the Court Order approving same and authorizing payment of the settlement amount and payment by the Trustee of the settlement amount. A redacted copy of the Settlement and Release Agreement is attached hereto as **Appendix "P"**.

89. The only portion of the Settlement and Release Agreement that has been redacted is the settlement amount. An unredacted version of the Settlement and Release Agreement will be filed with the Court as a confidential appendix to the Twenty-Third Report. The Trustee requests that the Court seal the Settlement and Release Agreement pending further Order of the Court as publicly disclosing same may be prejudicial to the Trustee, the 144 Park Condominium Corporation and/or others in the residential property development industry.
90. With respect to the case conference scheduled for May 23, 2019, it has been adjourned at the request of the 144 Park Condominium Corporation, as a result of the settlement that has been agreed to by the parties.

SHARED FACILITIES

91. As noted above, the appointment of the Trustee was sought to, among other things, take all necessary steps to complete the registration of the condominium.
92. On May 25, 2015, the condominium declaration (the "**144 Park Declaration**") and Plan of Condominium 30CDM-13406 were registered and the 144 Park Condominium Corporation was established. A copy of the 144 Park Declaration is attached hereto as **Appendix "Q"**.

93. As set out in the 144 Park Declaration and noted above, it was the intention that the 144 Park Project would serve as “Tower I” and the 155 Caroline Project to be constructed on the 155 Caroline Property was to be “Tower II”.
94. The 144 Park Declaration details that there are a number of units that are to be shared and used by the 144 Park Condominium Corporation and the 155 Caroline Condominium Corporation, which are defined as “Shared Units” in the 144 Park Declaration (the “**Shared Units**”). Attached hereto as **Appendix “R”** are the parcel registers for the Shared Units, which are all still owned by 144 Park.
95. The 144 Park Declaration required the 144 Park Condominium Corporation, and the owner of the 155 Caroline Property at that time, One 55 Mady, to enter into a shared facilities agreement, which the parties did on March 6, 2015 (the “**Shared Facilities Agreement**”). The Shared Facilities Agreement was registered on title on April 16, 2015. Copies of the notice registered on title and the Shared Facilities Agreement are attached hereto as **Appendix “S”**.
96. The Shared Facilities Agreement contemplates that the 144 Park Condominium Corporation and the 155 Caroline Condominium Corporation would each take title to a proportionate interest in the Shared Units based on the proportion of residential units in each of the two condominiums. The Shared Units are intended to be transferred to each condominium corporation for no consideration.

97. As noted above, the 144 Park Condominium Corporation has 148 residential units. The Trustee has been informed by Harris Sheaffer that the current owner of the 155 Caroline Property and the proposed declarant of the 155 Caroline Project, 155 Uptown Ventures, intends to have 203 residential units in the 155 Caroline Project.
98. As a result, the 144 Park Declaration and the Shared Facilities Agreement require that the interest of 144 Park in the Shared Units be transferred, with 42.17% of each Shared Unit to be owned by the 144 Park Condominium Corporation, and 57.83% of each Shared Unit to be owned by the 155 Caroline Condominium Corporation.
99. As the condominium declaration for the 155 Caroline Project has not been registered by 155 Uptown Ventures and the 155 Caroline Condominium Corporation has not yet been established, it is proposed that 155 Uptown Ventures, as owner of the 155 Caroline Property and eventual declarant, take title to the Shared Units at this time. 155 Uptown Ventures has agreed to transfer its interest in the Shared Units to the 155 Caroline Condominium Corporation after it has been registered.
100. To complete the transfer of the Shared Units it is necessary for a vesting order to be granted, as the Shared Units are subject to mortgages and encumbrances that were registered against the 144 Park Property and the transfer must be completed free and clear of all claims and encumbrances.

101. In the circumstances, the Trustee requests that the Court grant a vesting order transferring 144 Park's right, title and interest in the Shared Units to the 144 Park Condominium Corporation and 155 Uptown Ventures in the percentages set out above, free and clear of all claims and encumbrances.

TRUSTEE'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

102. Attached hereto as **Appendix "T"** is the R&D for the period January 22, 2015 to March 31, 2019. During this period, receipts, including \$500,000 advanced to the Trustee by MZG, totaled \$50.7 million. Disbursements totaled \$50.0 million, including repayment of the amount advanced by MZG with interest of \$17,062 and a facility fee of \$25,000 and payments to secured lenders and lien claimants of \$38.1 million. The net cash balance in the Trustee's bank account as at March 31, 2019 is \$690,815.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

103. Pursuant to paragraph 20 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts before the Court.
104. The fees and disbursements of the Trustee for the period from November 14, 2014 to December 31, 2017 were previously approved by the Court pursuant to Orders of the Court

dated August 5, 2015, October 16, 2015, November 14, 2016, February 23, 2017 and February 14, 2018.

105. The total fees for the Trustee for the period from January 1, 2018 to March 31, 2019 were \$90,459.00, plus disbursements of \$595.90, plus HST of \$11,837.14, for a total of \$102,892.04. The time spent by the Trustee is more particularly described in the Affidavit of Arif Dhanani sworn April 29, 2019, which is attached hereto and marked as **Appendix "U"** and contains copies of invoices that set out the services provided during this time period.
106. The fees and disbursements of Chaitons, as insolvency counsel to the Trustee, for the period from December 15, 2014 to January 31, 2018 were previously approved by the Court pursuant to Orders of the Court dated August 5, 2015, October 16, 2015, November 14, 2016, February 23, 2017 and February 14, 2018.
107. The total fees of Chaitons for the period from February 1, 2018 to March 31, 2019, were \$8,545.50, plus disbursements of \$436.66, plus HST of \$1,137.68, for a total of \$10,119.84. The time spent by Chaitons is more particularly described in the Affidavit of Sam Rappos sworn May 2, 2019, which is attached hereto as **Appendix "V"** and contains, among other things, copies of invoices that set out the services provided during this period.

108. The fees and disbursements of Harris Sheaffer, as real estate counsel to the Trustee, for the period from January 2, 2015 to September 28, 2016 were previously approved by the Court pursuant to Orders of the Court dated August 5, 2015 and November 14, 2016.
109. The total fees of Harris Sheaffer for the period from September 29, 2016 to December 7, 2017, were \$9,292.50, plus disbursements of \$166.56, plus HST of \$1,221.45, for a total of \$10,680.51. The time spent by Harris Sheaffer is more particularly described in the Affidavit of Ari Katz May 1, 2019, which is attached hereto and marked as **Appendix "W"** and contains, among other things, copies of invoices that set out the services provided during this period of time.
110. The Trustee is of the view that the fees and disbursements charged by Chaitons and Harris Sheaffer are fair and reasonable.

TRUSTEE'S REQUEST TO THE COURT

111. Based on the foregoing, the Trustee respectfully requests that the Court grant the orders described in paragraph 3 (c) above.

