

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

THE HONOURABLE) WEDNESDAY, THE 28TH
)
JUSTICE OSBORNE) DAY OF SEPTEMBER, 2022

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MYOUNG-JA MARY KIM**

**ORDER
(Extension and Amending DIP Approval Order)**

THIS MOTION, made by Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the “**Debtors**”) for, among other things, an extension of time to file a proposal, was heard this day by judicial videoconference.

ON READING the Motion Record of the Debtors, including the Affidavit of Silver Stephen Kim sworn on September 26, 2022 and the exhibits thereto (the “**Silver Affidavit**”), and the fourth report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) dated September 27, 2022 (the “**Fourth Report**”) and the appendices thereto, including the two fee affidavits of Tom McElroy sworn on September 27, 2022 (the “**Fee Affidavits**”) and on hearing the submissions of counsel for the Debtors and such other counsel as were present as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Dalal Hjjih sworn September 26, 2022, filed:

SERVICE

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

AMENDING DIP APPROVAL ORDER

2. **THIS COURT ORDERS** that the Order of the Honourable Justice Dietrich dated August 5, 2022 (the “**DIP Approval Order**”) be and is hereby amended by replacing the words “Hillmount Capital Inc.” with “such person or persons as may confirm in writing to the Debtors and to the Proposal Trustee that such person or persons agrees to provide interim financing in accordance with this Order”.

3. **THIS COURT ORDERS** that upon a person or persons agreeing to provide interim financing in accordance with paragraph 2 of this Order, the Proposal Trustee will file a certificate with this Court certifying the identity of such person or persons (“**DIP Lender Certificate**”).

4. **THIS COURT ORDERS** that upon the filing of the DIP Lender Certificate, the person or persons identified in the DIP Lender Certificate shall be deemed to be the DIP Lender within the meaning of the DIP Approval Order and shall be entitled to the benefit of the DIP Lender’s Charge, together with all of rights and protections set out in the DIP Approval Order, provided that any such interim financing shall be substantially on terms and subject to conditions set forth in the term sheet attached hereto as Schedule “A”.

EXTENSION OF TIME

5. **THIS COURT ORDER** that the time for the filing of a proposal by the Debtors is hereby extended in accordance with section 50.4(9) of the Bankruptcy and Insolvency Act by a period of eighteen (18) days from September 30, 2022, up to and including October 18, 2022.

APPROVAL OF FOURTH REPORT AND FEES

6. **THIS COURT ORDERS** that the Fourth Report of the Proposal Trustee, and the actions, conduct and activities of the Proposal Trustee set out therein, be and are hereby approved, provided however that only Albert Gelman Inc., in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize in any way such approval.

7. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as set out in the Fee Affidavits appended to the Fourth Report be and is hereby approved, and that the Proposal Trustee is hereby authorized and directed to pay the same from available funds.

GENERAL

8. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) may apply to this Court to vary or amend this Order on net less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

9. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this Order is effective from 12:01 a.m. on the date that it is made and is enforceable without any need for entry and filing.



Term Sheet

July 29, 2022

Private and Confidential

Isaacs Advisory
 100 University Avenue
 North Tower, 5th Floor
 Toronto, ON

Attention: Adrian Isaacs

Dear Adrian:

RE: Term Credit Facility (the "DIP Facility")

We understand that Kuk-Il John Kim and Myoung-Ja Mary Kim (the "**Debtors**") each filed a Notice of Intention to Make a Proposal on April 18, 2022 pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and Albert Gelman Inc. was appointed as Trustee in the proposal proceedings (the "**Proposal Trustee**"). The Court has approved an extension of time for the filing of a proposal by the Debtors by August 16, 2022 pursuant to a Court Order dated June 27, 2022.

Hillmount Capital Inc., in its capacity as a lender (the "**Lender**"), wishes to extend a preliminary quote and pursue arranging a formal DIP Loan Agreement (as defined below) in accordance with the terms and conditions detailed below and subject to final approval. The terms and conditions are as follows:

- | | |
|----------------------|--|
| LENDER: | Hillmount Capital Inc. (the " Lender ") |
| BORROWER(S): | Kuk-Il John Kim and Myoung-Ja Mary, Kim (together, or any of them, the " Borrower ") |
| REAL PROPERTY: | 385 Spadina Road, Toronto, ON (the " Real Property ") |
| PRIORITY / SECURITY: | <ol style="list-style-type: none"> 1. DIP Loan Agreement (as defined below). 2. All supporting authorizations, certificates, acknowledgments and legal opinions as the Lender may reasonably require including, without limitation, satisfactory legal opinions of the Lender's lawyer relating to the enforceability and priority of the security. 3. A super-priority court ordered charge over the Real Property in favour of the Lender in priority to all assignments, security interests, trusts, liens, mortgages, charges and encumbrances whatsoever, statutory or otherwise (the "DIP Charge") subject only to the Administration Charge pursuant to a Court Order dated April 28, 2022 in the amount of \$125,000 4. A registered mortgage in 1st position against the Real Property (the "Charge") subject only to the court ordered Administration Charge of \$125,000 (which shall not be increased) to secure professional fees of counsel to the Borrower, the Proposal Trustee and the Proposal Trustee's counsel. 5. Such other security, documentation or assurance to be prepared and registered by the Borrower's lawyer, as may be required by the Lender or the Lender's solicitor. |

Borrower(s)/Guarantor(s) Initials:

Handwritten initials in black ink, appearing to be 'JK' and 'MJ', written over a horizontal line.

DIP FACILITY: Maximum principal amount of \$250,000 (the “DIP Facility”)

FEES: Lender Commitment Fee – 5% of Dip Facility
Lender Legal Fees, Disbursements and HST – To be determined by Lender’s solicitor
The Lender Commitment Fee shall be earned and payable on the date the definitive agreement is entered into governing the financing transaction contemplated by this Term Sheet (the “DIP Loan Agreement”).

ADVANCES: Provided that (i) the Court Order including the DIP Charge has been granted by the Court; (ii) an Event of Default has not occurred; and (iii) demand for payment has not been made, the DIP Facility shall be available by one or, at the option of the Borrower, multiple advances each in the minimum amount of \$50,000. The initial advance and any subsequent advances shall be provided upon request by the Borrower and approved by the Proposal Trustee and shall be available on a minimum of 2 business days prior written request to the Lender. The proceeds of the first advance on the DIP Facility shall be advanced less the following:

- (a) Lender Fees (including Lender Commitment Fee and wiring fees);
- (b) Legal fees and disbursements plus HST thereon;
- (c) All reasonable costs, fees and expenses incurred by the Lender in connection with the negotiation and preparation of this Term Sheet;
- (d) Isaacs Advisory Fees;
- (e) Interest adjustment payment to the 1st of the month; and
- (f) The accounts of the Borrower’s insolvency counsel, WeirFoulds LLP and the Proposal Trustee, Albert Gelman Inc..

INTEREST RATE & PAYMENT: Interest shall be compounded and calculated monthly at the rate of **14% per annum**, not in advance. Interest shall be payable: (i) monthly, in arrears, on the 1st day of each month until the full amount outstanding hereunder on account of the DIP Facility has been paid in full; (ii) in accordance with the Repayment section below; and (iii) upon Maturity (as hereinafter defined).

REPAYMENT: Any amounts received in repayment of obligations owing under the DIP Loan Agreement shall be paid and applied as follows: (i) firstly, towards outstanding interest and costs payable hereunder; (ii) secondly, towards outstanding Permitted Fees and Expenses (as hereinafter defined); and (iii) thirdly, towards outstanding principal hereunder.

PERMITTED FEES & EXPENSES: Permitted Fees and Expenses includes:

- (a) All reasonable costs, fees and expenses incurred by the Lender in connection with the administration of the DIP Facility including any enforcement of the DIP Charge (all such fees and expenses shall be added to the DIP Facility and secured by the DIP Charge);
- (b) All reasonable and documented fees and expenses of counsels for the Borrower and the Proposal Trustee in connection with the DIP Facility and the Insolvency Proceedings; and
- (c) The Administration Charge which charge shall not exceed \$125,000.