All of which is respectfully submitted to this Court as of this 31st day of May, 2019.

RSM CANADA LIMITED

in its capacity as Court-appointed Trustee of
the Property and not in its personal capacity

Pcr: _____

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

APPENDIX F

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

THE HONOURABLE *Madam*) WEDNESDAY, THE 19th DAY
)
)
JUSTICE *Cooney*) OF JUNE, 2019



**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 RSM Canada 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 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 Twenty-Second Report of the Trustee dated May 31, 2019 (the "**Twenty-Second Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee, and such other counsel listed on the Counsel Slip, no one else from the service list

appearing although duly served as appears from the affidavit of service of Lynda Christodoulou sworn June 17, 2019, 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 TWENTY-SECOND REPORT AND ACTIVITIES

2. **THIS COURT ORDERS** that the Twenty-Second Report, and the conduct and activities of the Trustee as set out therein, be and are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Trustee for the period January 1, 2018 to March 31, 2019, as described in the Twenty-Second Report and the Affidavit of Arif Dhanani sworn April 29, 2019, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Trustee, Chaitons LLP, for the period February 1, 2018 to March 31, 2019, as described in the Twenty-Second Report and the Affidavit of Sam Rappos sworn May 2, 2019, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Trustee, Harris Sheaffer LLP, for the period September 29, 2016 to December 7, 2017, as described in the Twenty-Second Report and the Affidavit of Ari Katz sworn May 1, 2019, be and are hereby approved.

APPROVAL OF INTERIM R&D STATEMENT

6. **THIS COURT ORDERS** that the Trustee's interim statement of receipts and disbursements for the period January 22, 2016 to March 31, 2019, attached as Appendix "T" to the Twenty-Second Report, be and is hereby approved.

SETTLEMENT AND SEALING

7. **THIS COURT ORDERS** that the settlement contemplated by the settlement and release agreement attached as Appendix "P" to the Twenty-Second Report (the "**Settlement and Release Agreement**") be and is hereby approved, and the execution of the Settlement and Release agreement by the Trustee is hereby authorized and approved.

8. **THIS COURT ORDERS** that the Confidential Appendix to the Twenty-Second Report shall be sealed and shall not form part of the public record pending further Order of the Court.



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

JUN 19 2019

PER / PAR: 

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

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

Lawyers for RSM Canada Limited,
Court-appointed Trustee

APPENDIX G



By Courier

October 15, 2019

Arif Dhanani
c/o RSM Canada Limited
Construction Lien Trustee
11 King St. W., Ste. 700, Box 27
TORONTO, ON M5H 4C7

Dear Arif Dhanani:

Re: Security: Surety Bond No. 20229-11
Release Ref: 27421-13
Current Value: \$2,939,708.66
Vendor: 144 Park Ltd.
Registration No.: B39278
Enrolment No.: H1637218
Project: Waterloo Standard Condo Corp. 591
Home Address: 144 Park St., WATERLOO, N2L 0B6, ON, CAN

With regards to the request for the release of security, please find attached a copy of our letter authorizing reduction to a new value of \$640,000.00.

Security will be maintained:

- as there is outstanding warranty coverage and occupancy information for 22 units as requested.
- to cover the MSD common element warranty.

All security monies retained will cover all obligations owed or which will be owed to Tarion however they arise.

Should you have any questions regarding the security matter, please contact Michael Critchley at (416) 229-3844 or toll free at 1-877-696-6497 ext.3159..

Sincerely,

Brian Hama
Manager
Underwriting

BH/mc

Attach.

APPENDIX H



October 28, 2019

Aviva Insurance Company of Canada
c/o Westmount Guarantee Services Inc.
600 Cochrane Dr., Ste. 205
Markham, ON L3R 5K3

Dear Sirs:

Re: Security: Surety Bond No. 20229-11
Release Ref: 27421-14
Current Value: \$640,000.00
Vendor: 144 Park Ltd.
Registration No.: B39278
Enrolment No.: H1637218
Home Address: 144 Park St., WATERLOO, N2L 0B6, ON, CAN

Tarion Warranty Corporation authorizes a reduction of Surety Bond No. 20229-11 to a new value of \$200,000.00.

Sincerely,

Brian Hama
Manager
Underwriting

BH/mc

Copy to: Arif Dhanani - RSM Canada Limited, Construction Lien Trustee

APPENDIX I

**In the Matter of the Construction Lien Proceeding of 144 Park
Trustee's Statement of Receipts and Disbursements
For the Period January 22, 2015 to March 31, 2019**

	Cumulative to December 31, 2019
Receipts	
Closing proceeds from sale of units (Note 1)	\$ 43,502,035
HST collected	3,881,912
Occupancy fees paid by residents	979,896
DIP funds received	500,000
Property taxes collected from closing of units	564,431
Upgrade revenues collected	616,388
Public art cost recovery	89,147
Hydro utilities recovery	59,023
HST refunds	353,530
Transfers from Harris Sheaffer accounts	8,564
Bank interest	15,015
Sale of access fobs and other miscellaneous receipts, including guest suite mortgage	141,039
Total Receipts	\$ 50,710,980
 Disbursements	
Operating expenses (property manager, security, snow removal and landscaping, property cleaner, garbage disposal)	\$ 79,858
Payment of DIP Facility fee	25,000
Repayment of DIP funds	517,062
Costs paid to complete unsold units	1,255,734
Commissions paid on sale of units/upgrade revenues	547,664
Insurance premiums	29,093
Payment of fees and bond premium to Westmount Guarantee	40,480
Insurance deductible	50,000
Trustee's fees	
- pre-appointment consulting fees	36,737
- post-appointment fees	1,067,925
Legal counsel fees	713,403
Utilities	173,522
Common area maintenance fees paid to WSCC 591	591,325
Settlement fee paid to WSCC 591	200,000
Reserve fund contribution - trust funds	30,971
Amounts paid on behalf of WSCC 591 (insurance, utilities)	49,889
Repairs and maintenance	1,412,201
Wages	194,136
Third party consultants (engineer, surveyor, planner, architect)	183,622
HST/PST paid	742,363
HST remitted to Canada Revenue Agency	3,466,555
Property taxes paid	714,252
Advertising - Unsold Units	26,475
Registration fees paid to the City and Region of Waterloo	3,375
Courier	1,890
Other	14,240
Total disbursements	\$ 12,167,773
 Excess of receipts over disbursements before distributions to mortgagees and lien claimants	 \$ 38,543,207
 Distribution to mortgagees and lien claimants	
Laurentian Bank of Canada and/or Marshall Zehr Group	36,679,000
Lien claim holdbacks paid	1,418,802
Excess of receipts over disbursements	\$ 445,405

APPENDIX J

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**

SIXTH REPORT OF THE TRUSTEE

November 30, 2015

INTRODUCTION AND PURPOSE OF THE SIXTH 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) (the “**CLA**”) trustee (the “**Trustee**”) with respect to certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and 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”**.