LENDER’S SOLICITOR: Fred Tayar – Fred Tayar & Associates Professional Corporation
Tel: (416) 363-1800 Fax: (416) 363-3356 Email: fred@fredtayar.com

TERMS OF LOAN & PREPAYMENT PRIVILEGE: The DIP Facility matures on the earliest of (“Maturity”):

- (a) The date that is 12 months from the date of the DIP Loan Agreement;

Borrower(s)/Guarantor(s) Initials:



- (b) The completion of a sale of the Real Property, as approved by the Lender, the Proposal Trustee and, where required, the Court; and
- (c) The occurrence of an Event of Default.

All amounts outstanding or payable under the DIP Loan Agreement (including principal and all unpaid accrued interest under the DIP Facility and all fees, costs and expenses and other amounts required to be paid by the Borrower) shall be due and payable in full on Maturity.

The DIP Facility can be permanently repaid in whole or in part at any time upon 15 days written notice to the Lender after at least 2 months interest payments have been made.

PURPOSE OF LOAN:

The Loan has been requested by the Borrower for: (i) carrying costs of the Property, including interest payments payable under the DIP Facility; (ii) appraisal costs; (iii) environmental reports, etc.; (iv) fees and disbursements of the Borrower's insolvency counsel, WeirFoulds LLP, and of the Proposal Trustee, Albert Gelman Inc. Once the Borrower has the environmental reports, they will determine if they sell the Property "as is" to a developer/investor or if they will remediate the Property and then sell the Property.

DEFAULT:

The following events shall constitute events of default (each an "Event of Default"):

- (a) If the Borrower fails to pay to the Lender when due any amount of principal, interest or other amounts under the DIP Facility, this Term Sheet or otherwise, whether by acceleration or otherwise;
- (b) If the Borrower defaults, in the observance or performance of any other non-financial term, covenant or condition in this Term Sheet or any other agreement between the Lender and the Borrower entered into on or after the date of the DIP Loan Agreement;
- (c) If the Borrower defaults, in the observance of any Court Orders in relation to the Insolvency Proceedings;
- (d) If the Lender determines, in its sole discretion, acting reasonably, that a material adverse change has occurred after the date hereof in respect of the business, affairs or financial condition of the Borrower;
- (e) If (i) the Insolvency Proceedings are varied without the consent of the Lender or any other order is made which is or may be prejudicial to the Lender's interests, acting reasonably; (ii) the stay of proceedings is terminated or lifted;
- (f) If a receiver is appointed over any property of the Borrower or any judgment or order or process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower; and
- (g) If the Borrower becomes a bankrupt under the *Bankruptcy and Insolvency Act*.

REMEDIES:

Upon the occurrence of an Event of Default, the Lender may immediately terminate the DIP Loan Agreement, at which time;

- (a) All amounts outstanding under the DIP Facility and this Term Sheet shall, at the option of the Lender, immediately become due and payable; and
 - i. The DIP Charge may be enforced and the Lender may proceed with any other remedies available to the DIP Lender pursuant to the security granted to the Lender; or
 - ii. Seeking an order of the Court on 10 days prior notice, enforce, without further notice, demand or delay all of its rights and remedies against the Borrower and its property, assets and undertaking including without limitation, by way of

Borrower(s)/Guarantor(s) Initials:



appointment of a receiver or such other proceeding as the Lender may deem appropriate.

ADDITIONAL CONDITIONS
AND REPRESENTATIONS:

The DIP Loan Agreement will be entered into as soon as possible and after (a) receipt of all requested documentation as will be indicated in the DIP Loan Agreement; and (b) the terms and conditions of the DIP Loan Agreement are fulfilled, including (but not limited to) the following:

1. The Borrower obtaining a Court Order on terms acceptable to the Lender, including an Order:
 - a. authorizing the Borrower to enter into and authorizing the Borrower and the Proposal Trustee to perform their obligations under this Term Sheet and a DIP Loan Agreement;
 - b. authorizing the Lender to effect such registrations, filings and recordings that it deems appropriate, in its sole discretion, regarding the security granted to the Lender under the DIP Charge and security obtained in the Court Order;
 - c. granting the Lender a super-priority court ordered charge over all of the present and future real and personal, tangible and intangible property and assets of the Borrower which is only subordinate to the Administration Charge;
 - d. granting the Lender the right, upon the occurrence of an Event of Default (as defined below) and pursuant to the Court Order, to enforce the rights and remedies available to it under the security granted under the Court Order and available at law;
 - e. prohibiting any further borrowing by the Borrower, without the prior written consent of the Lender;
 - f. prohibiting the granting of any additional liens, charges, security interests or any other encumbrances upon the Real Property or assets of the Borrower;
 - g. requiring the Borrower to provide the Lender such reports, schedules and cash flows as is currently being provided to the Proposal Trustee; and
 - h. declaring the Court Order, and the DIP Charge granted thereunder, binding upon a trustee in bankruptcy of the Borrower, receiver, receiver-manager or other officer of the Court.
2. All property taxes on the Real Property to be current at the time of closing. Any arrears in property taxes must be paid in full prior to closing or from the proceeds of this Loan unless the Court orders that the DIP Facility takes priority over any arrears. Borrower(s) to pay property taxes directly and provide confirmation to the Lender, on a quarterly basis, that the property taxes are up to date.
3. Please see Schedule "A" for additional terms of the DIP Loan Agreement.
4. Satisfactory review of adequate fire and building "all risk" insurance on the Real Property by Lender or its independent insurance advisor. The Lender is to be designated as loss payee. The cost of the insurance review by the advisor is the responsibility of the Borrower.
5. It is hereby agreed by and between the Lender and the Borrower that any monies tendered in respect of the DIP Facility payments or other payments due shall be paid by 1 p.m. on the business day upon which they are due. If received after that time (i.e., for computing interest), the monies will be deemed to be received the next business day.
6. Satisfactory inspection of the Property and receipt of an appraisal in the Lender's name. Borrower to be responsible for Lender's inspection fees and letter of transmittal in favour of the Lender and payment of applicable fees.
7. Receipt of and approval by the Lender, within Lender's sole, absolute and unfettered discretion, of all existing environmental information and reports relating to the Property, including any Phase I or Phase II environmental reports, or cost estimates, and the back-up data (specifically, the reports are to include the analysis indicating

Borrower(s)/Guarantor(s) Initials:

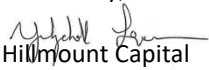


where the bore holes were drilled, what testing was done and the results of those testing) (collectively, the "Environmental Information").

POST CLOSING COVENANT OF THE BORROWER As soon as possible after the closing of the Transaction, and provided that advances have been made to the Borrower, the Borrower will deliver updated Environmental Information addressed also to the Lender. Borrower to be responsible for all applicable fees associated with obtaining such reports.

SCHEDULES ATTACHED: The following attached schedule(s) form a part of this Term Sheet:
Schedule A – Conditions

In order to proceed, kindly indicate your acceptance of the above terms and conditions by signing below and returning this Term Sheet to the Lender by **5:00pm on August 2, 2022**, along with a non-refundable deposit payable to the Lender in the amount of **\$2,500.00 (RECEIVED)** (the "Deposit"), representing a portion of the non-refundable application fee. The Deposit will be applied against processing a DIP Loan Agreement substantially in accordance with the terms and conditions outlined in this Term Sheet. **Please note that this Term Sheet does not constitute a DIP Loan Agreement but is rather an expression of interest.**

Yours truly,

Hillmount Capital
416-849-0322
Lic. #10453 and #11925

ACCEPTANCE OF TERM SHEET BY BORROWER


The Borrower hereby consents to the Lender obtaining credit and/or personal information on the Borrower from any source and each source is hereby authorized to provide such information to the Lender.