2. The purpose of this Sixth Report of the Trustee (the “**Sixth Report**”) is to request that the Court grant an Order:
 - (a) authorizing the Trustee to engage Mint Realty Inc. Brokerage (“**Mint Realty**”) to market the Remaining Units (as defined below) on the terms of the Mint Realty Proposal (as defined below), including advertising and soliciting offers in respect of the Remaining Units;

 - (b) authorizing the Trustee to sell, convey, or transfer the Remaining Units without the approval of the Court if the purchase price is at least within 95% of the listing price for the applicable residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property or its assignee to the sale price;

 - (c) authorizing the Trustee to make distributions to construction lien claimants of holdback amounts in the aggregate amount of \$315,038.40 from the net sale

proceeds of the Property being held by the Trustee pursuant to the Order of the Honourable Mr. Justice Newbould dated August 5, 2015 (the “**Reserve**”);

- (d) authorizing the Trustee to continue to hold in the Reserve the aggregate amount of \$363,138.53 in respect of holdback amounts claimed by three (3) construction lien claimants (694643 Ontario Limited cob as O’Connor Electric (“**O’Connor Electric**”), Clonard Group Inc. (“**Clonard**”), and Sreen Painting Ltd. (“**Sreen**”)) pending further Order of the Court;
- (e) authorizing the Trustee to distribute the balance of the funds in the Reserve to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and
- (f) authorizing the Trustee to make further distributions of the net sale proceeds of the Property to the Bank or its assignee up to the amount of the Bank’s secured indebtedness without further Court order.

TERMS OF REFERENCE

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

144 PARK PROJECT

Background

4. As has been previously reported to the Court, the Property was acquired by 144 Park in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 148 residential units and 1 guest unit (the “**144 Park Project**”).
5. 144 Park sought the appointment of the Trustee in January 2015 as it was insolvent and was not in a position to:
 - (a) take the necessary steps to have the condominium declaration finalized and registered;
 - (b) complete the sale transactions for the residential units that had been pre-sold; and
 - (c) complete the marketing and sale of the unsold residential units.
6. 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

- (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.
7. As of the date of the Trustee's appointment, 144 Park had entered into agreements of purchase and sale ("**Sale Agreements**") with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 Park to the purchasers.
 8. 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 the Honourable Mr. Justice McEwen dated April 29, 2015.
 9. As a result, there were 128 units that were the subject of Sale Agreements with 144 Park, and 20 unsold units (collectively, the "**Unsold Units**").
 10. The Appointment Order did not authorize or empower the Trustee to market or sell the Unsold Units.
 11. Pursuant to the Order of Justice Newbould dated August 5, 2015 (the "**August 5th Order**"), the Trustee was authorized to engage Mint Realty to market any or all of the Unsold Units on the terms of Mint Realty's proposal (the "**Mint Realty Proposal**"), including advertising and soliciting offers in respect of the Unsold Units or any part or parts thereof. The August 5th Order also authorized the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee

has obtained the written consent of the first mortgagee of the Property or its assignee. A copy of the August 5th Order is attached hereto as **Appendix "B"**.

Sold Units

12. As noted above, there were 128 units that were subject to Sale Agreements that the Trustee was authorized to take steps to close pursuant to the Appointment Order (the "Sold Units").

13. As of the date of this Sixth Report, the Trustee has closed the sale of 107 of the 128 Sold Units. Two more Sold Units are scheduled to close on November 30, 2015. Assuming that such sale transactions close, as of December 1, 2015, the Trustee will have closed the sale of 109 of the 128 Sold Units. The remaining 19 Sold Units are as follows:

(a) six (6) units¹ that were the subject of the Trustee's motion for advice and directions with respect to parking matters that was heard by this Court on October 27, 2015. As a result of the Court's Endorsement dated November 2, 2015 that concluded the Court did not authorize the Trustee to terminate these sale transactions, counsel to the Trustee has been in contact with counsel to these purchasers to schedule the closing of these sale transactions;

(b) three (3) units² that were impacted by the parking motion. Counsel to the Trustee has been in contact with counsel to these purchasers to schedule the closing of these sale transactions;

¹ Units 105, 1201, 1504, 1701, 1804 and 1901

² Units 604, 704 and 903

- (c) unit 1802, where the Trustee is in the process of completing required construction of the unit that 144 Park agreed to complete prior to closing, to the point where the purchaser has agreed to close the transaction and finish the remaining construction on his own. A closing date is in the process of being finalized;
- (d) two (2) units³ where the purchaser has commenced an application seeking to terminate the sale transactions. The purchaser's application was originally commenced in Kitchener and has been transferred to this Court. A hearing date has yet to be scheduled by the parties;
- (e) two (2) units⁴ where the Trustee terminated the Sale Agreements due to purchaser defaults;
- (f) four units⁵ where the Trustee and the purchasers have agreed to terminate the Sale Agreements in accordance with the terms of the Order of Justice Newbould dated October 16, 2015 (the "October 16th Order"), a copy of which is attached hereto as Appendix "C";⁶ and
- (g) unit 1310, where the Trustee and the purchaser are discussing whether the parties will agree to terminate the Sale Agreement in accordance with the October 16th Order.

³ Units 1407 and 1408

⁴ Units 610 and 1009

⁵ Units 609, 1102, 1801 and 1902

⁶ These purchasers have agreed to vacate the units by November 30, 2015 (other than 1801, which will vacate the unit by December 31, 2015) and will be entitled to reimbursement of certain deposit and upgrade monies that were insured by Aviva Insurance Company of Canada.

Remaining Units

14. As noted above, there are six (6) units where Sale Agreements have been terminated by the Trustee due to purchaser defaults or terminated on consent of the parties. There may be three (3) additional units terminated on consent of the parties or pursuant to Court Order (collectively, the “**Remaining Units**”).
15. To the extent that the Sale Agreements for the Remaining Units have been or will be terminated, the Trustee is requesting that the Court authorize it to engage and retain Mint Realty to market and sell the Remaining Units in the same manner and pursuant to the same terms that the Trustee has retained Mint Realty to date to market and sell the Unsold Units pursuant to the August 5th Order and the Mint Realty Proposal.

CONSTRUCTION LIEN CLAIMS PROCESS

Construction Liens

16. Construction liens had been registered against the Property in a total amount of approximately \$4.3 million. Attached as **Appendix “D”** is a chart that sets out the twenty (20) parties (collectively, the “**Construction Lien Claimants**”) that registered twenty one (21) construction liens against the Property, and the amount of their respective liens.⁷
17. Pursuant to the August 5th Order, the Trustee was authorized and directed to retain \$5.4 million from net sale proceeds of the Property in an interest bearing trust account in respect of construction lien claims pending further order of the Court. This amount

⁷ Adlers Main Tile & Carpet Co. Ltd. registered two construction liens and has, through its counsel, confirmed to the Trustee’s counsel that the first registered lien is subsumed by the second registered lien.

represents approximately 125% of the total face value amounts of the registered construction liens.

18. Pursuant to the Order (re Construction Lien Claims Process) of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015 (the “**Claims Process Order**”), the Trustee is to implement and administer a construction lien claims process (the “**Claims Process**”). A copy of the Claims Process Order is attached hereto as **Appendix “E”**.
19. The Claims Process Order authorized and directed the Trustee 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 sale of the Property.
20. As has been previously reported, as of the date of the Trustee’s appointment, there were no funds being held by 144 Park or the Bank with respect to holdback amounts.
21. The Trustee has received documentation with respect to the construction liens of each of the Construction Lien Claimants. The Trustee and its counsel, Chaitons LLP (“**Chaitons**”), have reviewed the claims filed by the Construction Lien Claimants pursuant to the Claims Process. The Trustee has discussed the quantum of each claim with former employees of 144 Park to confirm whether the amounts claimed by the Construction Lien Claimants were consistent with the amounts set out in 144 Park’s books and records.

22. Based on such review, it has been determined that each of the Construction Lien Claimants entered into a contract directly with 144 Park, and there was no general contractor with respect to the 144 Park Project.
23. The Trustee has been advised by Chaitons that, pursuant to section 22 of the *CLA*, 144 Park as owner of the Property was required to maintain a holdback for each Construction Lien Claimant of ten per cent (10%) of the price of services and materials as they were actually supplied.
24. The Trustee has also been advised by Chaitons that, pursuant to section 78(2) of the *CLA*, a properly perfected construction lien has priority over mortgages to the extent of any deficiency in the holdbacks that 144 Park was required to retain under the *CLA*. As there were no funds being held by 144 Park, the deficiency in the holdbacks is the entire amount of the holdbacks.

Distributions from the Reserve

25. As was previously reported by the Trustee in its Fifth Report to the Court dated October 13, 2015 (the "**Fifth Report**"), agreement had been reached with nine (9) of the 20 Construction Lien Claimants that had properly perfected construction lien claims as to the quantum of the holdbacks. A copy of the Fifth Report (without appendices) is attached hereto as **Appendix "F"**.
26. As a result, the Trustee brought a motion returnable October 16, 2015 to obtain an order authorizing it to distribute the aggregate amount of \$932,948.74 from funds in the Reserve to the following 9 Construction Lien Claimants:

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Global Fire Protection Ltd.	\$ 85,645.54
J & I Gaweda Construction Limited	103,632.60
T.I.C. Contracting Ltd.	292,217.30
Global Precast Inc.	115,179.62
2050491 Ontario Inc. o/a The Downsview Group	54,202.46
Weston Flooring Limited	468,639.79
Great Pyramid Aluminum Ltd.	9,410.75
DKS Stone Fabrication & Design Inc.	42,087.16
Aluminum Window Design Installations Inc.	161,933.52
TOTAL	\$932,948.74

27. Pursuant to the October 16th Order, the Trustee was authorized to distribute the \$932,948.74 to the 9 Construction Lien Claimants. The Trustee has distributed such amounts in accordance with the Order.

28. As a result of the distribution, the Reserve, which originally was in the amount of \$5.4 million, is now in the amount of \$4,472,242.62 inclusive of accrued interest as of November 26, 2015.

Additional Distributions from the Reserve

29. As set out in the Fifth Report, the Trustee required additional time to complete discussions with the remaining 11 Construction Lien Claimants regarding the quantum of their holdbacks.

30. Based on extensive discussions and correspondence between Chaitons and counsel to Construction Lien Claimants, a review of 144 Park's books and records, discussions with 144 Park management and employees, nine (9) of the remaining 11 Construction Lien Claimants have properly perfected construction lien claims and the quantum of their

holdbacks has been agreed to or not disputed as of the date of this Sixth Report for a total amount of \$315,038.40:

CONSTRUCTION LIEN CLAIMANT	AGREED TO OUTSTANDING HOLDBACK AMOUNT
Bast Home Comfort Inc.	\$ 10,182.84
Frendel Kitchens Limited	24,471.54
Sam Tortola Enterprises Inc.	10,400.86
CRS Contractors Rental Supply General Partner Inc.	15,869.50
Hammerschlag & Joffe Inc.	13,721.79
Adlers Main Tile & Carpet Co. Ltd.	86,000.00
Brody Wall System Ltd.	26,000.00
Skyway Canada Ltd.	4,257.84
Clonard Group Inc.	124,134.03
TOTAL	<u>\$315,038.40</u>

31. Discussions continue with the three remaining (3) Construction Lien Claimants (O'Connor Electric, Clonard, and Sreen) concerning the quantum of their holdback amounts, as discussed below.
32. With respect to Clonard, based on 144 Park's books and records, the holdback amount should be \$124,134.03. Clonard has provided documentation in support of its claim that the holdback amount should be \$158,173.33, resulting in a difference of \$34,039.30.
33. The Trustee continues to review the documentation provided by Clonard. At this time, the parties have agreed that the Trustee will seek Court authority to distribute \$124,134.03 to Clonard, and retain \$34,039.30 in the Reserve pending further Order of the Court.
34. With respect to the claim of O'Connor Electric, the parties continue to discuss matters related to its claim. O'Connor Electric has claimed that it is entitled to a holdback

amount of \$254,350.23. The parties have agreed that the Trustee will retain this amount in the Reserve pending further Order of the Court.

35. With respect to the claim of Sreen, the parties continue to discuss matters related to its claim. Sreen has claimed that it is entitled to a holdback amount of \$74,749.00. The Trustee will retain this amount in the Reserve pending further Order of the Court.

36. As a result, the Trustee is requesting that the Court grant an order authorizing it to:

- (a) distribute the aggregate amount of \$315,038.40 from the Reserve to the 9 Construction Lien Claimants listed above on account of holdback amounts; and
- (b) retain the aggregate amount of \$363,138.53⁸ in the Reserve pending further Order of the Court in connection with the claims of Clonard, O'Connor Electric and Sreen;
- (c) distribute the balance of the funds in the Reserve in the amount of \$3,794,065.69 plus additional interest accrued to date of distribution to the Bank.

Priorities between the Bank and the Construction Lien Claimants

37. As noted above, the Trustee was advised by Chaitons that the Construction Lien Claimants were entitled to payment of the deficiency in the holdback amounts from the net sale proceeds of the Property in priority to the claims of the mortgagees pursuant to section 78(2) of the *CLA*.

⁸ Calculated by adding the holdback amounts claimed by O'Connor Electric (\$254,350.23) and Sreen (\$74,749) and the disputed amount of the holdback amount claimed by Clonard (\$34,039.30).

38. In accordance with the Claims Process Order, the Trustee is to provide recommendations to the Court regarding priorities with respect to any proceeds of the sale of the Property.
39. At the request of counsel to certain of the Construction Lien Claimants, the Trustee made available documentation related to the 144 Park Project, such as appraisals, construction draw worksheets, and progress draw reports.
40. The Trustee has been advised by Chaitons that, based on its review of all documentation and information available to it to date, its view is that the Construction Lien Claimants are only entitled to the deficiency in their holdback amounts in priority to the claims of the Bank as first building mortgagee on the basis of section 78(2) of the *CLA*.
41. In a letter dated November 13, 2015, Chaitons wrote to counsel to the Construction Lien Claimants and set out its view as to the priority between the Bank as building mortgagee and the Construction Lien Claimants. In the letter, Chaitons requested that counsel provide their comments on the holdback and priority determinations set out in the letter. A copy of the November 13, 2015 letter is attached hereto as **Appendix "G"**.
42. One issue raised in the letter concerned the final advance made by the Bank to 144 Park on October 24, 2014, as the first construction lien was registered against the Property on that date.
43. At the request of the Trustee, the Bank delivered the Affidavit of Nicole Yap sworn November 18, 2015 that provides documentary support that the funds advanced by the Bank on October 24, 2014 was advanced prior to the registration of the first construction

lien. A copy of the Affidavit was provided to counsel to the Construction Lien Claimants and is attached hereto as **Appendix "H"**.

44. The Trustee has been informed that, as of the date of this Sixth Report, no Construction Lien Claimant has challenged or objected to Chaitons' view as to the extent of the priority of the Bank's mortgage over the Construction Lien Claimants (other than with respect to the deficiency in the holdbacks).

DISTRIBUTION TO LBC FROM NET SALE PROCEEDS

45. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of approximately \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank, the Bank has the first ranking building mortgage against the Property.
46. The Trustee obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first building mortgage against the Property.
47. Pursuant to the August 5th Order, the Trustee was authorized to distribute \$14 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$14 million to the Bank.
48. Pursuant to the October 16th Order, the Trustee was authorized to distribute up to \$6 million to the Bank. In accordance with the Order, the Trustee has distributed the amount of \$4.5 million to the Bank.

49. The Trustee has been informed that, as of November 23, 2015, the Bank was owed approximately \$22,059,111 in connection with the credit facilities it extended to 144 Park and secured by the Bank's mortgage.
50. The Trustee is requesting that the Court authorize it to make future distributions to the Bank or its assignee from the net sale proceeds of the Property up to the amount owed to the Bank without further Court order.

TRUSTEE'S REQUEST TO THE COURT

51. Based on the foregoing, the Trustee respectfully requests that the Court issue an Order:
 - (a) authorizing the Trustee to engage Mint Realty to market the Remaining Units on the terms of the Mint Realty Proposal;
 - (b) authorizing the Trustee to sell, convey, or transfer the Remaining Units without the approval of the Court if the purchase price is at least within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property or its assignee to the sale price;
 - (c) authorizing the Trustee to make distributions to Construction Lien Claimants with respect to holdback amounts in the aggregate amount of \$315,038.40 from funds in the Reserve;
 - (d) authorizing the Trustee to continue to hold in the Reserve the amount of \$363,138.53 in respect of the holdback amounts claimed by Clonard, O'Connor Electric and Screen pending further Order of the Court;

- (e) authorizing the Trustee to distribute the balance of the Reserve to the Bank; and
- (f) authorizing the Trustee to make further distributions of the net sale proceeds of the Property to the Bank or its assignee up to the amount of the Bank's secured indebtedness without further Court order.

All of which is respectfully submitted to this Court as of this 30th day of November, 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 K

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

THE HONOURABLE MR.) FRIDAY, THE 16th DAY
)
JUSTICE NEWBOULD) OF OCTOBER, 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 Motion for Advice and Directions)

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 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 Fourth Report of the Trustee dated September 25, 2015 and the Appendices thereto, and the Supplement to the Fourth Report of the Trustee dated October 13, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and other

counsel listed on the Counsel Slip, no one else from the service list appearing although duly served as appears from the affidavits of service of Lynn Lee sworn September 28, 2015 and October 14, 2015, filed,

1. **THIS COURT ORDERS** that the Trustee is hereby authorized to terminate or disclaim, if necessary, the agreements of purchase and sale entered into between 144 Park Ltd. and the following purchasers with respect to the listed units:

- (a) Radulovic, unit 609
- (b) Pollard, unit 802
- (c) Lam and Chac, unit 1102
- (d) Woodhouse, unit 1310
- (e) Coghill, unit 1801
- (f) McEachnie, unit 1803
- (g) Martin-Guy, unit 1902

2. **THIS COURT ORDERS** that the authorization granted to the Trustee pursuant to paragraph 1 hereof is entirely without prejudice to any position that Oliver Romaniuk, Duncan, Linton and Lenczner Slaght may take in respect of the relief sought by the Trustee against them or their clients.

ENTERED IN THE REGISTRY
OCT 13 2015


Giuseppe Di Pietro
Registrar

**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 Motion for Advice and Directions)

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 L

**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 S. 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**AFFIDAVIT OF ARIF N. DHANANI
(Sworn on January 29, 2020)**

I, ARIF N. DHANANI, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

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 certain lands and premises owned by 144 Park Ltd. (“**144 Park**”) and 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**”).
2. On December 5, 2017, the Court granted an order substituting RSM Canada Limited (“**RSM**”) in place of the name Collins Barrow Toronto Limited (the “**Omnibus Order**”).
3. I am a Vice-President of RSM, in its capacity as Trustee, with respect to the Property and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I

indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

4. Attached hereto and marked as **Exhibit "A"** are detailed invoices (the "**Invoices**") issued by RSM for its fees and disbursements in connection with the proceedings related to the Property pursuant to the Construction Lien Act for the period April 1, 2019 to December 31, 2019. The total fees charged by RSM during this period were \$24,274.00 plus disbursements of \$9.78, plus HST of \$3,156.89 totaling \$27,440.67.

5. The Invoices are a fair and accurate description of the services provided and the amounts charged by RSM.

6. Attached hereto and marked as **Exhibit "B"** is a schedule summarizing the invoices in Exhibit "A" including the total billable hours charged, the total fees charged and the average hourly rate charged.

7. I make this affidavit in support of a motion for an Order approving the Trustee's fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on the 29th day of January, 2020



Commissioner for Taking Affidavits
(or as may be)



ARIF N. DHANANI

Daniel Raphael Weisz, a Commissioner, etc.,
Province of Ontario, for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021

EXHIBIT “A”

Detailed Invoices

This is Exhibit “A” to the Affidavit of
Arif N. Dhanani, sworn on January 29, 2020



A Commissioner for the taking of Affidavits, etc.

Daniel Raphael Welsz, a Commissioner, etc.,
Province of Ontario, for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date May 17, 2019

Client File 300027
Invoice 52
No. 5696258

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period April 1 to April 30, 2019.

Date	Professional	Description
04/01/2019	Arif Dhanani	Follow up call to Chaitons LLP and message for S. Rappos of Chaitons; review of email from S. Atkinson and respond thereto; call with S. Rappos to discuss settlement; call with L. Holloway of Pronto General Contracting to confirm completion or status of all outstanding items on repair agreement with Tarion; email to S. Rappos with repair agreement, details of status of each item and settlement to be offered to WSCC 591.
04/02/2019	Arif Dhanani	Review of emails from AJ Mueller re no heat issue; call with L. Holloway re contacting Pro-Air Testing Inc. ("Pro-Air") to go back out to 144 Park; review of email from L. Reed, property manager and respond thereto; email to Board and property manager re attendance of Pro-Air at 144 Park at noon; review of draft email from S. Rappos, amend same and re-send to S. Rappos.
04/03/2019	Arif Dhanani	Review of email forwarded by Chaitons re settlement offer and forward same to MarshallZehr Group Inc. ("MZ") with comments; review Twenty-First Report of the Trustee.
04/04/2019	Anne Baptiste	Filing re banking.
04/05/2019	Arif Dhanani	Emails to/from Chaitons re LAT appeal and global settlement with Condominium Corporation.
04/08/2019	Arif Dhanani	Commence drafting Trustee's Twenty Second Report to Court.
04/09/2019	Arif Dhanani	Review of balancing report provided by Pro-Air and forward same to Morrison Hershfield; attend to file administration.
04/10/2019	Arif Dhanani	Continue drafting Trustee's Twenty Second Report.
04/11/2019	Anne Baptiste	Prepare disbursement cheques; prepare March bank reconciliation.
04/12/2019	Arif Dhanani	Continue drafting Receiver's Twenty Second Report.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

Date	Professional	Description
04/15/2019	Arif Dhanani	Drafting Trustee's Twenty Second Report to the Court.
04/16/2019	Arif Dhanani	Complete draft of Trustee's Twenty Second Report and send to Chaitons for comments.
04/16/2019	Donna Nishimura	Deposit cheque at the bank.
04/17/2019	Anne Baptiste	Post deposits to Ascend; filing re banking.
04/22/2019	Arif Dhanani	Complete and file HST return for March 2019.
04/23/2019	Arif Dhanani	Review of correspondence from counsel to WSCC 591 re settlement offer; email to MZ in this regard; review changes to Twenty Second Report made by Chaitons, accept same as appropriate, make further changes; send email to Chaitons with instructions re finalization of report and service.
04/24/2019	Anne Baptiste	Filing re banking.
04/25/2019	Daniel Weisz	Begin review of Twenty Second Report to Court.
04/26/2019	Daniel Weisz	Complete review of Twenty Second Report to Court.
04/26/2019	Arif Dhanani	Review of email from Morrison Hershfield re HVAC system and balancing and forward same to Board and property manager for 144 Park.
04/29/2019	Arif Dhanani	Email exchange with Chaitons re Twenty Second Report; review and incorporate changes made by D. Weisz, as appropriate, finalize affidavit of fees and execute same, assemble all report appendices; send final track changes version to Chaitons with appendices.
04/30/2019	Arif Dhanani	Review affidavit of A. Katz and invoices to be approved by the Court, email to A. Katz in this regard; review changes to Twenty-Second Report and incorporate same; email to MZ re report, update and any further input from MZ; review of email from MZ, email to Chaitons re further offer to settle; review of affidavit of S. Rappos and attachments thereto for insertion into Twenty-Second Report.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	2.20	\$ 525	\$ 1,155.00
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	22.20	\$ 395	8,769.00
Anne Baptiste/Donna Nishimura	Estate Administrator	0.90	\$ 110	99.00
Total hours and professional fees		25.30		\$ 10,023.00
HST @ 13%				1,302.99
Total payable				\$ 11,325.99

PAYMENT BY VISA / MC ACCEPTED

Card Number _____ Expiry Date _____

Name on Card _____ Amount _____

WIRE PAYMENT DETAILS

For CA\$ Payments: For credit to the account of RSM Canada Limited, Account No. 90-21116, Canadian Imperial Bank of Commerce Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

ONLINE/TELEPHONE BANKING available at major financial institutions under the account "RSM Canada Limited"

Terms: Payment upon receipt. Interest will be charged at the rate of 12% per annum (1% per month) on overdue accounts.
 RSM CANADA LIMITED



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date July 23, 2019

Client File 300027
Invoice 53
No. 5739038

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period May 1 to May 31, 2019.

Date	Professional	Description
05/01/2019	Daniel Weisz	Review of updated report to Court.
05/01/2019	Arif Dhanani	Review of amended affidavit of A. Katz and provide additional comments; update meeting with B. Tannenbaum.
05/03/2019	Arif Dhanani	Make final amendments to Twenty-Second Report and provide same to B. Tannenbaum for signature; finalize appendices to report and email same to S. Rappos at Chaitons LLP; call with S. Rappos re settlement with WSCC 591.
05/03/2019	Bryan Tannenbaum	Read and edit Twenty-Second Report of the Trustee.
05/06/2019	Arif Dhanani	Review correspondence from Duncan, Linton LLP; email to S. Rappos re same; email to MarshallZehr Group Inc. ("MZ") re settlement.
05/07/2019	Arif Dhanani	Review March 2019 HST notice of assessment and complete documentation to deposit refund cheque.
05/13/2019	Anne Baptiste	Prepare disbursement cheque, prepare April bank reconciliation; filing re banking.
05/15/2019	Arif Dhanani	Review of WSCC 591's amendments to settlement agreement and correspond with Chaitons on same; email to J. Schlumpf of MZ re insurance.
05/16/2019	Arif Dhanani	Call with S. Rappos re Release from WSCC 591 and proceeding thereon, including instructions to obtain Court approval of settlement agreement and authorization to make settlement payment; attend to administrative matters.
05/21/2019	Arif Dhanani	Amending Trustee's Twenty-Second Report to include details of settlement and release agreement between the Trustee and the 144 Park Condominium Corporation; email track changes version to Chaitons for comments.
05/21/2019	Bryan Tannenbaum	Receipt and review of revised Twenty-Second Report from Chaitons; review same; discuss with A. Dhanani.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

Date	Professional	Description
05/22/2019	Anne Baptiste	Prepare disbursement cheque; filing re banking.
05/24/2019	Arif Dhanani	Email to MZ with response to questions.
05/29/2019	Anne Baptiste	Filing re banking.
05/29/2019	Arif Dhanani	Review Trustee's Twenty-Second Report and make changes thereto, send same to S. Rappos for comments.
05/31/2019	Arif Dhanani	Finalize Trustee's Twenty-Second Report, print same, facilitate execution by B. Tannenbaum and send to Chaitons for service.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	President	2.00	\$ 550	\$ 1,100.00
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	0.80	\$ 525	420.00
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	7.00	\$ 395	2,765.00
Anne Baptiste	Estate Administrator	0.60	\$ 110	66.00
Total hours and professional fees		10.40		\$ 4,351.00
HST @ 13%				565.63
Total payable				\$ 4,916.63

PAYMENT BY VISA / MC ACCEPTED

Card Number _____ Expiry Date _____
 Name on Card _____ Amount _____

WIRE PAYMENT DETAILS

For CA\$ Payments: For credit to the account of RSM Canada Limited, Account No. 90-21116, Canadian Imperial Bank of Commerce Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

ONLINE/TELEPHONE BANKING available at major financial institutions under the account "RSM Canada Limited"



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date October 3, 2019

Client File 300027
Invoice 54
No. 5793864

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period June 1 to July 31, 2019.

Date	Professional	Description
06/07/2019	Donna Nishimura	Deposit cheque at the bank.
06/14/2019	Anne Baptiste	Post deposits to Ascend.
06/19/2019	Arif Dhanani	Review of email from Chaitons LLP with Court Orders and Endorsement; facilitate posting of Orders and Endorsement on the Trustee's website; email to Tarion with copy of Order and Settlement Agreement and request contact details for Tarion representative to discuss release of Tarion's bond.
06/20/2019	Anne Baptiste	Prepare May bank reconciliation; filing re banking.
06/24/2019	Arif Dhanani	Attend for Examination for Discovery at 100 King West in connection with March 2015 flooding incident; call with S. Tindale of Hughes Amys LLP; email to Benson Percival Brown re no communication of change of lawyer or date of examination.
06/28/2019	Anne Baptiste	Prepare disbursement cheques.
07/05/2019	Arif Dhanani	Review of email from and respond to MarshallZehr Group Inc. ("MZ") re status of settlement.
07/12/2019	Arif Dhanani	Review of documentation forwarded by S. Rappos of Chaitons re WSCC 591 withdrawal of LAT appeal; email to R. Salisbury of Tarion with copies of signed settlement agreement, LAT appeal withdrawal and documentation confirming payment of settlement amount and request contact details for Tarion bond release; forward email to MZ; exchange emails with MZ re payment of remaining funds and discharge and process therefor.
07/19/2019	Anne Baptiste	Prepare disbursement cheques.
07/22/2019	Arif Dhanani	Respond to email from Tarion re settlement and release of bond.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

Date	Professional	Description
07/25/2019	Arif Dhanani	Review documentation supporting WSCC 591's payment to unit owner of 1903 for heat pump as part of settlement agreement with Trustee.
07/26/2019	Anne Baptiste	Prepare June bank reconciliation; post deposits to Ascend; prepare disbursement cheques.
07/31/2019	Anne Baptiste	Filing re banking.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	3.80	\$ 395	\$ 1,501.00
Anne Baptiste/Donna Nishimura	Estate Administrator	1.00	\$ 110	110.00
Total hours and professional fees		4.80		\$ 1,611.00
HST @ 13%				209.43
Total payable				\$ 1,820.43

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date October 8, 2019

Client File 300027
Invoice 55
No. 5796040

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period August 1 to September 30, 2019.

Date	Professional	Description
08/01/2019	Arif Dhanani	Prepare and file HST returns for June and July 2019.
08/08/2019	Anne Baptiste	Filing re banking.
08/19/2019	Arif Dhanani	Review of emails from A. Katz re unit closings and registrations for Tarion; forward A. Katz email to Tarion.
08/21/2019	Anne Baptiste	Post deposits to Ascend; filing re banking.
08/29/2019	Bryan Tannenbaum	Receipt and review of A. Dhanani email to S. Rappos of Chaitons LLP re Tarion and bond reduction information requests from Tarion; receipt and review of S. Rappos email regarding sending A. Katz's document to Tarion counsel.
09/03/2019	Arif Dhanani	Review of documents related to 24 units specified by Tarion, including occupancy dates, prepare schedule in this regard and send same to S. Rappos.
09/04/2019	Arif Dhanani	Review and sign Receiver's Certificate re vesting of various common units in WSCC 591 and builder of 155 Caroline and send same to Harris Sheaffer LLP; respond to request for update from MarshallZehr Group Inc.
09/04/2019	Anne Baptiste	Prepare July bank reconciliation.
09/09/2019	Arif Dhanani	Emails from/to S. Rappos re further information requests from Tarion, discussion with B. Tannenbaum re same.
09/13/2019	Arif Dhanani	Review of email from Tarion counsel requesting further information, research information and draft email to S. Rappos with proposed response to Tarion counsel.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

Date	Professional	Description
09/24/2019	Arif Dhanani	Call with S. Rappos and A. Katz re Tarion information requests and moving forward to have Tarion release bond; send copies of last correspondence with Tarion to A. Katz.
09/27/2019	Anne Baptiste	Prepare August bank reconciliation.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	President	0.10	\$ 550	55.00
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	6.50	\$ 395	2,567.50
Anne Baptiste	Estate Administrator	0.50	\$ 110	55.00
Total hours and professional fees		<u>7.10</u>		\$ 2,677.50
Disbursements				
Courier			\$ 9.78	
Total disbursements				9.78
Total professional fees and disbursements				\$ 2,687.28
HST @ 13%				349.35
Total payable				\$ 3,036.63

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date November 25, 2019

Client File 300027
Invoice 56
No. 5840646

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period October 1 to October 31, 2019.

Date	Professional	Description
10/03/2019	Anne Baptiste	Prepare disbursement cheque.
10/09/2019	Anne Baptiste	Prepare disbursement cheques.
10/17/2019	Anne Baptiste	Prepare bank reconciliation.
10/22/2019	Arif Dhanani	Review correspondence from Tarion re bond reduction and send copy to A. Katz of Harris Sheaffer LLP and S. Rappos of Chaitons LLP; email to A. Katz following up on contact with Tarion; correspond with A. Katz re Tarion's information requests.
10/23/2019	Arif Dhanani	Call with B. Tannenbaum and B. Argue of Westmount Guarantee re release of funds from Tarion bond; review and sign Rider No. 002 and send to Westmount Guarantee and Tarion.
10/25/2019	Arif Dhanani	Call with B. Argue to discuss release of funds from Harris Sheaffer re Tarion bond, and charges in priority to secured lender; complete and file HST returns for August and September 2019.
10/29/2019	Arif Dhanani	Email to Harris Sheaffer re trust account history; review of trust account history after receipt of same from Harris Sheaffer; review of bond reduction letter from Tarion and email to Harris Sheaffer in this regard; email to B. Argue re trust account history and Tarion bond reduction letter.
10/28/2019	Anne Baptiste	Filing re banking.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	3.60	\$ 395	\$ 1,422.00
Anne Baptiste	Estate Administrator	0.40	\$ 110	44.00
Total hours and professional fees		<u>4.00</u>		\$ 1,466.00
HST @ 13%				190.58
Total payable				\$ 1,656.58

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

Invoices are due upon receipt
RSM Canada Limited



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date December 4, 2019

Client File 300027
Invoice 57
No. 5847280

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period November 1 to November 30, 2019.

Date	Professional	Description
11/01/2019	Arif Dhanani	Review of Tarion letter re bond reduction to \$200,000 and email to B. Tannenbaum in this regard, including discussion of October 30, 2019 with B. Argue of Westmount Guarantee; review of bond rider No. 3 received from Westmount Guarantee, execute same, and release to Tarion; call with B. Argue re his discussion with B. Hama at Tarion.
11/05/2019	Arif Dhanani	Call with L. Holloway of Pronto General Contracting re retention of books and records and drawings for 144 Park and status update on bond discharge.
11/07/2019	Anne Baptiste	Filing re banking.
11/12/2019	Arif Dhanani	Call with B. Argue re Tarion Bond and Major Structural Defects; review of bond wording; email to Harris Sheaffer LLP requesting copy of Vendor Agreement and Builder Agreement between 144 Park Ltd. and Tarion; review of Vendor Agreement and Builder Agreement for Colliers Center for wording on Major Structural Defects, discussion with B. Tannenbaum on same; review of books and records of Mady Group for Vendor Agreement and Builder Agreement between 144 Park Ltd. and Tarion; call with C. Mady re 144 Park Vendor and Builder Agreement; email to B. Hama requesting that he provide Vendor Agreement and Builder Agreement between 144 Park Ltd. and Tarion.
11/13/2019	Arif Dhanani	Review of email from B. Argue re Tarion and major structural defect warranty, review Tarion Bulletin, review 144 Park Ltd. purchase and sale agreements, discussion with C. Mady re signing of vendor/builder agreements and timing thereof and pre-sales of units, respond to email from B. Argue.
11/14/2019	Anne Baptiste	Prepare October bank reconciliation; prepare disbursement cheque.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

Date	Professional	Description
11/18/2019	Arif Dhanani	Review of Vendor Agreement and Builder Agreement between 144 Park Ltd. and Tarion; draft letter to Tarion with respect to maintenance of bond and send same to S. Rappos of Chaitons LLP for review and comment.
11/19/2019	Arif Dhanani	Review of emails from MarshallZehr Group and respond to same.
11/22/2019	Anne Baptiste	Filing re banking.
11/29/2019	Anne Baptiste	Prepare disbursement cheque.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	8.70	\$ 395	\$ 3,436.50
Anne Baptiste	Estate Administrator	0.50	\$ 110	55.00
Total hours and professional fees		9.20		\$ 3,491.50
HST @ 13%				453.90
Total payable				\$ 3,945.40

VISA/MASTERCARD
 Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS
 Please contact Donna Nishimura at 647.727.3552 for wire instructions.



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To 144 Park Ltd.
c/o RSM Canada Limited
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date January 13, 2020

Client File 300027
Invoice 58
No. 5870838

For professional services rendered with respect to the appointment of RSM Canada Limited¹ as Trustee under the *Construction Lien Act* of the project known as 144 Park for the period December 1 to December 31, 2019.

Date	Professional	Description
12/02/2019	Arif Dhanani	Finalize Tarion letter and send same with attachments to B. Hama at Tarion.
12/06/2019	Anne Baptiste	Filing re banking.
12/09/2019	Arif Dhanani	Emails to/from Chaitons LLP to schedule call to discuss Tarion's response to Trustee's letter.
12/10/2019	Arif Dhanani	Email to Northbridge Insurance re request for update on flooding claim; call with Chaitons re Tarion's response to request for release of bond.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

¹ Pursuant to a Substitution Order dated December 5, 2017, the Trustee's name was changed from Collins Barrow Toronto Limited to RSM Canada Limited effective December 1, 2017.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Arif N. Dhanani, CPA, CA, CIRP, LIT	Vice President	1.60	\$ 395	\$ 632.00
Anne Baptiste	Estate Administrator	0.20	\$ 110	22.00
Total hours and professional fees		<u>1.80</u>		\$ 654.00
HST @ 13%				85.02
Total payable				\$ 739.02

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

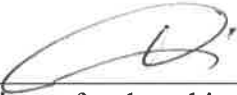
Invoices are due upon receipt.
RSM Canada Limited

EXHIBIT "B"

Calculation of Average Hourly Billing Rates of RSM Canada Limited for the period April 1, 2019 to December 31, 2019

Invoice No.	Billing Period	Total Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
52	April 1, 2019 to April 30, 2019	\$ 10,023.00	\$ -	\$ 1,302.99	25.30	\$ 396.17	\$ 11,325.99
53	May 1, 2019 to May 31, 2019	4,351.00	-	565.63	10.40	418.37	4,916.63
54	June 1, 2019 to July 31, 2019	1,611.00	-	209.43	4.80	335.63	1,820.43
55	August 1, 2019 to September 30, 2019	2,677.50	9.78	349.35	7.10	377.11	3,036.63
56	October 1, 2019 to October 31, 2019	1,466.00	-	190.58	4.00	366.50	1,656.58
57	November 1, 2019 to November 30, 2019	3,491.50	-	453.90	9.20	379.51	3,945.40
58	December 1, 2019 to December 31, 2019	654.00	-	85.02	1.80	363.33	739.02
Total		\$ 24,274.00	\$ 9.78	\$ 3,156.89	62.60	\$ 387.76	\$ 27,440.67

This is Exhibit "B" to the Affidavit of
Arif N. Dhanani, sworn on January 29, 2020


A Commissioner for the taking of Affidavits, etc.

Daniel Raphael Welsz, a Commissioner, etc.
Province of Ontario, for RSM Canada LLP
and RSM Canada Limited.
Expires January 5, 2021

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

-and-

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

Court File No. CV-15-10843-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ARIF N. DHANANI

CHAITONS LLP

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

Harvey Chaiton (LSUC #21592F)

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Sam Rappos (LSUC #51399S)

Tel: 416-218-1137

Fax: 416-218-1837

Email: samr@chaitons.com

Lawyers for the Trustee, RSM Canada Limited

**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

**MOTION RECORD
OF THE TRUSTEE**

(re Distribution of Funds held by Escrow
Agent and other relief)
(returnable February 3, 2020)

CHATONS LLP

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

Sam Rappos (LSO #51399S)

Tel: (416) 218-1137

Fax: (416) 218-1837

E-mail: samr@chaitons.com

**Lawyers for RSM Canada Limited,
Court-appointed Trustee**