I / We accept this Term Sheet and post with the Lender **\$2,500.00** representing a portion of the underwriting application and work fees. The Deposit will be non-refundable. The Borrower acknowledges that the Deposit is a reasonable estimate of work costs incurred in sourcing, investigating, underwriting and preparing the DIP Loan Agreement. The Lender will issue a DIP Loan Agreement substantially in accordance with the terms and conditions outlined in this Term Sheet and we agree to forfeit the Deposit as liquidated damages, if because of our / my default for any reason (including discrepancies from application), the loan is not advanced. Providing the loan is advanced fully, the Deposit will be applied towards the Lender Commitment Fee.

Accepted this 29 day of July 2022.

Borrower(s) / Guarantor(s)


Name: Kuk-Il John Kim (Borrower)



Name: Myoung-Ja Mary Kim (Borrower)

SCHEDULE A – CONDITIONS

Borrower(s)/Guarantor(s) Initials: 

ACCRUED AND EARNED INTEREST	Accrued interest calculated from the date that this DIP Facility is advanced to the Interest Adjustment Date will be deducted from the initial gross funds advanced. The Interest Adjustment Date is set at the Lender's option. The Borrower shall not be entitled to receive interest, if any, on any funds held in trust by the Lender. Any interest earned shall accrue to the Lender.
REGULATIONS	The Real Property must comply with all municipal, provincial and federal statutes, regulations and requirements.
SURVEY REQUIREMENTS	Prior to any advance of funds under the DIP Facility, Lender may require a survey acceptable to it, showing the lands and the location of the Real Property to be secured by this DIP Charge. This survey is to be prepared, dated, signed and sealed by a duly qualified Provincial Land Surveyor and is to indicate the land area of the property and the location of all improvements and easements or rights-of-way. At the sole discretion of the Lender's lawyer, the survey requirement may not apply with title insurance.
ASSIGNMENT BY LENDER	The Lender shall have 7 normal business days following: the acceptance of the DIP Loan Agreement, and upon receipt of all requested underwriting information to assign all or part of the of the DIP Facility in an amount to be determined by the Lender at its discretion and subject to terms satisfactory to the Lender.
TITLE INSURANCE	At the Lender's sole option, the Borrower may be required to provide title insurance for the Real Property. The cost of the title insurance shall be at the Borrower's expense.
ADDITIONAL PROVISIONS	Our current schedule of administration and servicing fees include (but not limited to) the following charges:
\$500.00	Missed payment fee: Payable for each missed or late installment payment and for replacing and processing each NSF cheque or returned payment for any charge on this property (i.e., 1 st and / or 2 nd mortgagee) or any other creditor (i.e., utility company, property taxes, etc.).
\$300.00	Insurance: Payable for dealing with each cancellation, premium payment or other non-compliance with insurance requirements.
\$5,000.00	Default: Payable for each act or proceeding instituted.
\$100.00	Loan Statements: For preparation of each statement.
\$5,000.00	Possession: For attending to take possession following default.
\$300.00	Administration: For administering maintenance and security of the property in our possession, per day.
\$300.00	Loan Discharge & Statement Fee: For discharge on one property. \$100.00 for each additional property.
\$250.00	Tax Default Fee: For failure by the Borrower to provide satisfactory confirmation of tax payments.
\$200.00	Annual Tax Account Administration Fee: For administering and maintaining the tax account
\$300.00	For each written request necessitated by the Lender not replacing dishonoured cheques forthwith
\$250.00	Failure to notify Lender of registration of lien by the Condominium Corporation for common maintenance arrears
\$495.00	For each hour of administrative time spent by the Lender or its agent in dealing with issues of default related to this loan. This rate does not apply to solicitor services
\$300.00	Inspection Fee (per property)
\$90.00	Bank Wire Transfer Fee

The Lender reserves the right to charge reasonable fees for other administrative services. Renewal and renewal fee to be at the discretion of the Lender. In the event of a further occurrence of the administrative fees as set out herein, the administrative fees shall increase by a further sum of \$50.00 and this shall be on a cumulative basis.

Borrower(s)/Guarantor(s) Initials: 

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**ORDER
(Extension and Amending DIP Approval Order)**

WeirFoulds LLP
66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Philip Cho (LSO #45615U)
pcho@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim