

Court File No. BK-22-02322607-0031
Estate File No. 31-2822607

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

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

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM

MOTION RECORD
(returnable April 17, 2023)

Dated: April 10, 2023

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

Philip Cho (LSO # 45615U)
Email: pcho@weirfoulds.com
Tel: (416) 365-1110

**Lawyers for the Debtors, Kuk-Ill John
Kim and Myoung-Ja Mary Kim**

SERVICE LIST

To: FIJ LAW LLP
50 West Pearce St #10
Richmond Hill, ON L4B 1C5

Raffaele Sparano
rsparano@fijlaw.com

Lawyers for Bosung Investments Inc., Byoung Han and Jae Yol Han

AND TO: CITY OF TORONTO
c/o GEORGE CHAROCOPOS
North York Civic Centre
5100 Yonge Street, lower level
North York, ON M2N 5V7

George.charocopos@toronto.ca

AND TO: HYON-CHEONG SALLY WESTERGREN
6 Old Church Street
London, UK
SW3 5DQ

sally.hckim@gmail.com

AND TO: BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Rick Coburn
(LSO # 306040)
rcoburn@blg.com

Brendan Wong
(LSO # 51464A)
bwong@blg.com

Lawyers for Lee-Mar Developments Limited

AND TO: WILMS & SHIER ENVIRONMENTAL LAWYERS LLP
1 Toronto Street, Suite 900
Toronto, ON M5C 2V6

Marc McAree
(LSO # 36807C)
mmcaree@wilmsshier.com

Jacquelyn E. Stevens
(LSO # 49234E)
jstevens@wilmsshier.com

AND TO: ALBERT GELMAN INC.
100 Simcoe Street, Suite 125
Toronto, ON M5H 3G2

Tom McElroy
tmcelroy@albertgelman.com

Trustee

AND TO: CHAPNICK & ASSOCIATES
228 Carlton Street
Toronto, ON M5H 2L1

Paul Dineen
(LSO #21996S)
paul.dineen@chapnick.ca

INDEX

Tab	Document
1	Notice of Motion
2	Affidavit of Silver Stephen Kim sworn April 10, 2023
A	Exhibit A – Affidavit of Kuk-III John Kim sworn April 26, 2022
B	Exhibit B – Affidavit of Silver Stephen Kim sworn June 22, 2022
C	Exhibit C – Affidavit of Silver Stephen Kim sworn August 2, 2022
D	Exhibit D – Affidavit of Silver Stephen Kim sworn September 26, 2022
E	Exhibit E – Order of the Honourable Justice Conway dated April 28, 2022
F	Exhibit F – Order of the Honourable Justice Osborne dated June 27, 2022
G	Exhibit G – Order of the Honourable Justice Dietrich dated August 5, 2022
H	Exhibit H – Order of the Honourable Justice Osborne dated September 28, 2022
I	Exhibit I – Certificate of filing a Proposal and Proposal (Kuk-III Kim)
J	Exhibit J – Certificate of filing a Proposal and Proposal (Myoung-Ja Kim)
K	Exhibit K – Feature Sheet of Initial Listing
L	Exhibit L – Feature Sheet of Second Listing
M	Exhibit M – Redacted Agreement of Purchase and Sale
N	Exhibit N – Messina’s in the Village Articles of Incorporation
3	Draft Approval and Vesting Order
4	Blackline Approval and Vesting Order
5	Draft Ancillary Order

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
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IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM

NOTICE OF MOTION
(returnable April 17, 2023)

Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the “**Debtors**”) will make a motion to a Judge presiding over the Commercial List on Monday, April 17, 2023 at 11:00 a.m. or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice
- In writing as an opposed motion under subrule 37.12.1(4)
- In person
- By telephone conference
- By video conference

At the following location: Judicial videoconference link to be provided in CaseLines.

THE MOTION IS FOR an order:

- (a) approving the transaction contemplated in the Sale and Purchase Agreement between the Debtors, as vendor, and Joseph Messina in trust for a company to be incorporated, as purchaser (in such capacity, the “**Purchaser**”) dated February 18, 2023 (the “**Sale Agreement**”) to purchase the real property located at 385 Spadina Road, Toronto, Ontario (the “**Property**”) of the Debtors (the “**Purchased Asset**”) and authorizing the Proposal Trustee to complete the transaction contemplated therein (the “**Transaction**”);
- (b) vesting in the Purchaser, or as the Purchaser may direct, the Debtors’ right, title and interest in the Purchased Asset, as defined in the Sale Agreement, free and clear of any claims and encumbrances, other than permitted encumbrances;
- (c) increasing the Administration Charge by amending the Order of Justice Conway, dated April 28, 2022 (the “**Administration Order**”);
- (d) approving the fifth report (the “**Fifth Report**”) of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (“**Proposal Trustee**”), to be filed ;
- (e) sealing the Confidential Information (as defined herein) until the earlier of (i) the filing of the Proposal Trustee’s Certificate following the completion of the transaction to be approved by the Court in this proceeding; and ii) further order of this Court;
- (f) approving the interim fees and disbursements of counsel to the Debtors and of the Proposal Trustee; and

- (g) such other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) The Debtors are individuals resident in the City of Toronto, in the Province of Ontario, and are spouses of each other;
- (b) On April 18, 2022, the Debtors each filed notices of intention to make a proposal (“NOI”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “BIA”);
- (c) On April 28, 2022, the Honourable Justice Conway granted an order (the “**Administration Charge Order**”), among other things, granting an Administration Charge in the amount of \$125,000 as security for the fees and disbursements of counsel to the Debtors and of the Proposal Trustee and authorizing the Debtors to enter into a listing agreement for the purpose of listing, marketing and selling the Property;
- (d) The time for filing a proposal was extended by orders of this Court made on April 28, 2022, June 27, 2022, August 5, 2022 and September 28, 2022, such that the time for filing a proposal was extended to October 18, 2022;
- (e) On October 18, 2022, the Debtors each filed a Proposal under section 62 of the BIA, which Proposals provide, among other things, that the Debtors will list and sell the Property;

- (f) On November 8, 2022, the first meeting of creditors was adjourned by ordinary resolution of the creditors to February 8, 2023, which was again adjourned by ordinary resolution of the creditors to May 8, 2023;

Sale of the Property

- (g) The Debtors' primary business asset is the Property, which is a vacant commercial property and is the subject of two court actions relating to alleged environmental contamination (the "**Environmental Litigation**");
- (h) In November 2022, the Debtors entered into a listing agreement with Re/Max Ultimate Julie Seo Realty & Re/Max Ultimate Reality Inc. (the "**Realtor**") for the purpose of selling the Property on the Multiple Listing Service in Ontario (the "**MLS**");
- (i) The Debtors established a virtual data room (the "**Data Room**") containing information about the Property, this Proceeding, and the Environmental Litigation, access to which was provided upon an interested person executing a Non-Disclosure Agreement;
- (j) Over the period of time that the Property was listed, thirty-five (35) persons executed Confidentiality Agreements and access was provided to the Data Room;
- (k) On December 5, 2022, the Property was listed on the MLS with a bid date of December 15, 2022, but no bids were received;

- (l) On February 13, 2023, the Debtors, in consultation with the Realtor, de-listed the Property from the MLS and re-listed the Property on February 17, 2023 for a list price of \$649,000;
- (m) On February 20, 2023, the Purchaser submitted an offer to purchase the Property, which was accepted on February 24, 2023;
- (n) The process leading to the Sale Agreement was reasonable in the circumstances;
- (o) The Proposal Trustee was aware and approved of the process leading to the Sale Agreement;
- (p) The Proposal Trustee will file its Fifth Report stating that in its opinion the Transaction is more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (q) The creditors have been made kept informed throughout the process leading to the Sale Agreement;
- (r) The effect of the proposed Transaction is intended to be of greater benefit to the creditors and of other interested persons affected by the environmental condition of the Property;
- (s) The consideration to be received for the sale of the Property is reasonable and fair, taking into account its market value;

Sealing Order

- (t) The Sale Agreement contains certain information that is of a commercially sensitive nature, namely the agreed purchase price (the “**Confidential Information**”);
- (u) In the event that the Transaction is not completed, the public release of the Confidential Information will likely prejudice any subsequent efforts by the Debtors, or a trustee in bankruptcy, to market and sell the Property;
- (v) The Debtors request that the Confidential Information be sealed pending the successful completion of the Transaction, or further order of this Court;
- (w) A sealing order is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk;
- (x) As a matter of proportionality, the benefits of a sealing order as for the limited period of time, outweigh its negative effects;

Increase to the Administration Charge

- (y) The fees and disbursements incurred by counsel to the Debtors and of the Proposal Trustee have exceeded the Administration Charge, and additional fees and disbursements will be incurred in respect of the within Motion, to complete the Transaction, and other steps required to carry out the remaining steps to seek approval of the Proposal;

- (z) The professionals whose fees are secured by the Administration Charge are critical to this Proceeding and are unlikely to continue acting without the benefit of an increase to the Administration Charge sufficient to secure payment for their fees;
- (aa) The Proposal Trustee is supportive of the proposed increase to the Administration Charge;

Approval of Report and Fees

- (bb) The Fifth Report fairly and accurately reflects the circumstances of the Debtors and the activities of the Proposal Trustee since the last report to the Court;
- (cc) The fees and disbursements of counsel to the Debtors and of the Proposal Trustee are reasonable in the circumstances;

Statutory Grounds

- (dd) Sections 64.2, 65.13 and 183(1) of the BIA, as amended;
- (ee) Sections 100 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (ff) Rules 1.04, 2.03, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (gg) Such further and other grounds as counsel may advise and this Court may permit.

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

- (a) The Affidavit of Silver Stephen Kim sworn April 10, 2023, and exhibits thereto;
- (b) The Fifth Report of the Proposal Trustee, to be filed separately; and
- (c) Such further and other evidence as counsel may submit and this Court may permit.

Dated: April 10, 2023

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

Philip Cho (LSO # 45615U)
Email: pcho@weirfoulds.com
Tel: (416) 365-1110

**Lawyers for the Debtors, Kuk-Il John
Kim and Myoung-Ja Mary Kim**

TO: ATTACHED SERVICE LIST

TAB 2

Court File No. BK-22-02322607-0031
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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(COMMERCIAL LIST)**

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

**IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM
AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA MARY KIM**

AFFIDAVIT OF SILVER STEPHEN KIM

I, **SILVER STEPHEN KIM**, of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY:**

1. I am the adult son of the debtors, Kuk-Ill John Kim and Myoung-Ja Mary Kim (the “**Debtors**”). I have been assisting my parents with the administration of this insolvency process and have been the primary contact for the Debtors’ counsel, Philip Cho at WeirFoulds LLP. As such, I have knowledge of the matters to which I hereinafter depose. Where I have been advised of matters, I identify the source of my information and belief and verily believe such matters to be true.

2. Albert Gelman Inc. (“**AGI**”) is the proposal trustee (the “**Proposal Trustee**”) in respect of these NOI proceedings.

3. I make this affidavit in support of the Debtors’ motion to approve the sale of the Property (as defined below), vesting all right, interest and title in the Property to the Purchaser (as defined

below), increasing the amount of the Administration Charge (as defined below) and approving the Fifth Report of the Proposal Trustee, together with the fees of counsel to the Debtor and of the Proposal Trustee.

Background

4. As set out in more detail in the Affidavit of Kuk-III John Kim sworn on April 26, 2022 (the “**John Kim Affidavit**”), a copy of which is attached hereto without exhibits and marked as **Exhibit “A”**, on April 18, 2022, the Debtors each filed a notice of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”). I also refer to my Affidavits sworn on June 22, 2022 (the “**First Silver Affidavit**”), on August 2, 2022 (the “**Second Silver Affidavit**”), and on September 26, 2022 (the “**Third Silver Affidavit**”) copies of which are attached hereto without exhibits and marked as **Exhibits “B” “C”, and “D”**, respectively.

5. By order of the Honourable Justice Conway dated April 28, 2022 (the “**Administration Order**”), the Debtors’ NOI proceedings were procedurally consolidated, and a super priority charge was granted in favour of the insolvency professionals (the “**Administration Charge**”) securing the amount of \$125,000. A copy of the Administration Order is attached hereto and marked as **Exhibit “E”**.

6. By order of the Honourable Justice Osborne dated June 27, 2022 (the “**Extension Order**”), the time for the Debtors to file a proposal was extended to, and including, August 16, 2022. A copy of the Extension Order is attached hereto and marked as **Exhibit “F”**.

7. By order of the Honourable Justice Dietrich dated August 5, 2022 (the “**DIP Approval Order**”), interim financing to be provided by Hillmount Capital Inc. (“**Hillmount**”), secured by a DIP Lender’s Charge (as defined in the DIP Approval Order) was approved. In addition, the time for the Debtors to file a proposal was further extended to, and including, September 30, 2022. However, as described in the Third Silver Affidavit, Hillmount declined to move forward and complete the interim financing transaction. A copy of the DIP Approval Order is attached hereto and marked as **Exhibit “G”**.

8. By order of the Honourable Justice Osborne dated September 28, 2022 (the “**Further Extension Order**”), the time for the Debtors to file a proposal was further extended to, and including, October 18, 2022. A copy of the Further Extension Order is attached hereto and marked as **Exhibit “H”**.

9. On October 18, 2022, the Debtors each filed a proposal with the Official Receiver. A copy of the certificates of filing a proposal for each of the Debtors, together with a copy of each Debtor’s respective Proposal, is attached hereto and marked as **Exhibits “I” and “J”**, respectively.

Actions taken since September 28, 2022 & Sale of the Property

10. The Debtors’ sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”), which had been historically used to operate a dry-cleaning business, and is the subject of certain environmental litigation proceedings (the “**Environmental Litigation**”) initiated by the owners of the neighbouring properties: Lee-Mar Developments Limited (the “**Lee-Mar Plaintiff**”) and Bosung Investments Inc., Byoung Ok Han and Jae Yol Han (the “**Bosung Plaintiff**”).

11. Following Hillmount's decision to not proceed as the DIP lender, the Debtors were unable to identify an alternative lender to provide interim financing. The Debtors proceeded to sell the Property on an "as is-where is" basis, as contemplated in their Proposals.

12. On November 8, 2022, I understand from Mr. Cho that a meeting of the creditors was held and that the creditors voted to adjourn the meeting to permit the Debtors to sell the Property. The Debtors agreed to provide regular updates to the Proposal Trustee and their creditors regarding the efforts to sell the Property.

13. The Debtors solicited and received proposals from three different prospective realtors of the Property.

14. On November 14, 2022, the Debtors selected Re/Max Ultimate Julie Seo Realty & Re/Max Ultimate Reality Inc. (the "**Realtor**") and entered into a listing agreement with the Realtor for the purpose of selling the Property on the Multiple Listing Service in Ontario (the "**MLS**"). The Realtor was selected because, among other things, it specialized in store-front commercial properties; was already familiar with the issues affecting the Property; and its commission rate was competitive alongside two other proposals which were received and fairly evaluated by the Debtors.

15. Between November 14, 2022, and November 26, 2022, Mr. Cho received the consents of the Lee-Mar Plaintiff and the Bosung Plaintiff to add certain environmental information produced during the course of the Environmental Litigation into a virtual data room (the "**Data Room**") set up by the Debtors, subject to interested persons signing a Non-Disclosure Agreement ("**NDA**").

16. Given the uncertainty with respect to the value of the Property as impacted by the environmental issues, the Realtor recommended that the Property be listed for nominal value with a bid date, to solicit interest and as many bids as possible. As such, the Property was listed on December 5, 2022, for a value of \$1 (the “**Initial Listing**”). The Realtor also reached out to its known contacts who it believed may be interested in the opportunity to purchase the Property. Attached hereto and marked as **Exhibit “K”** is a copy of the feature sheet.

17. I am advised by the Realtor that:

- (a) its office fielded over 50 legitimate calls inquiring about the Property;
- (b) of those calls, the Realtor sent a copy of the NDA to 29 agents and clients, which in turn returned 20 signed NDAs; and,
- (c) while there was interest, potential buyers were reluctant due to the alleged active contamination and litigation.

18. The Realtor recommended de-listing and then re-listing the Property at a different price to drive new interest in the Property as the listing had become “stale”. On February 8, 2023, the creditor’s meeting was reconvened where, as I am informed by Mr. Cho, the Realtor reported on the sale efforts to date, and proposed de-listing and re-listing the Property for sale at one of two potential price points. The creditors in attendance supported this approach and indicated a preference for listing the Property at the lower price point to attract interest. The meeting was further adjourned to May 8, 2023, and no vote was taken on the Proposals.

19. As such, the Initial Listing was cancelled on February 13, 2023, and re-listed on February 17, 2023, at \$649,000 (the “**Second Listing**”). Attached hereto and marked as **Exhibit “L”** is a copy of the feature sheet of the Second Listing.

20. On February 18, 2023, Joseph Messina, in trust for a company to be incorporated (the “**Purchaser**”) submitted an offer to purchase the Property (the “**Offer**”). On February 24, 2023, in consultation with the Realtor and the Proposal Trustee, the Debtors accepted the Offer. Attached hereto and marked as **Exhibit “M”** is a copy of the redacted agreement of purchase and sale (the “**Sale Agreement**”).

21. The Sale Agreement provided for a financing conditional period in favour of the Purchaser until March 27, 2023, which was waived by the Purchaser on March 16, 2023. The Sale Agreement is conditional on the Debtors obtaining court approval of the Sale Agreement and granting a vesting order in favour of the Purchaser, or as the Purchaser may direct. The sale of the Property is on an “as is-where is” basis with no representations or warranties.

22. I am advised by the Realtor that, following the Offer, the listing for the Property indicated that it was sold conditionally, and that the Realtor continued to accept inquiries, made the Property available for showings, and continued to accept signed NDAs for access to the Data Room. However, the Realtor advises that no other person expressed any intent to make an offer.

23. On March 16, 2023, Mr. Cho advised the creditors (through their lawyers) that the Property had sold conditionally and suggested meeting to discuss the Sale Agreement. On April 6, 2023, Mr. Cho, the Realtor, and the Proposal Trustee met with the creditors’ lawyers and reported on the process leading up to the Sale Agreement, the rationale for accepting the Offer, and disclosed the purchase price to them on the condition of confidentiality.

24. As a result, given the circumstances unique to the Property, the marketing efforts, the extensive period of time on which it was marketed, and the advice of the Realtor, the Debtors believe that the Sale Agreement represents the best price for the Property.

25. On April 6, 2023, the Purchaser's lawyer advised Mr. Cho that the Purchaser incorporated a company to take title to the Property. The name of the company taking title is Messina's In The Village and a copy of the Articles of Incorporation are attached hereto and marked as **Exhibit "N"**.

Sealing Order

26. The accepted purchase price for the Property has been kept confidential. If the purchase price is publicly disclosed, it may prejudice the Debtors, or a trustee in bankruptcy, in the event the Sale Agreement does not close and the Property must be remarketed for sale. As a result, the Debtors are requesting a sealing order in respect of the unredacted Sale Agreement, which I understand will be filed separately, and only for as long as is reasonably necessary.

Increase to the Administration Charge

27. Due to the challenges associated with the DIP Financing negotiations, and the need to adjust the Debtors' approach of selling the Property as a result of the absence of interim financing to conduct the environmental work that had been contemplated, both counsel to the Debtor and the Proposal Trustee incurred fees and disbursements that have exceeded, or will exceed, the amount secured by the Administration Charge.

28. As a result, the Debtors are requesting an increase in the amount secured by Administration Charge to \$300,000. The amount requested is an increase of \$175,000, which is

less than the amount of DIP Financing that had been previously approved, in the amount of \$250,000, which DIP Financing would have covered the fees of the professionals. Thus, there is little to no prejudice to creditors by increasing the amount secured by the Administration Charge as requested.


29. In addition, the professionals are unlikely to continue acting unless their fees are protected given the insolvency of the Debtors. As such, it is reasonably necessary to increase the amount secured by the Administration Charge so that the professionals can complete the work necessary to complete the sale transaction and seek approval of the Proposal.

Approval of Fees

30. The Debtors seek approval of the fees and disbursements of their counsel and of the Proposal Trustee as set out in the fee affidavits that I understand will be filed separately. The fees charged by WeirFoulds LLP and Albert Gelman Inc. are fair and reasonable in the circumstances and the Debtors support the approval of same.

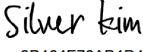
31. Throughout the process, the Debtors have acted in good faith and have kept the Proposal Trustee apprised of the matters as they developed, and I understand the Proposal Trustee will deliver its report to the Court recommending the granting of the relief sought and the approval of any fees.

SWORN remotely by **SILVER STEPHEN KIM** stated as being in the City of Vancouver, in the Province of British Columbia before me at the City of Toronto in the Province of Ontario, on April 10, 2023, in accordance with O. Reg 431/20, Administering an Oath or Declaration Remotely.

DocuSigned by:

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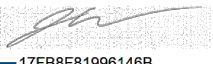
Commissioner for Taking Affidavits etc.

Jordan Dean Crocker,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires May 13, 2024.

DocuSigned by:

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SILVER STEPHEN KIM

This is **Exhibit “A”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

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A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607

Estate File No. 31-2822607

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

**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**

AFFIDAVIT OF KUK-IL JOHN KIM

I, **KUK-IL JOHN KIM**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am an individual resident in the Province of Ontario. On April 18, 2022, I filed a notice of intention to make a proposal (“NOI”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “*BIA*”).

2. That same day, my wife, Myoung-Ja Mary Kim (“**Mary**”), also filed a NOI under Division I, Part III of the *BIA*. Mary is also resident in the Province of Ontario. I will use “we” and “our” to refer to Mary and myself throughout this Affidavit.

3. Albert Gelman Inc. (“**AGI**”) has agreed to act as proposal trustee in respect of the proceedings commenced by the NOIs filed by Mary and me (the “**Proposal Trustee**” and the “**NOI Proceedings**”). Copies of the certificates of filing NOIs are attached as **Exhibit “1”** and “**2**”.

BACKGROUND

4. Our sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”). For the reasons that I will explain below, the Property is presently vacant.

5. Historically the Property was used to conduct a dry-cleaning business. From June 1989, Mary and I operated a dry-cleaning business at the Property, until we sold the business in February 2003. Prior to June 1989, other parties operated a dry-cleaning business at the Property.

6. Initially we leased the ground floor premises to operate the dry-cleaning business from the prior owner of the Property. In February 1994, we purchased the Property.

7. In February 2003, we sold the dry-cleaning business to another proprietor and leased the Property to this proprietor until about January 31, 2013. However, this proprietor ultimately filed for bankruptcy. Since January 31, 2013, the Property has remained vacant due to allegations of environmental contamination originating from the Property.

8. To the best of our knowledge, there are no orders issued in respect of the Property in relation to the alleged environmental contamination.

9. On July 10, 2009, Lee-Mar Developments Limited issued a Statement of Claim against us, among others, bearing Court File No. CV-09-380882 (the “**Lee-Mar Action**”, and together with the Bosung Action, the “**Environmental Litigation**”), in which the Plaintiff, which is the registered owner of a property located near our Property, makes similar allegations as alleged in the Bosung Action. A copy of the Statement of Claim in the Lee-Mar Action is attached hereto

- 3 -

and marked as **Exhibit “3”**. A copy of the Statement of Defence and Crossclaim in the Lee-Mar Action is attached hereto and marked as **Exhibit “4”**.

10. On November 17, 2014, Bosung Investments Inc., Byoung Ok Han and Jae Yol Han commenced an action bearing Court File No. CV-14-00516260-0000 (the “**Bosung Action**”) against us, and others, in which the Plaintiffs, who are the registered owners of a property located near our Property, allege, among other things, that the dry-cleaning business operated from the Property caused chemicals to migrate onto its property. A copy of the Statement of Claim in the Bosung Action is attached hereto and marked as **Exhibit “5”**. A copy of our Statement of Defence and Crossclaim is attached hereto and marked as **Exhibit “6”**.

11. As a result of the Environmental Litigation, we have not leased the Property due to the potential liability that may be attributable to any person in possession of the Property while the Environmental Litigation remains outstanding.

12. Professional fees associated with defending the Environmental Litigation have been funded through a series of personal loans provided by our daughter’s now ex-husband, Mr. Jussi Westergreen. However, neither Mr. Westergreen or our daughter are prepared to continue advancing funds to continue defending the Environmental Litigation.

13. As a result, we have decided to commence these NOI Proceedings to make a formal proposal under the BIA. We intend to sell the Property with a commercial real estate listing agent, and then to utilize the proceeds of sale to fund a proposal to our creditors.

KNOWN CREDITORS

14. The known creditors of Mary and me are:

- 4 -

- (a) Hyon-Cheong Sally Westergren, our daughter, who took an assignment of a promissory note in favour of her former spouse, Jussi Westergren;
- (b) Willms & Shier Environmental Lawyers LLP for unpaid legal accounts; and,
- (c) City of Toronto for unpaid property taxes in relation to the Property.

15. We also note that the plaintiffs in the Environmental Litigation have contingent claims against us. In all cases, the debts and liabilities are joint between Mary and me.

16. Registered on title to the Property is a charge in favour of Laurentian Trust of Canada Inc. in trust for Self-Directed RRSP 710467 in the amount of \$70,000, registered on June 26, 1997 (the “**Laurentian Charge**”), a copy of which is attached as **Exhibit “7”**. We had not realized that this Laurentian Charge remained on title to the Property until we were advised in relation to the NOI Proceedings.

17. We are in the process of obtaining information about the status of the Laurentian Charge but at the time of this affidavit, we only know, based on advice from our lawyers at WeirFoulds LLP, that Laurentian Trust of Canada is now operating as B2B Bank. We believe that this Laurentian Charge should be discharged because we no longer hold any RRSPs as they were collapsed and cashed at the time the Environmental Litigation started in or about 2009.

PROCEDURAL CONSOLIDATION

18. Mary and I own the Property in fee simple as joint tenants. We have always operated our commercial property business together in our individual capacities. As stated above, to the best of my knowledge, all our debts or liabilities are joint and several.

19. However, as individuals, we were required to file separate NOIs. I understand from the Proposal Trustee that without approval from the Court to consolidate the separate NOI Proceedings, then separate motions, filings, notices, and other required steps would have to be done in each NOI Proceeding.

20. As a result, we are seeking an order consolidating the administration of the NOI Proceedings. Consolidating our NOI Proceedings will be more efficient and less expensive, and will relieve us, the Court and the Proposal Trustee of the administrative burden of two separate NOI Proceedings. I believe that consolidating the NOI Proceedings will lessen the costs and impact on creditors and stakeholders and will not prejudice any person.

ADMINISTRATION CHARGE

21. The Property is presently vacant, and Mary and I have limited income. As a result, we are not in a position to pay the fees of our counsel and the Proposal Trustee on an ongoing basis.

22. Accordingly, Mary and I are seeking an order granting a priority charge (the “**Administration Charge**”) securing a maximum of \$125,000.00 in respect of the professional fees incurred in relation to the NOI Proceedings, including those of our counsel, the Proposal Trustee and if necessary, counsel to the Proposal Trustee. We propose that this Administration Charge have priority ahead of all creditors, including secured creditors.

23. The professionals whose fees will be secured by the Administration Charge have played and will continue to play a critical role in the NOI Proceedings. Without the security of the Administration Charge to protect the fees that will be incurred by the professionals, I understand

- 6 -

that they are not prepared to continue to act. I believe that the Administration Charge is necessary to ensure their continued participation.

24. Notice of this motion has been served on Laurentian Trust of Canada (care of B2B Bank).

25. I am advised by the Proposal Trustee and verily believe that it supports the proposed Administration Charge.

APPROVAL OF LISTING AGREEMENT

26. Mary and I, in consultation with our lawyers and with the Proposal Trustee, have concluded that the most effective way to realize the value of the Property and allow for a viable proposal to our creditors is to solicit a sale of the Property through a listing agreement and to market the property on the Multiple Listing Service.

27. In consultation with the Proposal Trustee, we believe that a sale of the Property by us would be more cost-effective and could attract better offers than if the Property were sold by a trustee in bankruptcy.

28. We accordingly request that this Court authorize us to enter into and perform a listing agreement with a commercial real estate broker to be determined in consultation with the Propsoal Trustee, for the purpose of marketing and ultimately, entering into and completing an agreement of purchase and sale for the Property, subject to approval by this Court.

EXTENSION OF TIME

29. I understand that Mary and I, having filed NOIs on April 18, 2022, have until May 18, 2022 to file a proposal unless we obtain an extension of time to file a proposal prior to that date.

30. We request that this Court grant us a 45-day extension to file a proposal. We have and will continue to act in good faith and with due diligence with respect to these NOI Proceedings. I believe that this extension will give us the time we need to speak to and retain a commercial realtor, obtain an appraisal in respect of the Property, respond to any issues raised by that realtor and/or the appraisal, solicit offers with respect to the Property, and work with the Proposal Trustee on a viable proposal to present to the creditors.

31. I do not believe that any creditor will be prejudiced by the extension sought.

32. I understand that the Proposal Trustee will be filing a Report to the Court supporting our request for the relief sought.

33. I swear this Affidavit in support of the within motion and for no other or improper purpose.

SWORN BEFORE ME in the City of Toronto in the Province of Ontario on this 26th day of April, 2022 and having been interpreted to the deponent in my presence by **Ann Won** who took an oath before me to interpret the affidavit correctly.



Commissioner for Taking Affidavits etc.


Jae Cho, lawyer



KUK-IL JOHN KIM

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

This is **Exhibit “B”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

17FB8E81996146B

A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

**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**

AFFIDAVIT OF SILVER STEPHEN KIM

I, **SILVER STEPHEN KIM**, of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY:**

1. I am the adult son of the debtors, Kuk-Ill John Kim and Myoung-Ja Mary Kim (the “**Debtors**”). I have been assisting my parents with the administration of this insolvency process and have been the primary contact for the Debtors’ counsel, Philip Cho at WeirFoulds LLP. As such, I have knowledge of the matters to which I hereinafter depose. Where I have been advised of matters, I identify the source of my information and belief and verily believe such matters to be true.

Background

2. As set out in more detail in the Affidavit of Kuk-Ill John Kim sworn on April 26, 2022 (the “**John Kim Affidavit**”), a copy of which is attached hereto without exhibits and marked as

Exhibit “A”, on April 18, 2022, the Debtors each filed a notice of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BLA**”).

3. By order of the Honourable Justice Conway dated April 28, 2022 (the “**Administration Order**”), the Debtors’ NOI proceedings were ordered to be procedurally consolidated and to continue under the within proceedings. A copy of the Administration Order is attached hereto and marked as **Exhibit “B”**.

4. Albert Gelman Inc. (“**AGI**”) was appointed proposal trustee (the “**Proposal Trustee**”) in respect of these NOI proceedings.

5. The Debtors’ sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”), which had been historically used to operate a dry-cleaning business. However, the Property is presently vacant and is the subject of certain environmental litigation proceedings (the “**Environmental Litigation**”) initiated by the owners of the neighbouring properties: Lee-Mar Developments Limited (the “**Lee-Mar Plaintiff**”) and Bosung Investments Inc., Byoung Ok Han and Jae Yol Han (the “**Bosung Plaintiff**”).

6. The Debtors filed NOIs in order to, among other things, suspend the Environmental Litigation and work to sell the Property for the benefit of creditors. Although Madam Justice Conway authorized the Debtors to enter into a listing agreement for the marketing and sale of the Property, for the reasons set out below, the Debtors have not yet taken this step.

Actions taken since April 28, 2022

7. Since the issuance of the Administration Order, the Debtors, through their counsel, have taken the following steps, described in more detail below:

- (a) Contacted and conferred with representatives from Terraprobe Inc. (“**Terraprobe**”), the environmental consultant retained by former counsel to the Debtors in the Environmental Litigation;
- (b) Consulted with, and retained, a new environmental consultant, Blue Frog Environmental Consulting Inc. (“**Blue Frog**”) to review the past reports, conduct a site inspection of the Property and recommend an action plan with a view to maximizing the sale price for the Property;
- (c) Determined that an immediate listing of the Property without having a better understanding of the nature and scope of the alleged environmental contamination would not likely generate the best price for the Property, particularly since prospective purchasers may not enter unconditional binding agreements without more information on the environmental risks;
- (d) Consulted with, and retained, a financing advisory firm, Isaacs Advisory (the “**Financing Advisor**”) to source debtor-in-possession financing to fund expenses necessary to prepare the Property for sale including, the fees of Blue Frog and a real estate appraisal;

- (e) Attended to certain matters affecting title to the Property, namely, applications to delete executions affecting title to the Property and an outstanding charge registered in favour of Laurentian Trust of Canada Inc.;
- (f) Engaged in discussions with counsel to the Lee-Mar Plaintiff and the Bosung Plaintiff to provide updates as to the steps taken by the Debtors; and,
- (g) Provided information to the Proposal Trustee with respect to the above.

Environmental Issues

8. On May 10, 2022, Janet Bobechko, an environmental lawyer from WeirFoulds, contacted Terraprobe to set up a time to discuss the Property and Terraprobe's past involvement. Following this contact, representatives of Terrarobe met with Debtors' counsel on May 26, 2022 over video conference to discuss the Property. During this meeting, Debtors' counsel were advised that the employees with knowledge of the actual work on the Property from Terraprobe were no longer employed. In addition, no work had been done by Terraprobe since December 2017. Terraprobe also confirmed that despite over 10 years of litigation, the parties to the litigation had not conducted comprehensive testing of the Property and no Phase 1 or Phase 2 assessment had ever been performed at the Property.

9. At the conclusion of the meeting, Terraprobe advised that due to their present volume of work, Terraprobe would have difficulty accommodating any request by the Debtors to be re-engaged for work in relation to the Property. As a result, the Debtors believe that there is no commercial benefit to re-engaging Terraprobe as the persons with historical knowledge of the

prior work are no longer employed and Terraprobe could have difficulty accommodating the Debtors' needs.

10. On June 2, 2022, WeirFoulds reached out to Blue Frog to discuss the possibility of engaging Blue Frog in relation to the Property. On June 10, 2022, Blue Frog's representative, Gerry Parrott met via video conference with Debtors' counsel to discuss the issues relating to the Property. Blue Frog confirmed that it could act and provided a scope of work for the initial phase which would include reviewing all of the environmental data, reports, and available site plans in relation to the Property in the Debtors' possession, identifying data gaps that need to be addressed, conducting a site visit, and preparing a recommended course of action. Blue Frog is aware of the insolvency proceeding and the goal of trying to sell the Property with a view to maximizing value.

11. I understand from Ms. Bobechko that Blue Frog is reputable consultant in the industry and in particular, Mr. Parrott has extensive experience dealing with similar properties in the Greater Toronto area.

12. As a result of the discussions with the environmental consultants and Debtors' counsel, the Debtors have decided that it is prudent to obtain updated and accurate information regarding any environmental contamination, and to include this information in the data available to prospective purchasers. Therefore, the Debtors have not yet engaged a listing agent for the sale of the Property.

Need for DIP Financing

13. Blue Frog has requested a reasonable financial retainer for its fees prior to beginning its work. The request is a reasonable one given that the Debtors are insolvent.

14. While the initial retainer requested is not significant, it is anticipated that additional work will be required including a Phase 1 and Phase 2 assessment. The Debtors are unable to finance the expenses associated with this environmental consultancy work, and other anticipated expenses, such as a real estate appraisal and perhaps some potential clean up work on the Property. In order to avoid any interruption or delay due to the inability to finance the costs of the work, on June 20, 2022, the Debtors engaged Adrian Isaacs at Isaacs Advisory to source debtor-in-possession financing.

15. The Financing Advisor has an extensive network of alternative lenders and has experience finding sources of funding in insolvency proceedings. The Financing Advisor is also aware of the urgency of the circumstances, including the limited number of extensions of time available to the Debtors under the NOI process. However, it is important to ensure that appropriate financing is in place to properly fund the work that is anticipated in order to put the Property in a position to market and sell.

16. When a potential lender has been found and a commitment letter issued to the Debtors, the Debtors will return to court for approval of the interim financing in accordance with the provisions of the *Bankruptcy and Insolvency Act*.

Title Matters

17. The parcel register for the Property disclosed a number of unusual encumbrances and clouds on title. The thumbnail description for the Property indicated many executions that may affect title to the Property. In addition, there was a charge in favour of Laurentian Trust registered on title with which the Debtors were not familiar. Attached hereto and marked as **Exhibit "C"** is a copy of the parcel register for the Property dated April 7, 2022.

18. Debtors' counsel investigated these issues and discovered that all but one of the executions had expired. The one execution that was not expired was in relation to a person that was not one and the same as either of the Debtors. Debtors' counsel applied to delete the executions from the thumbnail description which was registered and certified by the Land Registrar. With respect to the Laurentian Trust charge, Debtors' counsel discovered that Laurentian Trust had signed a discharge in November 2001 but for unknown reasons, the lawyer that was supposed to register the discharge did not do so. Debtors' counsel has now obtained a new discharge which was registered on June 21, 2022. Attached hereto and marked as **Exhibit "D"** is a copy of the parcel register for the Property dated June 21, 2022 which shows the thumbnail description with executions removed and the discharge registered. I understand that once the Land Registrar certifies the discharge, the Laurentian Trust charge and the discharge will both be deleted from title.

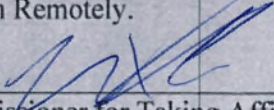
Other matters including extension of time

19. Throughout this period, Debtors' counsel has engaged in update calls with counsel to the Lee-Mar Plaintiff and counsel to the Bosung Plaintiff as requested from time to time. In addition, the Proposal Trustee has been kept apprised of the matters as they have developed.

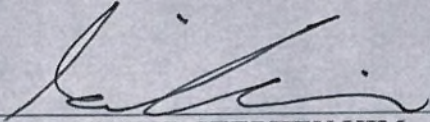
20. As such, I believe that the Debtors have acted in good faith and with due diligence with respect to the NOI proceedings. The Administration Order extended the time by which the Debtors must file a proposal to July 2, 2022. For the reasons described above, the Debtors are not in a position to put a proposal to its creditors at this time. As such, the Debtors require a further extension of time to file a proposal up to and including August 16, 2022. The Debtors believe that they will be able to make a viable proposal if a further extension of time is granted.

21. I understand that the Proposal Trustee will deliver its report and is supportive of a further extension of time.

SWORN remotely by **SILVER STEPHEN KIM** stated as being in the City of Vancouver, in the Province of British Columbia before me at the City of Toronto in the Province of Ontario, on June 22, 2022, in accordance with O. Reg 431/20, Administering an Oath or Declaration Remotely.




Commissioner for Taking Affidavits etc.



SILVER STEPHEN KIM

Max Sklow LSD # 79799L

This is **Exhibit “C”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

17FB8F81996146B...

A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

**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**

AFFIDAVIT OF SILVER STEPHEN KIM

I, **SILVER STEPHEN KIM**, of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY:**

1. I am the adult son of the debtors, Kuk-Ill John Kim and Myoung-Ja Mary Kim (the “**Debtors**”). I have been assisting my parents with the administration of this insolvency process and have been the primary contact for the Debtors’ counsel, Philip Cho at WeirFoulds LLP. As such, I have knowledge of the matters to which I hereinafter depose. Where I have been advised of matters, I identify the source of my information and belief and verily believe such matters to be true.

Background

2. As set out in more detail in the Affidavit of Kuk-Ill John Kim sworn on April 26, 2022 (the “**John Kim Affidavit**”), a copy of which is attached hereto without exhibits and marked as

Exhibit “A”, on April 18, 2022, the Debtors each filed a notice of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”). I also refer to my Affidavit sworn on June 22, 2022 (the “**First Silver Affidavit**”), a copy of which is attached hereto without exhibits and marked as **Exhibit “B”**.

3. By order of the Honourable Justice Conway dated April 28, 2022 (the “**Administration Order**”), the Debtors’ NOI proceedings were procedurally consolidated, and a super priority charge was granted in favour of the insolvency professionals (the “**Administration Charge**”) securing the amount of \$125,000. A copy of the Administration Order is attached hereto and marked as **Exhibit “C”**.

4. By order of the Honourable Justice Osborne dated June 27, 2022 (the “**Extension Order**”), the time for the Debtors to file a proposal was extended to, and including, August 16, 2022. A copy of the Extension Order is attached hereto and marked as **Exhibit “D”**.

5. Albert Gelman Inc. (“**AGI**”) was appointed proposal trustee (the “**Proposal Trustee**”) in respect of these NOI proceedings.

6. The Debtors’ sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”), which had been historically used to operate a dry-cleaning business. However, the Property is presently vacant and is the subject of certain environmental litigation proceedings (the “**Environmental Litigation**”) initiated by the owners of the neighbouring properties: Lee-Mar Developments Limited (the “**Lee-Mar Plaintiff**”) and Bosung Investments Inc., Byoung Ok Han and Jae Yol Han (the “**Bosung Plaintiff**”).

7. The Debtors filed NOIs in order to, among other things, suspend the Environmental Litigation and work to sell the Property for the benefit of creditors. Although Madam Justice Conway authorized the Debtors to enter into a listing agreement for the marketing and sale of the Property, the Debtors have not listed the Property for sale. Instead, as set out in more detail in the First Silver Affidavit, the Debtors retained Blue Frog Environmental Consulting Inc. (the “**Environmental Consultant**”) and sought interim DIP financing for the purpose of funding certain environmental work and other costs and expenses that may be required to prepare the Property for sale (the “**DIP Financing**”).

Actions taken since June 27, 2022

8. Since the issuance of the Extension Order, the Debtors, through their counsel, have taken the following steps, described in more detail below:

- (a) Consulted with the former environmental consultant, Terraprobe Inc. (“**Terraprobe**”), counsel to the Lee-Mar Plaintiff (“**BLG**”) and counsel to the Bosung Plaintiff (“**FIJ Law**”) to prepare a form of Non-Disclosure Agreement to be executed by a potential DIP lender for access to view copies of confidential environmental documents (the “**Environmental Documents**”) obtained in the course of the Environmental Litigation; and,
- (b) Worked with financing advisory firm, Isaacs Advisory (the “**Financing Advisor**”) to source DIP Financing, engage in negotiations with Hillmount Capital Inc. (the “**DIP Lender**”), and finalize the terms and conditions, on which the DIP Lender would provide interim financing to the Debtors.

Non-Disclosure Agreement

9. Shortly after the Extension Order was issued, WeirFoulds reached out to former litigation counsel, Willms & Shier LLP, Terraprobe, BLG and FIJ Law (collectively, the “**Affected Third Parties**”) to seek consent to share the Environmental Documents with potential lenders so long as the receiving person executed a Non-Disclosure Agreement (“**NDA**”).

10. Between June 28, 2022 and July 14, 2022, WeirFoulds worked on negotiating the form of NDA that would be acceptable to such persons. By July 14, 2022, the form of NDA was finalized among the Debtors and the Affected Third Parties.

DIP Interim Financing

11. As set out in the First Silver Affidavit, the Debtors realized that interim funding was required to undertake certain actions that are likely to maximize the potential for sale of the Property given the allegations made in the Environmental Litigation. The Financing Advisor was engaged to source potential sources of interim financing.

12. The Financing Advisor advised that there was a lack of lenders interested in providing interim financing due to the lack of any income generated by the Property, the pre-existing environmental issues, and lower size of the potential transaction. However, the Financing Advisor was able to locate the DIP Lender who was willing to advance interim financing, subject to certain terms and conditions.

13. On June 30, 2022, we received from the Financing Advisor a letter from the DIP Lender extending a preliminary offer to provide financing subject to the terms and conditions set out in the letter. Over the following weeks, discussions, facilitated by the Financing Advisor, occurred

such that a revised letter was delivered on July 15, 2022. The Debtors signed back the letter on July 20, 2022.

14. Further discussions ensued between the Debtors' lawyers and the DIP Lender's lawyer, resulting in amendments and a newly issued letter, which was issued and signed back on July 29, 2022 (the "**Term Sheet**"). Attached hereto and marked as **Exhibit "E"** is a copy of the Term Sheet.

15. The DIP Lender is prepared to provide the Debtors with secured interim financing (the "**DIP Financing**") subject to certain conditions, including the DIP Lender receiving a super priority charge (the "**DIP Lender's Charge**"), which will be subject only to the Administration Charge. The purpose of the DIP Financing will be for (i) carrying costs of the Property, (ii) appraisal costs, (iii) environmental reports, (iv) payment of the fees and disbursements of Debtors' insolvency counsel and of the Proposal Trustee, and other reasonably necessary costs so that the Debtors can determine if the Property could be sold "as is, where is", or if remediation of the Property is necessary before sale,

16. The principal terms of the DIP Financing are as follows:

- (a) Maximum principal amount of facility: \$250,000 ("**DIP Facility**");
 - (b) Lender Commitment Fee: 5% of DIP Facility;
 - (c) Interest Rate: 14% per annum compounded monthly, not in advance;
 - (d) Maturity: The earlier of 12 months and the completion of the sale of the Property;
- and,

- (e) Prepayment: The DIP Facility can be permanently repaid in whole or in part at any time upon 15 days written notice after at least 2 months' interest payments have been paid.

17. Presently, the Property is unencumbered, and the Debtors have no secured creditors. Attached hereto and marked as **Exhibit "F"** is a copy of the Parcel Register dated June 21, 2022 showing no encumbrances on title. Attached hereto and marked as **Exhibit "G"** is a copy of the PPSR search results for each of the Debtors.

18. The terms of the DIP Financing are such that interest only is payable during the term of the loan, which may be funded from the DIP Facility. A copy of the Debtors' cashflow statements filed in these proceedings is attached and marked as **Exhibit "H"**. As set out, the Debtors have no revenue in relation to the Property, which is the reason, in part, for the DIP Financing.

19. In the circumstances, the terms of the DIP Facility are reasonable. Without the DIP Facility, the Debtors will be unable to finance the cost of the necessary environmental work recommended to be undertaken in advance of marketing the Property for sale. I believe that any attempt to sell the Property without this information will not realize appropriate value to the detriment of the unsecured creditors.

Extension of Time

20. The Debtors continue to act in good faith and with due diligence with respect to the NOI proceedings. The Extension Order extended the time by which the Debtors must file a proposal to August 16, 2022. Presently, the Debtors are not in a position to put a proposal to its creditors

and requires additional time to complete the DIP Financing transaction and instruct the Environmental Consultant to commence its work described in the First Silver Affidavit.

21. As such, the Debtors require a further extension of time to file a proposal up to and including September 30, 2022. The Debtors believe that they will be able to make a viable proposal if a further extension of time is granted.

22. The Proposal Trustee has been kept apprised of the matters as they have developed, and I understand will deliver its report to the Court recommending the granting of the relief sought.

SWORN remotely by **SILVER STEPHEN KIM** stated as being in the City of Vancouver, in the Province of British Columbia before me at the City of Toronto in the Province of Ontario, on August 2, 2022, in accordance with O. Reg 431/20, Administering an Oath or Declaration Remotely.




Commissioner for Taking Affidavits etc.

Wojtek Jaskiewicz (LSO # 49809L)



SILVER STEPHEN KIM

This is **Exhibit “D”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:


17EB8E81996146B

A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

**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**

AFFIDAVIT OF SILVER STEPHEN KIM

I, **SILVER STEPHEN KIM**, of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY:**

1. I am the adult son of the debtors, Kuk-Ill John Kim and Myoung-Ja Mary Kim (the “**Debtors**”). I have been assisting my parents with the administration of this insolvency process and have been the primary contact for the Debtors’ counsel, Philip Cho at WeirFoulds LLP. As such, I have knowledge of the matters to which I hereinafter depose. Where I have been advised of matters, I identify the source of my information and belief and verily believe such matters to be true.

Background

2. As set out in more detail in the Affidavit of Kuk-Ill John Kim sworn on April 26, 2022 (the “**John Kim Affidavit**”), a copy of which is attached hereto without exhibits and marked as

Exhibit “A”, on April 18, 2022, the Debtors each filed a notice of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”). I also refer to my Affidavits sworn on June 22, 2022 (the “**First Silver Affidavit**”) and on August 2, 2022 (the “**Second Silver Affidavit**”), copies of which are attached hereto without exhibits and marked as **Exhibits “B”** and “**C**”, respectively.

3. By order of the Honourable Justice Conway dated April 28, 2022 (the “**Administration Order**”), the Debtors’ NOI proceedings were procedurally consolidated, and a super priority charge was granted in favour of the insolvency professionals (the “**Administration Charge**”) securing the amount of \$125,000. A copy of the Administration Order is attached hereto and marked as **Exhibit “D”**.

4. By order of the Honourable Justice Osborne dated June 27, 2022 (the “**Extension Order**”), the time for the Debtors to file a proposal was extended to, and including, August 16, 2022. A copy of the Extension Order is attached hereto and marked as **Exhibit “E”**.

5. By order of the Honourable Justice Dietrich dated August 5, 2022 (the “**DIP Approval Order**”), the time for the Debtors to file a proposal was further extended to, and including, September 30, 2022. In addition, the DIP Approval Order approved interim financing to be provided by Hillmount Capital Inc. (“**Hillmount**”), secured by a DIP Lender’s Charge (as defined in the DIP Approval Order). A copy of the DIP Approval Order is attached hereto and marked as **Exhibit “F”**.

6. Albert Gelman Inc. (“**AGI**”) is the proposal trustee (the “**Proposal Trustee**”) in respect of these NOI proceedings.

7. The Debtors' sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the "**Property**"), which had been historically used to operate a dry-cleaning business. However, the Property is presently vacant and is the subject of certain environmental litigation proceedings (the "**Environmental Litigation**") initiated by the owners of the neighbouring properties: Lee-Mar Developments Limited (the "**Lee-Mar Plaintiff**") and Bosung Investments Inc., Byoung Ok Han and Jae Yol Han (the "**Bosung Plaintiff**").

8. The Debtors filed NOIs in order to, among other things, suspend the Environmental Litigation and work to sell the Property for the benefit of creditors. Although Madam Justice Conway authorized the Debtors to enter into a listing agreement for the marketing and sale of the Property, the Debtors have not listed the Property for sale. Instead, as set out in more detail in the First Silver Affidavit, the Debtors retained Blue Frog Environmental Consulting Inc. (the "**Environmental Consultant**") and sought interim DIP financing for the purpose of funding certain environmental work and other costs and expenses that may be required to prepare the Property for sale (the "**DIP Financing**").

9. On August 5, 2022, this Court approved interim financing pursuant to a term sheet provided by Hillmount, as more particularly set out in the DIP Approval Order.

Actions taken since August 5, 2022

10. Following the issuance of the DIP Approval Order, counsel to the Debtors and counsel to Hillmount engaged in discussions to amend the form of Non-Disclosure Agreement ("**NDA**") that had been prepared, as described in the Second Silver Affidavit.

11. On August 18, 2022, Hillmount accepted the amended form of NDA and delivered an executed NDA to the Debtors. However, at the same time, Hillmount requested additional amounts to be paid by the Debtors prior to beginning its due diligence on the environmental information.

12. Following this request, Debtors' counsel and Hillmount's counsel had several email exchanges regarding this request for additional fees. On August 25, 2022, as I am advised by Philip Cho, partner with WeirFoulds LLP, counsel to the Debtors, Hillmount was provided with a link to a virtual data room to access the environmental documents.

13. Between August 25, 2022 and September 13, 2022, Hillmount reviewed the environmental documents, asked some questions to Debtors' counsel, which were answered by Mr. Cho. Ultimately, as I am advised by Mr. Cho, on September 13, 2022, Hillmount's counsel informed Mr. Cho that Hillmount would not provide any financing without collateral security provided on additional real property.

14. Despite efforts to engage Hillmount to reconsider its decision, on September 15, 2022, Hillmount's counsel unequivocally advised that Hillmount "will not proceed with the loan in the current circumstances in the absence of further collateral security." Attached hereto and marked as **Exhibit "G"** is a copy of the email from Fred Tayar, counsel to Hillmount to Mr. Cho.

15. Following the collapse of the interim financing transaction, Mr. Cho arranged to have a call with counsel to the Lee-Mar Plaintiff (Brendan Wong of Borden Ladner Gervais LLP) and counsel to the Bosung Plaintiff (Rafaelle Sparano of FIJ Law LLP). On September 16, 2022, Mr. Cho discussed with Messers. Wong and Sparano the possibility of one or both of their clients

providing the interim financing on the same terms as had been approved by the Court and acting as the DIP Lender pursuant to the DIP Approval Order.

16. As set out in my Second Silver Affidavit, the principal terms of the interim financing as approved by the DIP Approval Order are as follows:

- (a) Maximum principal amount of facility: \$250,000 (“**DIP Facility**”);
- (b) Lender Commitment Fee: 5% of DIP Facility;
- (c) Interest Rate: 14% per annum compounded monthly, not in advance;
- (d) Maturity: The earlier of 12 months and the completion of the sale of the Property;
and,
- (e) Prepayment: The DIP Facility can be permanently repaid in whole or in part at any time upon 15 days written notice after at least 2 months’ interest payments have been paid.

17. These discussions with the Environmental Litigation plaintiffs are still ongoing.

18. The Debtors are also exploring other possibilities to arrange for the necessary interim financing on substantially the same terms as approved in the DIP Approval Order.

19. If the Debtors cannot arrange for satisfactory interim financing, it may be that the Debtors will have to list the Property for sale on an “as is” basis without fulsome information about the status of the environmental condition of the Property. I understand that this will make the Property less attractive to potential purchasers.

20. The Debtors are therefore proposing an amendment to the DIP Approval Order such that if an alternative lender can be identified (whether the Environmental Litigation plaintiffs or another person), and provided that the alternative lender is satisfactory to the Proposal Trustee, then that alternative lender could be substituted as the DIP Lender within the meaning of the DIP Approval Order.

21. In this way, the Debtors will not be required to make a further motion to the Court as this matter has already been unfortunately delayed and the costs have been higher than expected for various reasons as has been described.

Extension of Time

22. The Debtors continue to act in good faith and with due diligence with respect to the NOI proceedings. The DIP Approval Order extended the time by which the Debtors must file a proposal to September 30, 2022. Presently, the Debtors are not in a position to put a proposal to its creditors and requires additional time to identify an alternative lender to act as the DIP Lender, complete the financing transaction, and then to instruct the Environmental Consultant to commence its work described in the First Silver Affidavit.

23. It may be that the work to be undertaken by the Environmental Consultant will commence after a Proposal is filed by the Debtors given that, as I am advised by Mr. Cho, the time to file a Proposal can only be extended to October 18, 2022 due to limitations under the *BIA*.

24. As such, the Debtors require a further extension of time to file a proposal up to and including October 18, 2022. The Debtors believe that they will be able to make a viable proposal if a further extension of time is granted.

25. The Proposal Trustee has been kept apprised of the matters as they have developed, and I understand will deliver its report to the Court recommending the granting of the relief sought.

SWORN remotely by **SILVER STEPHEN KIM** stated as being in the City of Vancouver, in the Province of British Columbia before me at the City of Toronto in the Province of Ontario, on September 26, 2022, in accordance with O. Reg 431/20, Administering an Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits etc.


DocuSigned by:



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SILVER STEPHEN KIM

This is **Exhibit “E”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

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A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

THE HONOURABLE) THURSDAY THE 28TH
)
JUSTICE CONWAY) DAY OF APRIL, 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**

ORDER

(Administrative Consolidation, Administration Charge and other relief)

THIS MOTION, made by Kuk-Ill John Kim (the “**John Kim**”) for administrative consolidation, an administration charge and other relief, was heard this day by videoconference.

ON READING the Motion Record of the John Kim, including the Affidavit of John Kim sworn on April 26, 2022 and the exhibits thereto, and the First Report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”), and on hearing the submissions of counsel for John Kim and Myoung-Ja Mary Kim (“**Mary Kim**”, and together with John Kim, 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 Max Skrow sworn April 27, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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.

EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for the filing of a proposal by John Kim and the time for the filing of a proposal by Mary Kim are hereby extended in accordance with section 50.4(9) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) by a period of forty-five (45) days, up to and including July 2, 2022.

ADMINISTRATIVE CONSOLIDATION

3. **THIS COURT ORDERS** that, without prejudice to the right of any party to seek or oppose substantive consolidation in respect of any or all of the following proceedings:

- (a) In the Matter of the Notice of Intention to Make a Proposal of Kuk-Il John Kim, Estate and Court File No. 31-2822607; and
- (b) In the Matter of the Notice of Intention to Make a Proposal of Myoung-Ja Mary Kim, Estate and Court File No. 31-2822601;

(collectively the “**NOI Proceedings**”)

the NOI Proceedings shall be procedurally consolidated and the Proposal Trustee shall be authorized and directed to administer the NOI Proceedings on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the BIA including, without limitation, the following:

- (a) Sending notices to creditors of the Debtors pursuant to one consolidated notice;
- (b) Calling and conducting any meetings of creditors of the Debtors pursuant to one combined advertisement and meeting;
- (c) Issuing consolidated reports in respect of the estates of the Debtors;
- (d) Preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the estates of the Debtors on a consolidated basis; and

(e) Bringing motions to this Honourable Court on a consolidated basis.

4. **THIS COURT ORDERS** that the single Court File Number 31-2822607 (the “**Consolidated Court File**”) and the following title of proceeding shall be assigned to the NOI Proceedings:

**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**

5. **THIS COURT ORDERS** that a copy of this Order shall be filed by the Debtors in the court file for each of the NOI Proceedings but that any other document required to be filed in any of the NOI Proceedings shall hereafter only be required to be filed in the Consolidated Court File.

6. **THIS COURT ORDERS** that for avoidance of doubt, any motion, application or action, including the herein motion, in respect of the Debtors or any of them shall be brought and filed in the Consolidated Court File and if so brought and filed, it shall be deemed brought and filed in each of the NOI Proceedings, as appropriate, without prejudice to any rules of civil procedure or otherwise that are applicable.

7. **THIS COURT ORDERS** that the procedural consolidation of the NOI Proceedings shall not:

- (a) cause either of the Debtors to be liable for any claim for which they otherwise are not liable; or
- (b) affect the Proposal Trustee’s or a creditor’s rights to seek to disallow any claim, including on the basis that such claim is a duplicative claim.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee (if any), and counsel to the Debtors shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these NOI Proceedings. The Debtors are hereby authorized but not required to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee (if any) and counsel to the Debtors on a monthly basis.

9. **THIS COURT ORDERS** that the Proposal Trustee, its legal counsel (if any) and counsel to the Debtors shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel (if any) are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee (if any) and counsel to the Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the property, municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”), which charge shall not exceed an aggregate amount of \$125,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of the NOI Proceedings.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges, encumbrances, claims of secured creditors, statutory or otherwise.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Administration Charge (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in these proceedings; (b) any application for a bankruptcy order pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of the creditors pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing loan documents, lease, sublease, offer to lease to lease or other agreements (collectively, an “**Agreement**”) which binds the Debtor, and notwithstanding any provision to the contrary in any such Agreement:

- (a) The creation of the Administration Charge shall not create or be deemed to constitute a breach by the Debtors of any Agreement to which they are parties;
- (b) None of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
- (c) The payments made by the Debtors pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

APPROVAL OF LISTING AGREEMENT

14. **THIS COURT ORDERS** that the Debtors (or either of them) are hereby authorized to enter into and perform a standard form listing agreement with a licensed real estate agent, with such variations as the Proposal Trustee may approve, and to do all things necessary or attendant to the same, for the purpose of listing, marketing and selling the Property.

APPROVAL OF FIRST REPORT

15. **THIS COURT ORDERS** that the First Report of the Proposal Trustee, and the actions, conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.


GENERAL

16. **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 not 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.

17. **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.



This is **Exhibit “F”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:


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A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

THE HONOURABLE) MONDAY THE 27TH
)
JUSTICE OSBORNE) DAY OF JUNE, 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 approval of activities and fees)**

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 June 22, 2022 and the exhibits thereto (the “**Silver Affidavit**”), and the second report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) dated June 22, 2022 (the “**Second Report**”) and the appendices thereto, 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 Candace Buckmire sworn June 23, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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.

EXTENSION OF TIME

2. **THIS COURT ORDERS** 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* (the “BIA”) by a period of forty-five (45) days up to and including August 16, 2022.

APPROVAL OF REPORT AND FEES

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

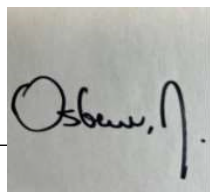
4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Debtor as set out in the fee affidavit appended to the Second Report be and are hereby approved, and that the Proposal Trustee is hereby authorized and directed to pay the same from available funds.

5. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as set out in the fee affidavits appended to the Second Report be and are hereby approved, and that the Proposal Trustee is hereby authorized and directed to pay the same from available funds.


GENERAL

6. **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 not 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.

7. **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.

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This is **Exhibit “G”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:


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A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

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

THE HONOURABLE) FRIDAY THE 5TH
JUSTICE DIETRICH) DAY OF AUGUST, 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 KIM**

**ORDER
(DIP Approval and Charge)**

THIS MOTION, made by Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the “**Debtors**”) for an extension of time to file a proposal, approval of debtor-in-possession interim financing and granting a super-priority charge was heard this day by judicial videoconference.

ON READING the Motion Record of the Debtor, including the Affidavit of Silver Stephen Kim sworn on August 2, 2022 and the exhibits thereto (the “**Silver Affidavit**”), and the third report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) (the “**Third Report**”), and on hearing the submissions of counsel for the Debtors, counsel for the DIP Lender (as defined below), and the Proposal Trustee, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Margo Sabbah sworn August 8, 2022, filed:

SERVICE

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

EXTENSION OF TIME

2. **THIS COURT ORDERS** 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* (the “**BIA**”) by a period of forty-five (45) days from August 16, 2022, up to and including September 30, 2022.

DIP FINANCING

3. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to obtain and borrow under a credit facility from Hillmount Capital Inc. (the “**DIP Lender**”) provided that borrowings under such credit facility shall not exceed \$250,000 unless permitted by further order of this Court.

4. **THIS COURT ORDERS** that the DIP Facility shall substantially be on terms and subject to conditions set forth in the term sheet between the Debtors and the DIP Lender, accepted on July 29, 2022 (the “**DIP Term Sheet**”), attached as Exhibit “E” to the Silver Affidavit, subject to such minor amendments as may be acceptable to the Debtors and the DIP Lender, and approved by the Proposal Trustee.

5. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, security documents, guarantees, and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, costs, liabilities, and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the property, municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”) as security for the Debtors’ obligations to the DIP Lender under the DIP Term Sheet, which obligations include, without limitation, principal, interest, costs and fees. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s charge shall have the priority set out in paragraphs 9 and 11 of this Order.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record, or perfect the DIP Lender’s Charge or any of the Definitive Documents.

8. **THIS COURT ORDER AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Debtors under the BIA with respect to any advances made under the Definitive Documents.

9. **THIS COURT ORDERS** that the priorities of the Administration Charge granted by this Court pursuant to the Order of Justice Conway on April 28, 2022 and the DIP Lender’s Charge (together, the “**Charges**”) as among them, shall be as follows:

- (a) First – Administration Charge (up to the maximum of \$125,000); and,
- (b) Second – DIP Lender’s Charge (up to the maximum of \$250,000).

10. **THIS COURT ORDERS** that the filing, registration, or perfection of the DIP Lender’s Charge shall not be required, and that the DIP Lender’s Charge shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded or perfected subsequent to the DIP Lender’s Charge coming into existence, notwithstanding any such failure to file, register, record or project.

11. **THIS COURT ORDERS** that the DIP Lender’s Charge shall, subject to the Administration Charge, constitute a charge on the Property and such DIP Lender’s Charge shall

rank in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise.

12. **THIS COURT ORDERS** that the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in these proceedings; (b) any application for a bankruptcy order pursuant to the BIA, or any bankruptcy order made pursuant to such application; (c) the bankruptcy of the Debtors, or any of them; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreements (collectively, an "**Agreement**") which bind the Debtors, or either of them, and notwithstanding any provision to the contrary in any such Agreement:

- (a) the creation of the DIP Lender's Charge shall not create or be deemed to constitute a breach by the Debtors, or either of them, of any Agreement to which they are parties;
- (b) the DIP Lender shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the DIP Lender's Charge;
- (c) the payments made by the Debtors, or either of them, pursuant to this Order, and the granting of the DIP Lender's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

APPROVAL OF THIRD REPORT

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

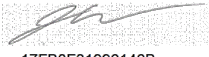
GENERAL

14. **THIS COURT ORDERS** that any interested party (including the Debtors, the DIP Lender, and the Proposal Trustee) may apply to this Court to vary or amend this Order on not 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.

15. **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.

Dietrich J.

This is **Exhibit “H”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

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A Commissioner for taking Affidavits, etc.

Court File No. 31-2822607
Estate File No. 31-2822607

**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

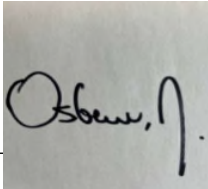
6. **THIS COURT ORDERS** that the Fourth Report of the Proposal Trustee, and the actions, conduct and activities of the Proposal Trustee set out therein, be and are hereby approved, provided however that only Albert Gelman Inc., in its personal capacity and only with respect to its personal liability, 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.

 2022.09.29
07:52:10
-04'00'

SCHEDULE "A" - TERM SHEET



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 together.

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)

[Signature]
Name: Kuk-Il John Kim (Borrower)

[Signature]
Name: Myoung-Ja Mary Kim (Borrower)

SCHEDULE A – CONDITIONS

Borrower(s)/Guarantor(s) Initials: [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 statues, 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:



This is **Exhibit "I"** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:


17FB8F81996146B

A Commissioner for taking Affidavits, etc.



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2822607
Estate No. 31-2822607

In the Matter of the Proposal of:

Kuk-III John Kim

Debtor

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of Proposal:	October 18, 2022	Security:	\$
Meeting of Creditors:	November 08, 2022, 13:00 Videoconference https://us02web.zoom.us/j/89393093030?p Markham, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF FILING OF A PROPOSAL - Section 62

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that:

- a proposal in respect of the aforementioned debtor was filed under section 62 of the *Bankruptcy and Insolvency Act*.

The aforementioned trustee is required:

- to provide to me, without delay, security in the aforementioned amount; and
- to send to all creditors, at least ten days prior to the meeting, a notice of a meeting of creditors, which will be held at the aforementioned time and place.

Date: October 19, 2022, 11:02

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

District of Ontario
Division No.: 09 - Toronto
Estate No.: 31-2822607
Court No.: 31-2822607

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

In the Matter of the Proposal of
Kuk-III John Kim
of the City of Markham, in the Province of Ontario

PROPOSAL
(Dated October 18, 2022)

Kuk-III John Kim, the above-named Debtor (the “**Debtor**”), hereby submits the following Proposal under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c.B-3, as amended (the “**BIA**”).

1. DEFINITIONS

In this Proposal, the following terms have the meaning herein set out:

- (a) **Administration Charge.** A charge on the Real Property as security for the professional fees and disbursements of the Trustee and counsel to the Debtor granted pursuant to the Order of Justice Conway dated April 28, 2022, which charge shall not exceed an aggregate amount of \$125,000.
- (b) **Claim.** A “claim provable” as defined in the BIA. For clarification, this includes any debt or liability, present or future, to which the Debtor was subject on the NOI Date or to which the Debtor may become subject before the Completion Date by reason of any obligation incurred before the NOI Date whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, surety or otherwise, and whether or not such a right is executory in nature, including, without limitation, any claim referred to in this Proposal in respect of the termination or disclaimer by the Debtor of a lease, any product warranty liability and the right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause of action or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or on the NOI Date. In the event of any inconsistency between this definition and the definition of “claim provable” as defined in the BIA, the terms of the BIA shall prevail.

- (c) **Completion Date.** The date on which the Trustee files its certificate of completion, certifying that this Proposal has been fully performed by the Debtor.
- (a) **CRA.** Canada Revenue Agency.
- (b) **Creditors Meeting.** The term as defined in Paragraph 9(d).
- (c) **Debtor's Legal Fees and Disbursements.** The legal fees and disbursements incurred by the Debtor including the taxed legal fees incurred by the Debtor for its counsel, WeirFoulds LLP, for legal advice, for preparation of the Proposal as well as for any/all other legal matters related to these restructuring proceedings plus disbursements and HST and shall be paid out of the Proposal Fund in priority to all Claims of Unsecured Creditors.
- (d) **Debtor's Spouse.** Myoung-Ja Mary Kim.
- (e) **Debtor's Spouse's Proposal.** Proposal filed under the BIA on October 18, 2022 by the Debtor's Spouse (estate no.: 31-2822601).
- (f) **DIP Charge.** A charge on the Real Property as security for the Debtor's obligations to the DIP Lender, if any, granted pursuant to the Order of Justice Dietrich dated August 5, 2022, as amended by the Order of Justice Osborne dated September 28, 2022, which charge shall not exceed an aggregate amount of \$250,000.
- (g) **DIP Lender.** The lender, if any, that has agreed to provide interim financing to the Debtor in accordance with the Order of Justice Dietrich dated August 5, 2022, as amended by the Order of Justice Osborne dated September 28, 2022.
- (h) **Final Approval.** Acceptance of the Proposal by the creditors of the Debtor and approval by the Court, both in accordance with the BIA, and any appeal period with respect to Court approval having expired.
- (i) **Inspectors.** The term as defined in Paragraph 9(d).
- (j) **Net Proceeds.** The term as defined in paragraph 8(a).
- (k) **NOI Date.** The date on which the Debtor filed a Notice of Intention to Make a Proposal in contemplation of this Proposal with the Official Receiver being April 18, 2022.
- (l) **Ordinary Creditor.** An Unsecured Creditor that is not a Preferred Creditor.
- (m) **Preferred Creditor.** An Unsecured Creditor in respect of any Claim that would be payable in priority to other Unsecured Creditors pursuant to the provisions of s.136 of the BIA.

- (n) **Proposal.** This Proposal, as it may be amended from time to time.
- (o) **Proposal Date.** The date of the initial filing of the Proposal with the Official Receiver.
- (p) **Proposal Period.** The period between the date of Final Approval and the Completion Date.
- (q) **Proven Claim.** Any Claim which is the subject of a proof of claim that has been filed with the Trustee and admitted by the Trustee in accordance with the BIA.
- (r) **Real Property.** The real property known municipally as 385 Spadina Road, Toronto, Ontario (PIN: 21188-0135 (LT)) which the Debtor has disclosed being an owner of as joint tenant. The Debtor's Spouse is the other owner as joint tenant.
- (s) **Secured Creditor.** A creditor holding security against the property of the Debtor in respect of their Claim as "secured creditor" is defined in the BIA.
- (t) **Trustee.** Albert Gelman Inc., as Licensed Insolvency Trustee to the Proposal of the Debtor.
- (u) **Trustee's Fees and Disbursements.** The fees and disbursements of the Trustee incidental to the proceedings arising out of the Proposal including:
 - (i) The Trustee's fees which shall be based on the amount of time spent in respect of the Proposal including applicable HST; and
 - (ii) all reasonable expenses and disbursements incurred by the Trustee including, without limitation, any legal fees; plus any applicable taxes on those expenses and disbursements. For the purposes of calculating its fees, the Trustee will track the time spent by its staff in respect of and incidental to the Proposal and shall bill that time on an hourly-rate basis at its prevailing rates. The Trustee's hourly billing rates for its professional and administrative staff are subject to change without notice. The Trustee's Fees and Disbursements shall be paid in priority to all Claims of creditors. The Trustee shall be at liberty to withdraw and pay the Trustee's fees and disbursements from the Proposal Fund (as defined below), from time to time subject to final taxation by the Registrar in Bankruptcy upon completion of the Proposal.
- (v) **Unsecured Creditor.** A creditor having a Claim against the Debtor other than a Secured Creditor. An Unsecured Creditor includes both an Ordinary Creditor and Preferred Creditor, and includes a Secured Creditor in respect of any Claim or portion of their Claim that is not secured (if any).

2. PURPOSE OF PROPOSAL

- (a) The purpose of this Proposal to effect a restructuring of the indebtedness of the Debtor in the manner contemplated herein and as permitted by the Act in the expectation that all Unsecured Creditors will derive a greater benefit from the restructuring than would result from a bankruptcy of the Debtor.
- (b) During the Proposal Period, and provided that a default under this Proposal has not occurred and is continuing hereunder, all Unsecured Creditors will be stayed from commencing or continuing any proceeding or remedy against the Debtor or any of his property or assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies, to recover or enforce any judgment against the Debtor in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.

3. CLASSIFICATION OF CREDITORS

- (a) For the purpose of this Proposal, the Unsecured Creditors of the Debtor shall be comprised of a single class, consisting of all Unsecured Creditors ("Class 1"), which, for greater certainty, shall include Preferred Creditors entitled to vote pursuant to the BIA.

4. DEBTS OWED TO THE CROWN¹

- (a) Proven Claims of His Majesty in right of Canada or a province of all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation that were outstanding on the NOI Date shall be paid in full within six (6) months of Final Approval of this Proposal unless His Majesty in Right of Canada or a province consents to some other arrangement. The amount payable pursuant to this section of the Proposal will be paid directly by the Debtor to the CRA.

5. SECURED CREDITORS²

- (a) This Proposal is not made to Secured Creditors. Payment of the Claims of Secured Creditors shall be made in the usual manner or as may be agreed between the Debtor and the Secured Creditors.

¹ There are no known claims falling within this category as at the date of this Proposal.

² There are no known Secured Creditors as at the date of filing this Proposal.

6. PREFERRED CREDITORS³

- (a) For the purposes of paragraph 8(b) of this Proposal, Proven Claims of Preferred Creditors, without interest, shall be paid in priority to all Ordinary Creditors in accordance with the order of priorities set out in section 136 of the BIA;
- (b) Any partial or interim payments made under this Proposal to multiple Preferred Creditors with the same level of priority under the BIA shall be paid on a *pro rata* and *pari passu* basis among those creditors.

7. REAL PROPERTY

- (a) As soon as is reasonably practicable following the filing of this Proposal, the Debtor will enter into a listing agreement for sale of the Real Property with a commercial real estate broker. The Debtor will make commercially reasonable best efforts to sell the Real Property and to close such sale transaction within one (1) year of the date of filing this Proposal. In respect of any accepted offer to purchase the Real Property, the Debtor will seek an order approving such transaction and vesting the Real Property in and to the purchaser.
- (b) The Debtor's Spouse's Proposal includes the same provision as set out in paragraph 7(a) above.

8. UNSECURED CREDITORS

- (a) The Debtor's proceeds from the sale of the Real Property, net of realtor commissions and costs (incl. HST), legal fees, property taxes, the Administration Charge and/or any other costs or expenses associated with listing and selling the Real Property (the "**Net Proceeds**"), shall be paid to the Trustee upon the closing of the sale of the Real Property.
- (b) The Trustee shall distribute the Net Proceeds in the following order:
 - i. Payment of the Trustee's Fees and Disbursements;
 - ii. Payment of the Debtor's Legal Fees and Disbursements;
 - iii. Payment of the amounts, if any, owing to the DIP Lender and secured by the DIP Charge;
 - iv. Payment of Proven Claims of Preferred Creditors, if any, in full;
 - v. Payment of Proven Claims to Ordinary Creditors on a *pro rata* and *pari passu* basis.
- (c) Any payments made by or on behalf of the Debtor under this Proposal shall be applied to the scheduled payments in the order they come due unless otherwise specified by the Debtor. The Debtor shall have the right to prepay any or all of the

³ There are no known Preferred Creditors as at the date of filing this Proposal.

balance due under the Proposal prior to the expiration of the scheduled payment terms without interest or penalty. Any prepayment shall not accelerate the due date of any other payment(s) still outstanding unless otherwise specified in this Proposal.


- (d) In accordance with section 147 of the BIA, the Superintendent of Bankruptcy levy shall be deducted from all distributions to Unsecured Creditors except where the BIA does not require the levy.
- (e) By casting a vote with the Trustee in favour (or 'For') this Proposal each Unsecured Creditor (including Preferred Creditors) agrees that their respective Claim does not fall within the definition of BIA section 178, debts not released by order of discharge.

9. GENERAL PROVISIONS


- (a) The Trustee is acting solely in its capacity as Licensed Insolvency Trustee under this Proposal and not in its personal or corporate capacity. The Trustee shall have the powers granted to it by the Proposal, by the BIA, and by any order of the Court. The Trustee and its officer(s), director(s), employee(s) or agent(s) are not and shall not be responsible or liable for any obligations of the Debtor, and shall be exempt from all personal and corporate liability in fulfilling any duties or exercising any powers conferred upon it by the Proposal or generally in carrying out the terms of this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.
- (b) Sections 95 to 101 of the BIA (with the exception of section 97(3)) shall not apply in connection with this Proposal or any dealing by the Debtor prior to the NOI Date and the Trustee shall have no responsibility, liability or authority whatsoever in connection therewith. The Trustee shall not monitor or in any way manage the Debtor's business or financial affairs.
- (c) All payments required to be paid by or on behalf of the Debtor under the terms of this Proposal shall be paid over to the Trustee unless otherwise stated herein. The Trustee shall make all payments out of the funds paid to it in accordance with the terms of this Proposal.
- (d) At the meeting of creditors to consider this Proposal (the "**Creditors Meeting**"), the creditors may, by vote in accordance with the BIA, appoint up to five inspectors (the "**Inspectors**") who will have, in addition to any powers of inspectors under the BIA, the power to:
 - i. receive any notice of default in the performance of the Proposal and waive any such default;
 - ii. increase the time period set out in paragraph 7(a);

- iii. advise the Trustee in respect of such matters as may be referred to the Inspectors by the Trustee; and,
 - iv. extend the time for any payment due under this Proposal.
- (e) All proper Claims against the Debtor arising with respect to goods supplied, services rendered, or other consideration given or provided after the NOI Date up to the date of approval of this Proposal by the Superior Court of Justice, in Bankruptcy and Insolvency, and not otherwise dealt with pursuant to this Proposal, shall be paid in full by the Debtor in the ordinary course, in priority to the Claims of all other Creditors.
- (f) At 12:01 a.m. on the Completion Date, the Debtor shall be forever released and discharged from any and all Claims. This release shall have no force or effect if the Debtor becomes bankrupt before the terms of the Proposal are fully performed.
- (g) The Debtor may propose amendments to the Proposal at any time prior to the conclusion of the Creditors Meeting provided that any such amendment does not reduce the rights and benefits given to the Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.
- (h) Any notices or communications in respect of this Proposal shall be delivered to the Debtor at the address set out below:
- Kuk-Il John Kim
c/o WeirFoulds LLP
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario M5K 1B7
Attention: Philip Cho
E-mail: pcho@weirfoulds.com
- (i) For purposes of this Proposal, Claims denominated in a currency other than Canadian Dollars will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the NOI Date.

Dated at Toronto, Ontario this 18th day of October 2022


Name: Kuk-Il John Kim

This is **Exhibit “J”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

17FB8F81996146B...

A Commissioner for taking Affidavits, etc.



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2822601
Estate No. 31-2822601

In the Matter of the Proposal of:

Myoung-Ja Mary Kim

Debtor

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of Proposal:	October 18, 2022	Security:	\$
Meeting of Creditors:	November 08, 2022, 13:30 Videoconference https://us02web.zoom.us/j/89290373552?pw Markham, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF FILING OF A PROPOSAL - Section 62

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that:

- a proposal in respect of the aforementioned debtor was filed under section 62 of the *Bankruptcy and Insolvency Act*.

The aforementioned trustee is required:

- to provide to me, without delay, security in the aforementioned amount; and
- to send to all creditors, at least ten days prior to the meeting, a notice of a meeting of creditors, which will be held at the aforementioned time and place.

Date: October 19, 2022, 11:05

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

District of Ontario
Division No.: 09 - Toronto
Estate No.: 31-2822601
Court No.: 31-2822601

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

In the Matter of the Proposal of
Myoung-Ja Mary Kim
of the City of Markham, in the Province of Ontario

PROPOSAL
(Dated October 18, 2022)

Myoung-Ja Mary Kim, the above-named Debtor (the “**Debtor**”), hereby submits the following Proposal under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c.B-3, as amended (the “**BIA**”).

1. DEFINITIONS

In this Proposal, the following terms have the meaning herein set out:

- (a) **Administration Charge.** A charge on the Real Property as security for the professional fees and disbursements of the Trustee and counsel to the Debtor granted pursuant to the Order of Justice Conway dated April 28, 2022, which charge shall not exceed an aggregate amount of \$125,000.
- (b) **Claim.** A “claim provable” as defined in the BIA. For clarification, this includes any debt or liability, present or future, to which the Debtor was subject on the NOI Date or to which the Debtor may become subject before the Completion Date by reason of any obligation incurred before the NOI Date whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, surety or otherwise, and whether or not such a right is executory in nature, including, without limitation, any claim referred to in this Proposal in respect of the termination or disclaimer by the Debtor of a lease, any product warranty liability and the right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause of action or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or on the NOI Date. In the event of any inconsistency between this definition and the definition of “claim provable” as defined in the BIA, the terms of the BIA shall prevail.

- (c) **Completion Date.** The date on which the Trustee files its certificate of completion, certifying that this Proposal has been fully performed by the Debtor.
- (a) **CRA.** Canada Revenue Agency.
- (b) **Creditors Meeting.** The term as defined in Paragraph 9(d).
- (c) **Debtor's Legal Fees and Disbursements.** The legal fees and disbursements incurred by the Debtor including the taxed legal fees incurred by the Debtor for its counsel, WeirFoulds LLP, for legal advice, for preparation of the Proposal as well as for any/all other legal matters related to these restructuring proceedings plus disbursements and HST and shall be paid out of the Proposal Fund in priority to all Claims of Unsecured Creditors.
- (d) **Debtor's Spouse.** Kuk-Il John Kim.
- (e) **Debtor's Spouse's Proposal.** Proposal filed under the BIA on October 18, 2022 by the Debtor's Spouse (estate no.: 31-2822607).
- (f) **DIP Charge.** A charge on the Real Property as security for the Debtor's obligations to the DIP Lender, if any, granted pursuant to the Order of Justice Dietrich dated August 5, 2022, as amended by the Order of Justice Osborne dated September 28, 2022, which charge shall not exceed an aggregate amount of \$250,000.
- (g) **DIP Lender.** The lender, if any, that has agreed to provide interim financing to the Debtor in accordance with the Order of Justice Dietrich dated August 5, 2022, as amended by the Order of Justice Osborne dated September 28, 2022.
- (h) **Final Approval.** Acceptance of the Proposal by the creditors of the Debtor and approval by the Court, both in accordance with the BIA, and any appeal period with respect to Court approval having expired.
- (i) **Inspectors.** The term as defined in Paragraph 9(d).
- (j) **Net Proceeds.** The term as defined in paragraph 8(a).
- (k) **NOI Date.** The date on which the Debtor filed a Notice of Intention to Make a Proposal in contemplation of this Proposal with the Official Receiver being April 18, 2022.
- (l) **Ordinary Creditor.** An Unsecured Creditor that is not a Preferred Creditor.
- (m) **Preferred Creditor.** An Unsecured Creditor in respect of any Claim that would be payable in priority to other Unsecured Creditors pursuant to the provisions of s.136 of the BIA.

- (n) **Proposal.** This Proposal, as it may be amended from time to time.
- (o) **Proposal Date.** The date of the initial filing of the Proposal with the Official Receiver.
- (p) **Proposal Period.** The period between the date of Final Approval and the Completion Date.
- (q) **Proven Claim.** Any Claim which is the subject of a proof of claim that has been filed with the Trustee and admitted by the Trustee in accordance with the BIA.
- (r) **Real Property.** The real property known municipally as 385 Spadina Road, Toronto, Ontario (PIN: 21188-0135 (LT)) which the Debtor has disclosed being an owner of as joint tenant. The Debtor's Spouse is the other owner as joint tenant.
- (s) **Secured Creditor.** A creditor holding security against the property of the Debtor in respect of their Claim as "secured creditor" is defined in the BIA.
- (t) **Trustee.** Albert Gelman Inc., as Licensed Insolvency Trustee to the Proposal of the Debtor.
- (u) **Trustee's Fees and Disbursements.** The fees and disbursements of the Trustee incidental to the proceedings arising out of the Proposal including:
 - (i) The Trustee's fees which shall be based on the amount of time spent in respect of the Proposal including applicable HST; and
 - (ii) all reasonable expenses and disbursements incurred by the Trustee including, without limitation, any legal fees; plus any applicable taxes on those expenses and disbursements. For the purposes of calculating its fees, the Trustee will track the time spent by its staff in respect of and incidental to the Proposal and shall bill that time on an hourly-rate basis at its prevailing rates. The Trustee's hourly billing rates for its professional and administrative staff are subject to change without notice. The Trustee's Fees and Disbursements shall be paid in priority to all Claims of creditors. The Trustee shall be at liberty to withdraw and pay the Trustee's fees and disbursements from the Proposal Fund (as defined below), from time to time subject to final taxation by the Registrar in Bankruptcy upon completion of the Proposal.
- (v) **Unsecured Creditor.** A creditor having a Claim against the Debtor other than a Secured Creditor. An Unsecured Creditor includes both an Ordinary Creditor and Preferred Creditor, and includes a Secured Creditor in respect of any Claim or portion of their Claim that is not secured (if any).

2. PURPOSE OF PROPOSAL

- (a) The purpose of this Proposal to effect a restructuring of the indebtedness of the Debtor in the manner contemplated herein and as permitted by the Act in the expectation that all Unsecured Creditors will derive a greater benefit from the restructuring than would result from a bankruptcy of the Debtor.
- (b) During the Proposal Period, and provided that a default under this Proposal has not occurred and is continuing hereunder, all Unsecured Creditors will be stayed from commencing or continuing any proceeding or remedy against the Debtor or any of her property or assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies, to recover or enforce any judgment against the Debtor in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.

3. CLASSIFICATION OF CREDITORS

- (a) For the purpose of this Proposal, the Unsecured Creditors of the Debtor shall be comprised of a single class, consisting of all Unsecured Creditors ("Class 1"), which, for greater certainty, shall include Preferred Creditors entitled to vote pursuant to the BIA.

4. DEBTS OWED TO THE CROWN¹

- (a) Proven Claims of His Majesty in right of Canada or a province of all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation that were outstanding on the NOI Date shall be paid in full within six (6) months of Final Approval of this Proposal unless His Majesty in Right of Canada or a province consents to some other arrangement. The amount payable pursuant to this section of the Proposal will be paid directly by the Debtor to the CRA.

5. SECURED CREDITORS²

- (a) This Proposal is not made to Secured Creditors. Payment of the Claims of Secured Creditors shall be made in the usual manner or as may be agreed between the Debtor and the Secured Creditors.

¹ There are no known claims falling within this category as at the date of this Proposal.

² There are no known Secured Creditors as at the date of filing this Proposal.

6. PREFERRED CREDITORS³

- (a) For the purposes of paragraph 8(b) of this Proposal, Proven Claims of Preferred Creditors, without interest, shall be paid in priority to all Ordinary Creditors in accordance with the order of priorities set out in section 136 of the BIA;
- (b) Any partial or interim payments made under this Proposal to multiple Preferred Creditors with the same level of priority under the BIA shall be paid on a *pro rata* and *pari passu* basis among those creditors.

7. REAL PROPERTY

- (a) As soon as is reasonably practicable following the filing of this Proposal, the Debtor will enter into a listing agreement for sale of the Real Property with a commercial real estate broker. The Debtor will make commercially reasonable best efforts to sell the Real Property and to close such sale transaction within one (1) year of the date of filing this Proposal. In respect of any accepted offer to purchase the Real Property, the Debtor will seek an order approving such transaction and vesting the Real Property in and to the purchaser.
- (b) The Debtor's Spouse's Proposal includes the same provision as set out in paragraph 7(a) above.

8. UNSECURED CREDITORS

- (a) The Debtor's proceeds from the sale of the Real Property, net of realtor commissions and costs (incl. HST), legal fees, property taxes, the Administration Charge and/or any other costs or expenses associated with listing and selling the Real Property (the "**Net Proceeds**"), shall be paid to the Trustee upon the closing of the sale of the Real Property.
- (b) The Trustee shall distribute the Net Proceeds in the following order:
 - i. Payment of the Trustee's Fees and Disbursements;
 - ii. Payment of the Debtor's Legal Fees and Disbursements;
 - iii. Payment of the amounts, if any, owing to the DIP Lender and secured by the DIP Charge;
 - iv. Payment of Proven Claims of Preferred Creditors, if any, in full;
 - v. Payment of Proven Claims to Ordinary Creditors on a *pro rata* and *pari passu* basis.
- (c) Any payments made by or on behalf of the Debtor under this Proposal shall be applied to the scheduled payments in the order they come due unless otherwise specified by the Debtor. The Debtor shall have the right to prepay any or all of the

³ There are no known Preferred Creditors as at the date of filing this Proposal.

balance due under the Proposal prior to the expiration of the scheduled payment terms without interest or penalty. Any prepayment shall not accelerate the due date of any other payment(s) still outstanding unless otherwise specified in this Proposal.

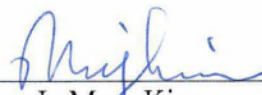
- (d) In accordance with section 147 of the BIA, the Superintendent of Bankruptcy levy shall be deducted from all distributions to Unsecured Creditors except where the BIA does not require the levy.
- (e) By casting a vote with the Trustee in favour (or 'For') this Proposal each Unsecured Creditor (including Preferred Creditors) agrees that their respective Claim does not fall within the definition of BIA section 178, debts not released by order of discharge.

9. GENERAL PROVISIONS

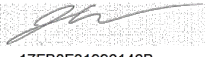
- (a) The Trustee is acting solely in its capacity as Licensed Insolvency Trustee under this Proposal and not in its personal or corporate capacity. The Trustee shall have the powers granted to it by the Proposal, by the BIA, and by any order of the Court. The Trustee and its officer(s), director(s), employee(s) or agent(s) are not and shall not be responsible or liable for any obligations of the Debtor, and shall be exempt from all personal and corporate liability in fulfilling any duties or exercising any powers conferred upon it by the Proposal or generally in carrying out the terms of this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.
- (b) Sections 95 to 101 of the BIA (with the exception of section 97(3)) shall not apply in connection with this Proposal or any dealing by the Debtor prior to the NOI Date and the Trustee shall have no responsibility, liability or authority whatsoever in connection therewith. The Trustee shall not monitor or in any way manage the Debtor's business or financial affairs.
- (c) All payments required to be paid by or on behalf of the Debtor under the terms of this Proposal shall be paid over to the Trustee unless otherwise stated herein. The Trustee shall make all payments out of the funds paid to it in accordance with the terms of this Proposal.
- (d) At the meeting of creditors to consider this Proposal (the "**Creditors Meeting**"), the creditors may, by vote in accordance with the BIA, appoint up to five inspectors (the "**Inspectors**") who will have, in addition to any powers of inspectors under the BIA, the power to:
 - i. receive any notice of default in the performance of the Proposal and waive any such default;
 - ii. increase the time period set out in paragraph 7(a);

- iii. advise the Trustee in respect of such matters as may be referred to the Inspectors by the Trustee; and,
 - iv. extend the time for any payment due under this Proposal.
- (e) All proper Claims against the Debtor arising with respect to goods supplied, services rendered, or other consideration given or provided after the NOI Date up to the date of approval of this Proposal by the Superior Court of Justice, in Bankruptcy and Insolvency, and not otherwise dealt with pursuant to this Proposal, shall be paid in full by the Debtor in the ordinary course, in priority to the Claims of all other Creditors.
- (f) At 12:01 a.m. on the Completion Date, the Debtor shall be forever released and discharged from any and all Claims. This release shall have no force or effect if the Debtor becomes bankrupt before the terms of the Proposal are fully performed.
- (g) The Debtor may propose amendments to the Proposal at any time prior to the conclusion of the Creditors Meeting provided that any such amendment does not reduce the rights and benefits given to the Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.
- (h) Any notices or communications in respect of this Proposal shall be delivered to the Debtor at the address set out below:
- Myoung-Ja Mary Kim
c/o WeirFoulds LLP
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, Ontario M5K 1B7
Attention: Philip Cho
E-mail: pcho@weirfoulds.com
- (i) For purposes of this Proposal, Claims denominated in a currency other than Canadian Dollars will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the NOI Date.

Dated at Toronto, Ontario this 18th day of October 2022


Name: Myoung-Ja Mary Kim

This is **Exhibit “K”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

17EB8F81996146B

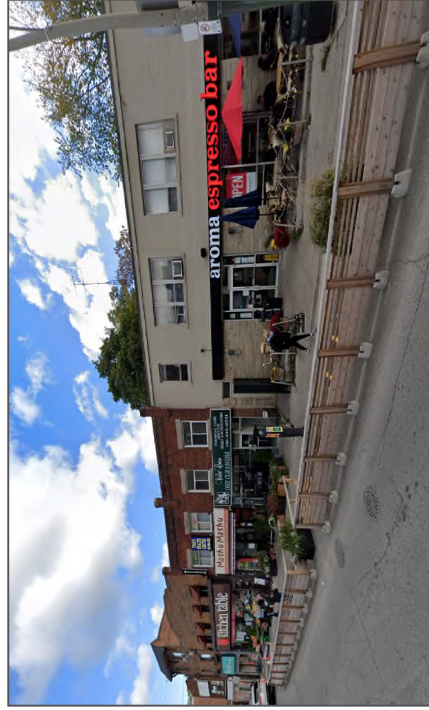
A Commissioner for taking Affidavits, etc.

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

HIGHLIGHTS

- Rare Location Opportunity In Toronto's Prime Forest Hill Village.
- Two Storey Brick Building For Sale In One Of Canada's Most Highly Sought After And Prestigious Neighbourhoods.
- Extremely Large Main Floor, Open Commercial Space With Useable Basement.
- Nicely Laid Out Two Bedroom Residential Apartment On 2nd Floor.
- Includes Two Car Parking At Rear Of Property.
- Property Sold Vacant In As-Is, Where-Is Condition.



RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

PROPERTY DETAILS

FRONTAGE: Approx. 20 Ft.

DEPTH: Approx. 138.5 Ft.

TOTAL AREA: Approx. 3,120 Sq. Ft.

TOTAL RETAIL AREA: Approx. 2,300 Sq. Ft.

TOTAL OFC/APT AREA: Approx. 820 Sq. Ft.

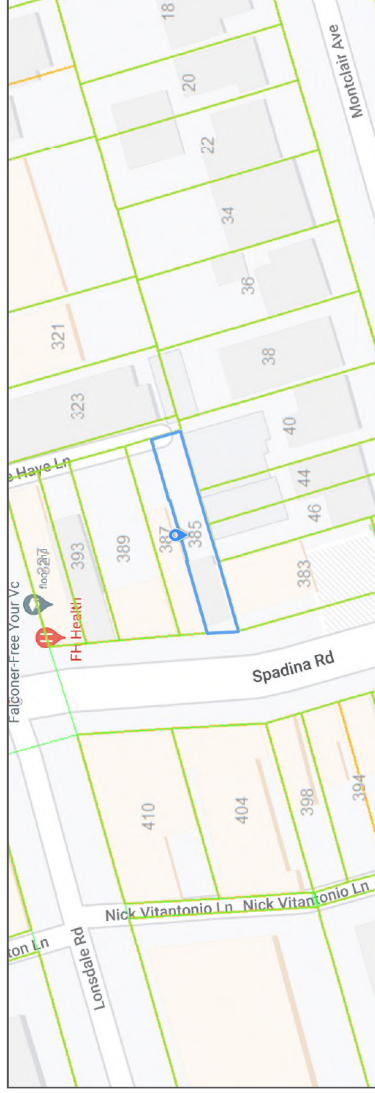
CROSSROADS: Spadina Rd. / Lonsdale Rd.

ZONING: CR 2.5 (c2.0; r2.0) SS2 (x2292)

PROPERTY TAXES: \$ 44,887.41 / 2021 / Annual

LEGAL DESCRIPTION: LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2 PLAN 64R14057 AS IN CA2646699; CITY OF TORONTO

AREA



* Buyer/Buyer's Agent to Verify All Measurements, Taxes, and Zoning

DocuSign Envelope ID: D5C724BC-D194-45C1-A929-23B8A256892

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00



AREA HIGHLIGHTS



E: julie@julieseo.com
O: 416.487.5131
C: 416.270.3966
W: julieseo.com

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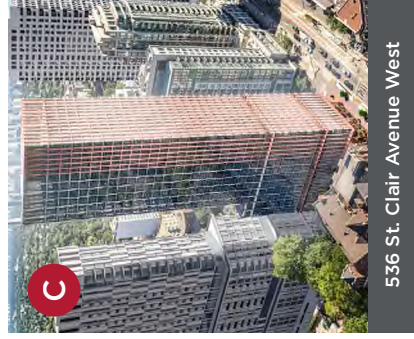
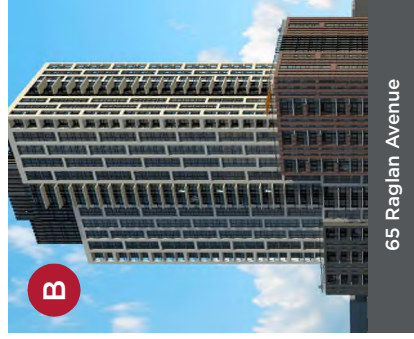
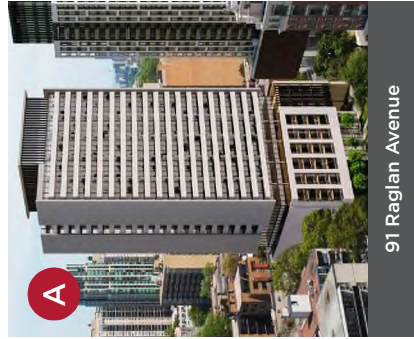
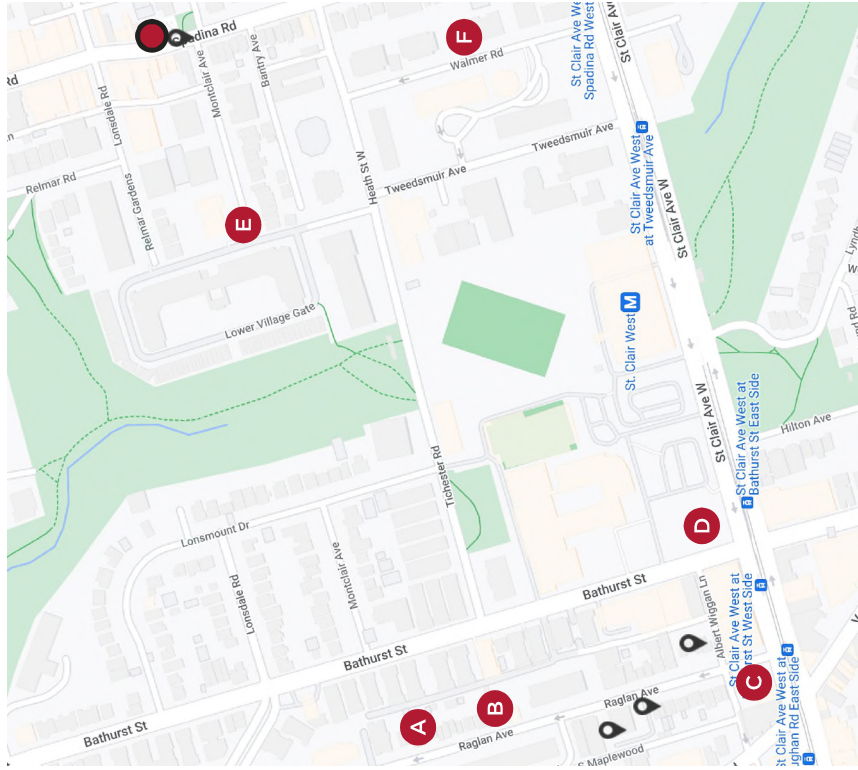
RE/MAX
ULTIMATE
REALTY INC. Broker/Realtor

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

THE AREA - CONDO DEVELOPMENTS

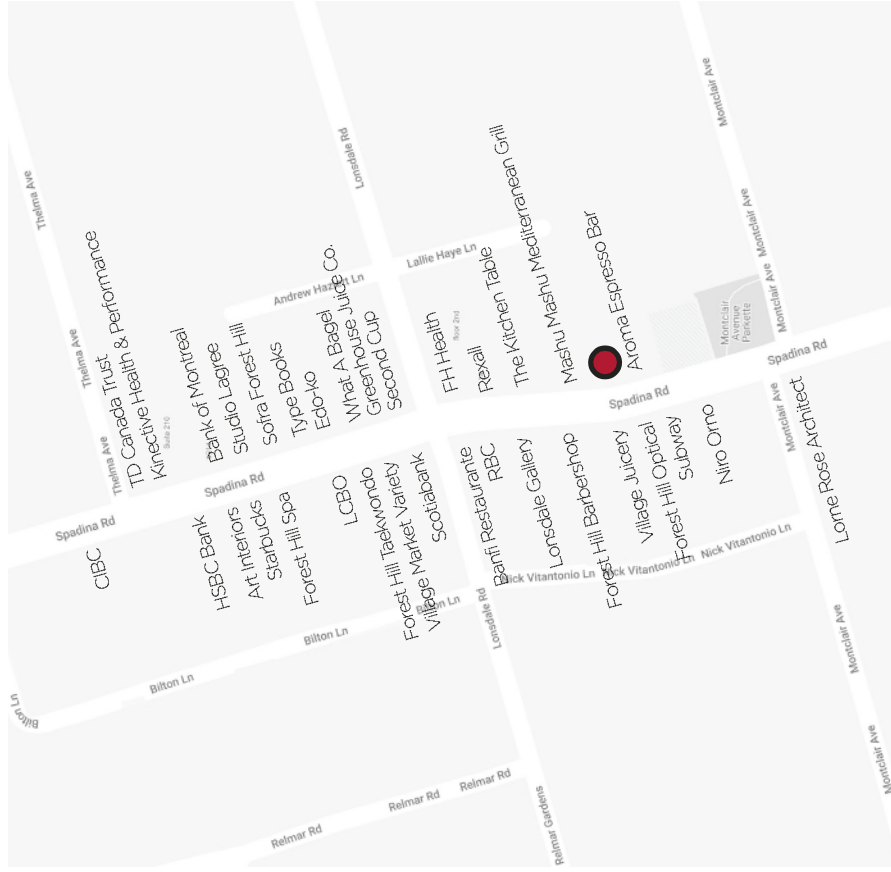
Source: <https://urbantoronto.ca/map/>



RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

RETAIL MAP



RETAIL NEIGHBOURS

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

NEIGHBOURHOOD INFO

SCHOOLS




With excellent assigned and local public schools very close to this home, your kids will get a great education in the neighbourhood.



<p>Forest Hill Jr and Sr Public School Designated Catchment School Grades PK to 8 78 Dunloo Rd</p>	<p>Collège français secondaire Designated Catchment School Grades 7 to 12 100 Carlton St</p>	<p>Other Local Schools</p> <p>Central Technical School Grades 9 to 12 725 Bathurst St</p> <p>Lord Lansdowne Junior Public School Grades K to 6 33 Robert St</p>
<p>Forest Hill Collegiate Institute Designated Catchment School Grades 9 to 12 730 Eglinton Ave W</p>	<p>ÉÉ Gabrielle-Roy Designated Catchment School Grades PK to 6 14 Pembroke St</p>	


SAFETY

With safety facilities in the area, help is always close by. Facilities near this home include a fire station, a police station, and a hospital within 3.83km.




-  **Toronto Western Hospital (University Health Network)**
399 Bathurst St
-  **Fire Station**
20 Balmoral Ave
-  **Police Station**
75 Eglinton Ave W

PARKS & REC.

This home is located in park heaven, with 4 parks and a long list of recreation facilities within a 20 minute walk from this address.



<p>Suydam Park 22 Reimar Rd</p>	<p>Sir Winston Churchill Park 301 St. Clair Ave W</p>
<p>Cedarvale Ravine 1611 Bathurst St</p>	<p>FACILITIES WITHIN A 20 MINUTE WALK</p> <p>2 Playgrounds 1 Dog Park 10 Tennis Courts</p>

 2 mins
 3 mins
 6 mins

TRANSIT

Public transit is at this home's doorstep for easy travel around the city. The nearest street transit stop is only a minute walk away and the nearest rail transit stop is a 7 minute walk away.

-  **Nearest Rail Transit Stop**
St Clair West Station
7 mins
-  **Nearest Street Level Transit Stop**
Spadina Rd At Lonsdale Rd
< 1 min

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$1.00

THE OFFERING

- Must include Seller's Schedule A, as well as Schedule B with Offers.
- Please contact Listing Agents for confidentiality agreement and before typing offers.
- Don't miss out on this rare location opportunity!

ADDITIONAL INFO

* Do not go direct, please book an appointment to show.

* Please contact Listing Agents for additional property details at:

Re/Max Ultimate Julie Seo Realty Brokerage

1739 Bayview Ave. #201, Toronto ON, M4G 3C1
Office: (416) 487-5131
Fax: (416) 487-1750

Julie Seo

Broker of Record
Cell: (416) 270-3966
Email: julie@julieseoo.com

Re/Max Ultimate Realty Inc. Brokerage

1739 Bayview Ave., Toronto ON, M4G 3C1
Office: (416) 487-5131
Fax: (416) 487-1750

Stuart Hyman

Broker
Cell: (416) 587-1739
E-Mail: shyman@remax.net




E: julie@julieseoo.com O: 416.487.5131
C: 416.270.3966 W: julieseoo.com

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RE/MAX
ULTIMATE
REALTY INC.

This is **Exhibit “L”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

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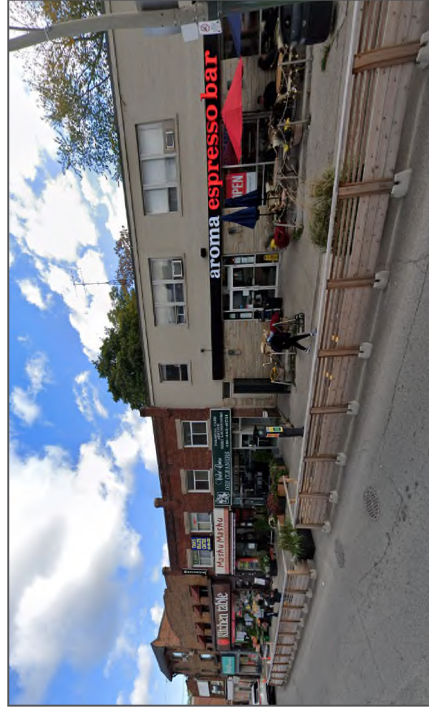
A Commissioner for taking Affidavits, etc.

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

HIGHLIGHTS

- Rare Location Opportunity In Toronto's Prime Forest Hill Village.
- Two Storey Brick Building For Sale In One Of Canada's Most Highly Sought After And Prestigious Neighbourhoods.
- Extremely Large Main Floor, Open Commercial Space With Useable Basement.
- Nicely Laid Out Two Bedroom Residential Apartment On 2nd Floor.
- Includes Two Car Parking At Rear Of Property.
- Property Sold Vacant In As-Is, Where-Is Condition.



RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

PROPERTY DETAILS

FRONTAGE: Approx. 20 Ft.

DEPTH: Approx. 138.5 Ft.

TOTAL AREA: Approx. 3,120 Sq. Ft.

TOTAL RETAIL AREA: Approx. 2,300 Sq. Ft.

TOTAL OFC/APT AREA: Approx. 820 Sq. Ft.

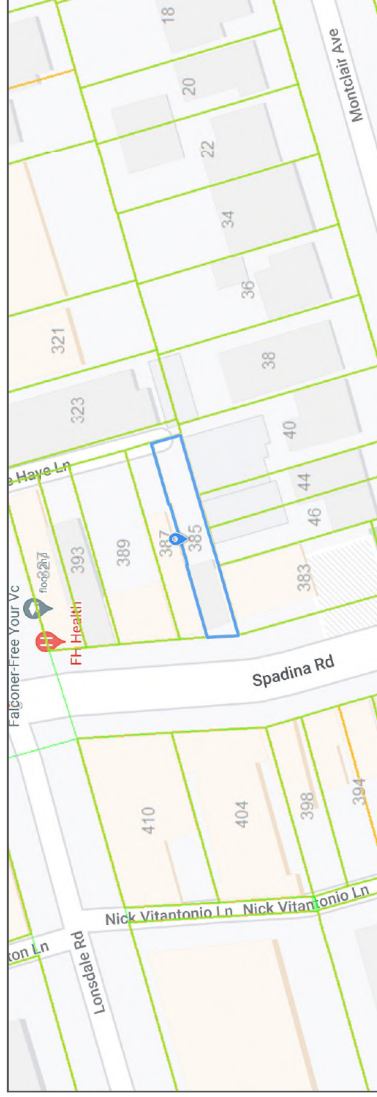
CROSSROADS: Spadina Rd. / Lonsdale Rd.

ZONING: CR 2.5 (c2.0; r2.0) SS2 (x2292)

PROPERTY TAXES: \$ 44,699.22 / 2022 / Annual

LEGAL DESCRIPTION: LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2 PLAN 64R14057 AS IN CA264699; CITY OF TORONTO

AREA



* Buyer/Buyer's Agent to Verify All Measurements, Taxes, and Zoning



E: julie@julieseo.com O: 416.487.5131
C: 416.270.3966 W: julieseo.com

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RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000



AREA HIGHLIGHTS



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O: 416.487.5131
C: 416.270.3966
W: julieseos.com

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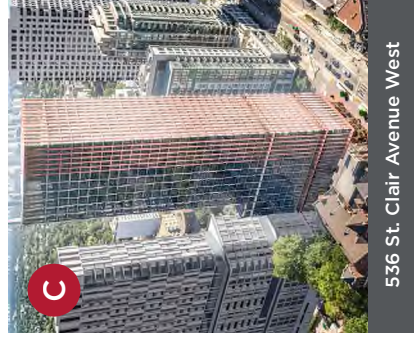
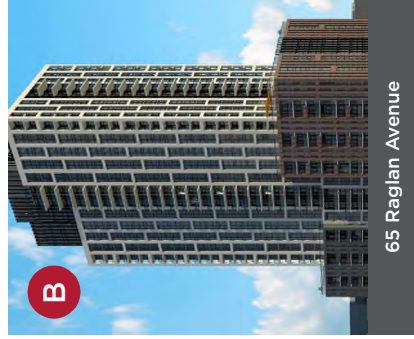
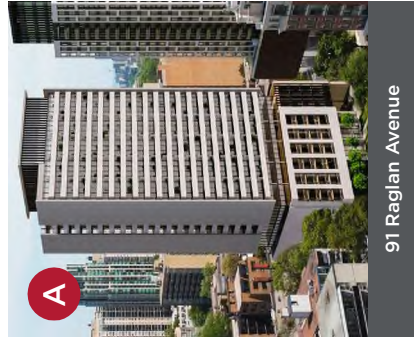
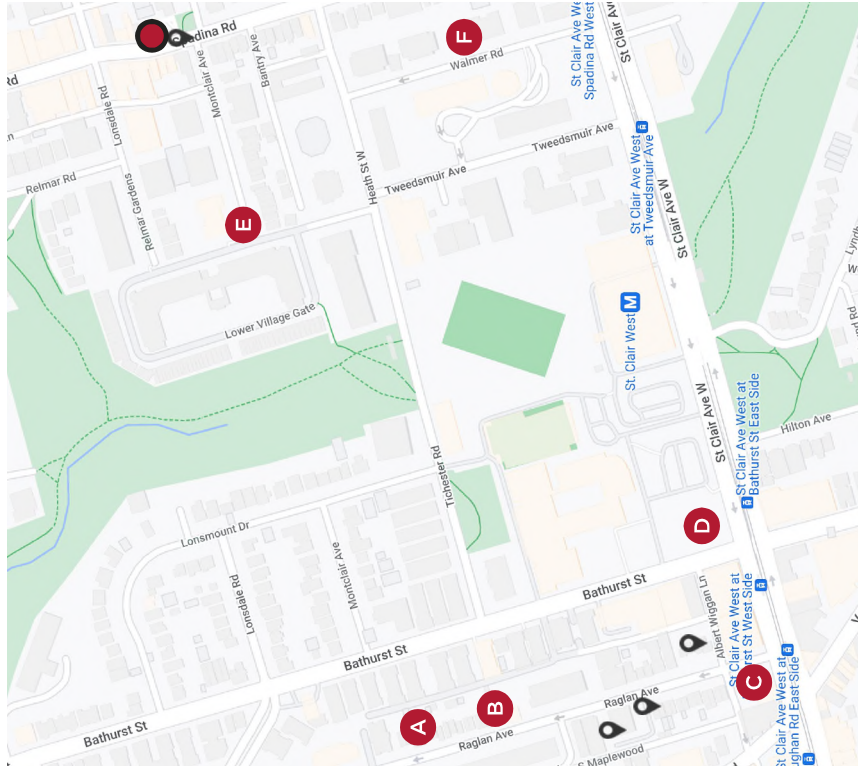
RE/MAX
ULTIMATE
REALTY INC. Broker/Owner

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

THE AREA - CONDO DEVELOPMENTS

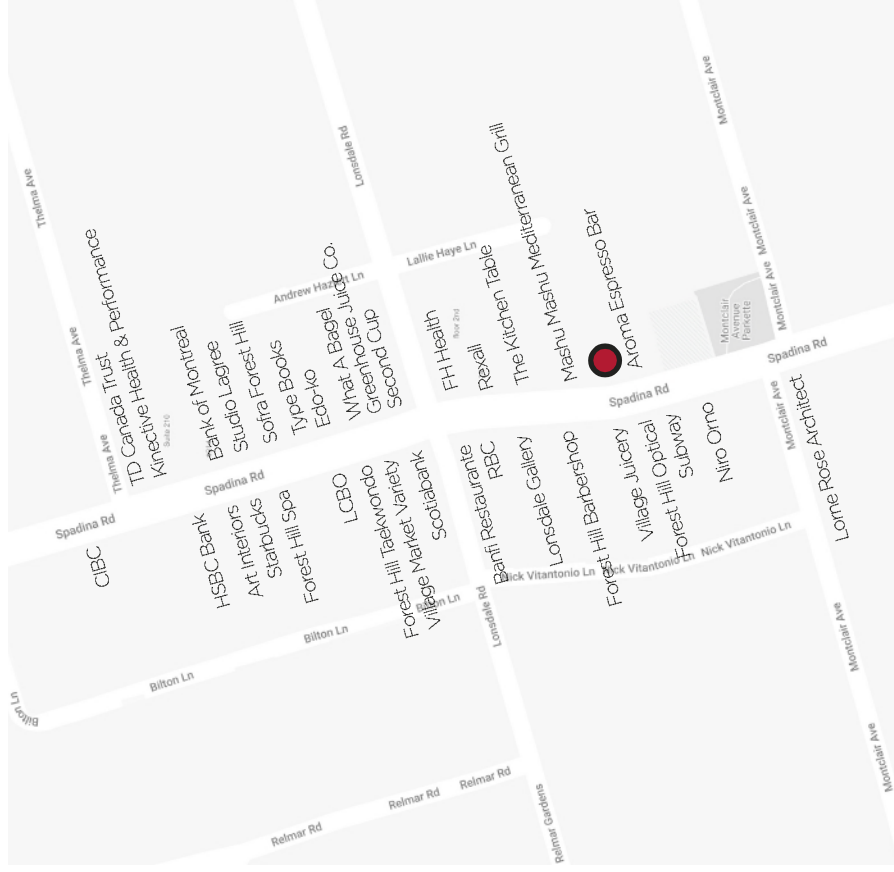
Source: <https://urbantoronto.ca/map/>



RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

RETAIL MAP



RETAIL NEIGHBOURS

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

NEIGHBOURHOOD INFO

SCHOOLS




With excellent assigned and local public schools very close to this home, your kids will get a great education in the neighbourhood.



<p>Forest Hill Jr and Sr Public School Designated Catchment School Grades PK to 8 78 Dunloo Rd</p>	<p>Collège français secondaire Designated Catchment School Grades 7 to 12 100 Carlton St</p>	<p>Other Local Schools</p> <p>Central Technical School Grades 9 to 12 725 Bathurst St</p> <p>Lord Lansdowne Junior Public School Grades K to 6 33 Robert St</p>
<p>Forest Hill Collegiate Institute Designated Catchment School Grades 9 to 12 730 Eglinton Ave W</p>	<p>ÉÉ Gabrielle-Roy Designated Catchment School Grades PK to 6 14 Pembroke St</p>	


SAFETY










With safety facilities in the area, help is always close by. Facilities near this home include a fire station, a police station, and a hospital within 3.83km.

-  **Toronto Western Hospital (University Health Network)**
399 Bathurst St
-  **Fire Station**
20 Balmoral Ave
-  **Police Station**
75 Eglinton Ave W

PARKS & REC.

This home is located in park heaven, with 4 parks and a long list of recreation facilities within a 20 minute walk from this address.



<p> Suydam Park 22 Reimar Rd  </p>	<p> Sir Winston Churchill Park 301 St. Clair Ave W   </p>
<p> Cedarvale Ravine 1611 Bathurst St </p>	<p>FACILITIES WITHIN A 20 MINUTE WALK</p> <p>2 Playgrounds 1 Dog Park 10 Tennis Courts</p> <p>1 Sports Field 4 Trails</p>

TRANSIT

Public transit is at this home's doorstep for easy travel around the city. The nearest street transit stop is only a minute walk away and the nearest rail transit stop is a 7 minute walk away.

-  **Nearest Rail Transit Stop**
St Clair West Station
7 mins
-  **Nearest Street Level Transit Stop**
Spadina Rd At Lonsdale Rd
< 1 min

RARE FOREST HILL VILLAGE OPPORTUNITY at 385 Spadina Road

For Sale \$649,000

THE OFFERING

- Must include Seller's Schedule A, as well as Schedule B with Offers.
- Please contact Listing Agents for confidentiality agreement - required before typing offers and to book a showing.
- Don't miss out on this rare location opportunity!

ADDITIONAL INFO

* Do not go direct, please book an appointment to show.

* Please contact Listing Agents for additional property details at:

Re/Max Ultimate Julie Seo Realty Brokerage

1739 Bayview Ave. #201, Toronto ON, M4G 3C1

Office: (416) 487-5131

Fax: (416) 487-1750

Julie Seo

Broker of Record

Cell: (416) 270-3966

Email: julie@julieseo.com

Re/Max Ultimate Realty Inc. Brokerage

1739 Bayview Ave., Toronto ON, M4G 3C1

Office: (416) 487-5131

Fax: (416) 487-1750

Stuart Hyman

Broker

Cell: (416) 587-1739

E-Mail: shyman@remax.net




E: julie@julieseo.com
O: 416.487.5131
C: 416.270.3966
W: julieseo.com

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RE/MAX
ULTIMATE
REALTY INC.

This is **Exhibit “M”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:



17FB8F81996146B

A Commissioner for taking Affidavits, etc.



Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 18 day of February, 2023

BUYER: Joseph Messina in trust for a company to be incorporated
(Full legal names of all Buyers), agrees to purchase from

SELLER: Kuk-Il John Kim and Myoung-Ja Mary Kim
(Full legal names of all Sellers), the following

REAL PROPERTY:

Address 385 Spadina Road

fronting on the East side of Spadina Road

in the City of Toronto

and having a frontage of more or less by a depth of more or less

and legally described as See Schedule "B"

..... (the "property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$)

..... Dollars

DEPOSIT: Buyer submits See Schedule "A"
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

..... Dollars (CDN\$)

by negotiable cheque payable to "Deposit Holder"
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A B, C & D attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 4 PM on
(Seller/Buyer) (a.m./p.m.)
the 24 day of February, 2023, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the See Schedule "A" day of

....., 20..... Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

DS
JM

INITIALS OF SELLERS(S):

DS
MK

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See Schedule "A"

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. ~~Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.~~ Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

DS
JM

MJK

FAX No.: (For delivery of Documents to Seller) FAX No.: (For delivery of Documents to Buyer)
Email Address: (For delivery of Documents to Seller) Email Address: (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
None

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**
None

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, ~~a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable.~~ The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

DS
JM

See Schedule "A"

INITIALS OF BUYER(S):

DS
JM

INITIALS OF SELLERS(S):

MJK

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the day of....., 20..... (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (.....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

the Permitted Encumbrances and

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

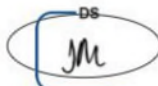
DS
JM

INITIALS OF SELLERS(S):

MJK

- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):



29. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

DocuSigned by: Joseph Messina 2/20/2023 | 2:23 PM EST
(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date)
(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) (Seller/Authorized Signing Officer) (Seal) (Date) Feb 24, 2023
(Witness) (Seller/Authorized Signing Officer) (Seal) (Date) Feb 24, 2023

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 3:45 pm this 24 day of February, 2023.

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)
Listing Brokerage RE/MAX ULTIMATE REALTY INC & RE/MAX ULTIMATE JULIE SEO REALTY. (Tel.No.)
JULIE SEO & STUART HYMAN (Salesperson/Broker/Broker of Record Name)
Co-op/Buyer Brokerage (Tel.No.)
(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) Feb 24, 2023 (Date)
(Seller) Feb 24, 2023 (Date)

Address for Service (Tel. No.)
Seller's Lawyer WeirFoulds LLP, Attn: Talia Rotman
Address 4100-66 Wellington Street West, Toronto, ON, M5K 1B7
Email trotman@weirfoulds.com
416 619-2095 416 365-1876
(Tel. No.) (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

DocuSigned by: Joseph Messina 2/20/2023 | 2:23 PM EST
(Buyer) A25A55F35B64432 (Date)
(Buyer) (Date)

Address for Service (Tel. No.)
Buyer's Lawyer
Address
Email
(Tel. No.) (Fax. No.)

FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date signed by the undersigned of the foregoing Agreement of Purchase and Sale. Acknowledged by:
(Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

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Schedule A Agreement of Purchase and Sale – Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Joseph Messina in trust for a company to be incorporated....., and

SELLER: Kuk-III John Kim and Myoung-Ja Mary Kim.....

for the purchase and sale of 385 Spadina Road.....

..... dated the 18..... day of February....., 2023.....

Buyer agrees to pay the balance as follows:

See attached schedules

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):

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SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated., as Purchaser, and Kuk-Ill John Kim and Myoung-Ja Mary Kim, as Vendor

1. DEPOSIT

The Purchaser hereby agrees to submit the following deposits by way of electronic wire transfer to the Vendor's solicitor, in trust:

- a) A first deposit of [One Hundred Thousand] (\$100,000.00) within one (1) Business Day of mutual Acceptance of this Agreement (the "**First Deposit**"); and
- b) The parties hereby agree that the Deposit shall be held in trust and deposited by the Vendor's solicitor in an interest-bearing trust account or a term deposit with a Canadian Chartered Bank or Trust Company in accordance with the provisions of this Agreement pending the completion or other termination of this Agreement and to be credited on the Closing Date on account of the Purchase Price.
- c) The Purchaser hereby agrees to pay the balance of the Purchase Price, subject to the adjustments as provided for herein, by wire transfer using the Large Value Transfer System, to the Vendor, or as it might otherwise direct in writing, on Closing.
- d) The interest earned on the Deposit shall accrue to the Purchaser's benefit and be paid to the Purchaser on Closing (as hereinafter defined) or other termination of this Agreement. If this Agreement is not completed as a result of the default of the Purchaser, then the Deposit and all accrued interest thereon shall be forfeited to the Vendor as liquidated damages, without prejudice to any other right or remedies the Vendor may have under this Agreement or otherwise at law or equity.

2. ACKNOWLEDGMENT OF PURCHASER AS TO CONDITION OF THE PROPERTY

- a) The Purchaser acknowledges that an up to date survey for the Property is not available and agrees to take title to the Property subject to any encroachments, easements and/or rights of way that may affect title to the Property and that may be revealed by an up to date plan of survey. The Purchaser will be responsible for all costs associated with obtaining an up-to-date survey of the Property.
- b) In entering into this Agreement, the Purchaser has relied on and will continue to rely entirely and solely upon its own inspections, investigations and diligence with respect to the Property, including without limitation, the physical and environmental and geotechnical condition of the Property. The Purchaser further acknowledges that it is not relying on any information furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith.
- c) Save and except as otherwise expressly provided for in this Agreement, the Property is being assumed by the Purchaser on an "as is/where is" basis as of the Closing Date and without any express or implied agreement, representation or warranty of any kind whatsoever from the Vendor, its employees, agents, consultants, subcontractors or brokers as to any matter concerning the Property whatsoever, including, without limitation, as to the title, condition, area, suitability for development, suitability for any particular purpose, physical characteristics, profitability, use or zoning, the existence of unknown latent defects, any environmental matter or as to the accuracy, currency or completeness of any information or documentation supplied in connection with the Property and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) will not apply and are hereby waived by the Purchaser.
- d) The Purchaser acknowledges that the transaction contemplated in this Agreement is subject to approval by the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) and title to the Property will be transferred by way of an approval and vesting order, to be sought by the Vendor in the matter of the Proposal of the Vendor under Court File No. 31-2822607 (Toronto).
- e) The Purchaser hereby releases, and covenants with the Vendor that it shall release the Vendor and its related and affiliated entities, and each of their respective officers, directors, shareholders, employees, representatives and agents from any actions, liabilities, demands, claims, remediation cost recovery actions, losses, damages, orders, fines, penalties, costs and expenses (including

SCHEDULE "A"

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without limitation, reasonable legal costs on a substantial indemnity basis) whenever occurring or caused which the Purchaser or any other person, including, without limitation, any governmental authority has, may have, or will have arising from or in any way related to the Property including, without limitation, the presence of contaminants and hazardous substances on, under or from, or the environmental condition, at the Property. The Purchaser further agrees that it will not take any direct or indirect step or steps to cause, precipitate or encourage the issuance of any proceeding or order against the Vendor including but not limited to a proceeding or order pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E19 or any other applicable environmental laws provided that this agreement shall not prevent or bar the Purchaser from defending any action brought by any third party. In furtherance of the foregoing provisions of this Section 2, the Purchaser shall execute and deliver to the Vendor on the Closing Date the form of release attached hereto as Schedule "D" (the "**Environmental Release**").

- f) The Purchaser acknowledged and agrees that the provisions of this Section 2 shall not merge upon but shall survive Closing.

3. PURCHASER'S CONDITIONS AND ACCESS

The Purchaser's obligation to complete the transaction of purchase and sale contemplated under this Agreement is conditional for a period of thirty (30) days from the Acceptance Date (the "**Conditional Date**") upon the Purchaser arranging, at the Purchaser's own expense, financing for the acquisition of the Property satisfactory to the Purchaser in its sole discretion and satisfactory building inspection and satisfactory environmental inspection (the "**Due Diligence Condition**").

The foregoing conditions are for the sole benefit of the Purchaser and may be waived by the Purchaser in whole or in part by written Notice to the Vendor or its solicitors. In the event that the conditions contained herein have not been fully satisfied or otherwise waived in writing by the Purchaser on or before the Conditional Date, this Agreement shall come to an end and the Deposit and all interest earned thereon shall be returned to the Purchaser without deduction upon which it is agreed that neither party shall have any further rights or obligations hereunder.

From the date of this Agreement until the Closing Date (the "**Interim Period**"), the Vendor will ensure that the Purchaser, its representatives and advisers will have reasonable access to the Property upon mutual agreement and reasonable notice and at reasonable times to inspect and carry out tests and investigations of the Property to complete its due diligence and satisfy itself in respect of the Due Diligence Condition. All tests and investigations carried out by the Purchaser or its representatives or advisers will be at the Purchaser's sole risk and expense and shall not unreasonably interfere with the business of the Vendor being carried on at the Property, nor shall the Purchaser commit waste. Any damage resulting from the Purchaser's tests or investigations will be promptly paid for by the Purchaser or repaired at its sole cost and expense and the Purchaser shall indemnify and hold harmless the Vendor in respect of any and all such damage and/or losses suffered or incurred by the Vendor in connection with or any manner whatsoever relating to the Purchaser's access to the Property in the event the transactions contemplated hereby are not successfully completed.

4. VENDOR'S CONDITIONS

The Vendor's obligation to complete the transaction of Purchase and Sale contemplated under this Agreement is conditional for a period of forty-five (45) days following the Purchaser's waiver of the Due Diligence Condition (the "**Vendor's Conditional Date**"), upon the Vendor having received approval of the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) ("**OSCJ**") to proceed with the transaction contemplated by this Agreement in the OSCJ's sole, absolute and unfettered discretion (the "**Court Approval Condition**"). The Court Approval Condition is for the sole benefit of the Vendor and once satisfied the Vendor will provide written notice to the Purchaser or its solicitors. In the event that the Court Approval Condition has not been fully satisfied by the Vendor on or before the Vendor's Conditional Date, this Agreement shall come to an end and the Deposit and all interest earned thereon shall be returned to the Purchaser without deduction, upon which it is agreed that neither party shall have any further rights or obligations hereunder.

5. CLOSING



SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

Unless this Agreement is otherwise terminated in accordance with its terms, closing shall be completed on or before 5:00 p.m. (Toronto time) on the day that is Fifteen (15) Business Days following the satisfaction of the Court Approval Condition (the "**Closing**" or "**Closing Date**").

6. DUE DILIGENCE DELIVERIES

The Purchaser hereby acknowledges that it has received copies of all of the documents posted in the electronic data room established and managed by the Vendor's Broker on behalf of the Vendor (the "**Data Room**").

7. CLOSING DOCUMENTS OF THE VENDOR

On the Closing Date, the Vendor shall deliver the following (the "**Vendor's Documents**") to the Purchaser (in addition to all usual closing documents) which shall be in form and content satisfactory to the Purchaser, acting reasonably:

- (a) a Vesting Order of the Property from the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) in favour of the Purchaser, or as it may otherwise direct in writing which the parties agree, if necessary;
- (b) a statement of adjustments;
- (c) discharges of all liens, charges and encumbrances required hereunder save and except for the Permitted Encumbrances;
- (d) an undertaking to readjust;
- (e) a certificate of the Vendor as to Section 116 of the *Income Tax Act* and applicable provisions of the *Family Law Act* (Ontario);
- (f) the form of Environmental Release referred to in Section 2(e) of this Schedule "A" above and attached hereto as Schedule "D".

8. CLOSING DELIVERIES OF THE PURCHASER

On the Closing Date the Purchaser shall deliver the following (the "**Purchaser's Documents**") to the Vendor (in addition to all usual closing documents) which shall be in form and content satisfactory to the Vendor acting reasonably:

- (a) the balance of the Purchase Price in accordance with the statement of adjustments by a bank wire transfer from a Schedule I Canadian Bank to the Vendor, or as the Vendor may in writing direct;
- (b) an undertaking to readjust;
- (c) the form of Environmental Release referred to in Section 2(e) of this Schedule "A" above and attached hereto as Schedule "D";
- (d) the HST certificate and indemnity referred to in Section 10 of this Schedule "A" below;
- (e) a written direction regarding title, if applicable.

9. TIME OF ESSENCE

Time shall be of the essence of this Agreement and the transactions contemplated herein, provided that the time for doing or completing any matter herein may be amended by an agreement in writing, signed by both parties.

10. H.S.T. AND OTHER TAXES AND FEES

The Purchaser and the Vendor agree that the Purchaser shall be responsible for and shall pay all harmonized sales tax ("**HST**") in accordance with the provisions of the *Excise Tax Act* (Canada), land transfer tax, provincial sales tax, registration fees, together with any other federal, provincial and other taxes and fees (collectively, "**Taxes and Fees**") exigible and/or payable in respect the Purchaser's acquisition of the Property. The Purchaser and the Vendor acknowledge and agree that the Purchase Price shall be exclusive of all Taxes and Fees which shall be paid by the Purchaser, subject to the following. The

SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

Purchaser represents that it is now, or will be no later than the Closing Date, registered for the purposes of the HST, in accordance with the applicable provisions of the *Excise Tax Act* (Canada), as amended. The Purchaser covenants to deliver a certificate and indemnity in form satisfactory to the Vendor's solicitors, acting reasonably, on the Closing Date confirming (i) that it is purchasing the Property on its own behalf and not as a trustee, agent or nominee for any third party; (ii) its valid HST registration number; (iii) that its HST registration number is in full force and effect on closing and has not been revoked or waived as confirmed by the Canada Revenue Agency GST/HST Registry; (iv) that it agrees to remit directly to the appropriate authorities all HST payable by it as a result of this transaction; and (v) that it agrees to indemnify the Vendor in this regard, such certificate and indemnity constituting conclusive evidence of such HST registration precluding the Vendor from collection of HST from the Purchaser on the Closing Date. In the event that the Purchaser is not registered under the *Excise Tax Act* (Canada) for the purposes of HST, or fails to deliver the above noted HST certificate and indemnity, then the Purchaser will deliver to the Vendor on the Closing Date, in addition to the Purchase Price and other amounts referenced herein, a certified cheque in the amount of HST payable in respect of this transaction.

11. ASSIGNMENT

12. The Purchaser shall have the right at any time on or before closing date, to assign this agreement to any person or corporation, either existing or to be incorporated, without the consent of the Vendors provided that the assignee shall covenant and agree to perform the obligations of the Purchaser under this agreement. Upon such assignment, the originally named Purchaser shall not be released from all further liability and obligations hereunder.

CONFIDENTIALITY

Without limiting the Non-Disclosure and Confidentiality Agreement signed by the Purchaser on [Joseph Messina in trust for a company to be incorporated], which shall remain in full force and effect, until the Closing Date (and in the event this Agreement is terminated for any reason other than its completion, and also from and after such termination), the Purchaser and its consultants, agents, advisors and solicitors shall keep confidential all information, documentation and records obtained from the Vendor or its consultants, agents, advisors or solicitors with respect to the Property as well as any information arising out of the Due Diligence Deliveries or from the Purchaser's due diligence investigations (collectively, the "**Confidential Information**"). The Purchaser shall not use any Confidential Information for any purposes not related to this transaction or in any way detrimental to the Vendor.

- (a) Notwithstanding the foregoing, nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, advisors and solicitors as long as the Purchaser requires such parties to keep such information confidential.
- (b) Unless and until the closing has occurred, each of the Vendor and the Purchaser shall keep confidential, and shall use reasonable best efforts to ensure that its agents and consultants keep confidential, this Agreement, except to the extent reasonably required to comply with its obligations or enforce its rights under this Agreement.
- (c) If this Agreement is terminated for any reason, the Purchaser shall, promptly upon receipt of the Vendor's written request, return to the Vendor all Confidential Information (other than the Purchaser's notes and due diligence materials) and similar material including all copies.

13. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

14. WAIVER

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

15. SOLICITORS AS AGENTS


SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Vendor's solicitors on behalf of the Vendor and any tender of Closing Documents and the balance of the Purchase Price may be made upon the Vendor's solicitors and the Purchaser's solicitors, as the case may be.

16. **CURRENCY**

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

17. **FURTHER ASSURANCES**

Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

18. **ENUREMENT**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, if any.

19. **NOTICES**

All notices, consents, approvals, statements, authorizations, documents, or other communications, required or permitted to be given hereunder shall be in writing and shall be delivered personally or by telecopier, facsimile transmission or other electronic communication which results in a written or printed notice being given (including by electronic mail via the Internet), to the parties hereto at their respective addresses set forth hereunder, namely:

To the Vendor at:

C/O WeirFoulds LLP
Barristers and Solicitors
66 Wellington Street West, Suite 4100
Toronto-Dominion Centre
Toronto, Ontario M5K 1B7

Attention: Philip Cho
E-mail: pcho@weirfoulds.com
Facsimile: 416-365-1876

With a copy to:

WeirFoulds LLP
Barristers and Solicitors
66 Wellington Street West, Suite 4100
Toronto-Dominion Centre
Toronto, Ontario M5K 1B7

Attention: Patrick Nugent/ Talia Rotman
E-mail: pnugent@weirfoulds.com/ trotman@weirfoulds.com
Facsimile: 416-365-1876

To the Purchaser at:



Attention: Joseph Messina
A-5

SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

Email: Lniss77@me.com

With a copy to:

Attention:
Email:
Facsimile:

or at any such other address or addresses as may be given by any of them to the other in writing from time to time. Such Notice, if delivered personally or by telecopier, facsimile transmission or other electronic communication which results in a written or printed notice being given (including by electronic mail via the Internet), shall be deemed to have been given on the day and at the time of personal delivery or telecopy or other electronic transmission, if delivered or transmitted prior to 5:00 p.m. on a Business Day, or if not prior to 5:00 p.m. on a Business Day, on the Business Day next following the day of delivery or telecopy or other electronic transmission, as the case may be.

20. DOCUMENT REGISTRATION AGREEMENT

The parties acknowledge that the electronic registration system ("**TERS**") is operative on a mandatory basis in the Land Registry Office ("**LRO**") in which the Lands are registered and that the registration of the Vesting Order referred to in Section 7(a) of this Schedule "A" will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act* (Ontario), and the parties further agree that the following provisions shall apply in this regard:

- (a) each of the Purchaser's solicitors and the Vendor's solicitors are hereby authorized to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on September 19, 2000 or any successor version thereto (the "**DRA**"), together with the requirement that the registering solicitor shall be obligated to provide the non-registering solicitor with a copy of the registration report printed by TERS upon the registration of the electronic documents, as evidence of the registration thereof, within one (1) Business Day of the Closing Date. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing this transaction electronically, and shall be executed by both solicitors (such that each solicitor has a copy of the DRA duly executed by both solicitors) by no later than two (2) days before the Closing Date;
- (b) the delivery and exchange of documents and funds, and the release thereof to the Vendor and the Purchaser, as the case may be, shall be governed by the DRA, pursuant to which the solicitor receiving the documents and/or funds will be required to hold them in escrow and will not be entitled to release them except in strict accordance with the provisions of the DRA;
- (c) notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (the "**Tendering Party**") upon the other party (the "**Receiving Party**") when:
 - (i) the solicitor for the Tendering Party has delivered all applicable closing documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
 - (ii) the solicitor for the Tendering Party has advised the solicitor for the Receiving Party, in writing, that the Tendering Party is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) the Tendering Party has completed all steps required by TERS to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor without the co-operation or participation of the Receiving Party's solicitor;



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SCHEDULE "A"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

without the necessity of personally attending upon the Receiving Party or the Receiving Party's solicitor with the documents and/or funds and without any requirement to have an independent witness evidencing the foregoing.

21. BUSINESS DAYS

Business Day means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario. In the event that any date established by or in accordance with this Agreement or any date of termination of a period of time set forth or referred to in this Agreement will fall upon a Saturday, Sunday or statutory holiday in the Province of Ontario, then such date will be deemed to be the next following day which is not a Saturday, Sunday or statutory holiday.

22. FACSIMILE AND COUNTERPARTS

It is agreed by the parties hereto that this Agreement and any amendments thereto (and any other agreements, notices or documents contemplated thereby) may be executed and delivered by facsimile transmission or other electronic communication which results in a written or printed notice being given (including by electronic mail via the Internet) and in any number of counterparts and all such facsimile and electronic copies and counterparts shall be deemed to be an original hereof and for all purposes constitute one agreement, be binding on the parties hereto, provided each party hereto has executed and delivered at least one counterpart, and each may be relied upon by each party hereto as such for any and all purposes.

23. SUCCESSORS AND ASSIGNS

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

24. LEGAL ADVICE

The Parties to this Agreement acknowledge that the real estate Broker(s) so named in this Agreement has recommended that the Parties obtain independent professional advice prior to signing this document. The Parties further acknowledge that no information provided by such real estate Broker(s) is to be construed as legal, tax or environmental advice. Buyer and Seller further acknowledge being advised by agent to seek specific advice from independent litigation and environmental law counsel regarding the legal issues that the parties will face following closing as a result of the environmental contamination currently existing at the property (and the subsequent migration of hazardous substances to adjacent properties).



SCHEDULE "B"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated, as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

LEGAL DESCRIPTION

LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2 PLAN 64R14057 AS IN CA264699; CITY OF TORONTO, being all of PIN 21188-0135 (LT)

Municipally known as 385 Spadina Road, Toronto

SCHEDULE "C"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim, as Vendor

PERMITTED ENCUMBRANCES

Notwithstanding anything to the contrary in the Purchase Agreement, the Purchaser shall take title to the Property on closing subject to the following (collectively, the "**Permitted Encumbrances**"):

General:

- (a) **Possession:** Any unregistered claim or interest through or by possession, continuous use or improvements that a third party may have acquired in respect of the Property;
- (b) **Her Majesty the Queen:** Unregistered liens, charges, adverse claims, security interests or other encumbrances of any nature claimed or held by Her Majesty the Queen in Right of Canada, her agency or authority under or pursuant to any applicable legislation, statute or regulation, save and except for unregistered liens for public utilities and realty taxes which are due and payable;
- (c) **Crown Grant:** All reservations, limitations, provisos and conditions expressed in the original grant of title of the lands and premises comprising the Property from the Crown.
- (d) **Expropriation:** All rights of expropriation of any federal, provincial or municipal authority or agency;
- (e) **Undetermined/Inchoate Liens:** Undetermined or inchoate liens or charges relating to or arising out of the supply of labour, services or materials to or for the Property that have not been filed or registered on closing and the priority of any liens under the *Construction Lien Act* (Ontario) to the extent of any deficiency in the holdbacks required to be made under said Act.
- (f) **Up-to-Date Survey:** Any minor defects, irregularities, easements or encroachments that might be revealed by any up-to-date survey of the Property;
- (g) **Liens:** Any liens for realty taxes, rates, levies, assessments and public utilities which are not yet due or payable;
- (h) **Land Use Control:** All applicable governmental orders, laws, by-laws and regulations respecting matters related to land use control;
- (i) **Utility Easements:** Any easement or right-of-way in favour of any utility (either municipal, private or public) whether it be for gas, water, electricity, cable and/or telephone, or otherwise, and any conveyance of any lands for streets, highways, parks, one foot reserves or to any municipality, or for any other public purpose to any public authority as required by relevant authorities having jurisdiction over the Property;
- (j) **Unregistered Easements or Rights-of-Way:** Any unregistered easements or rights-of-way and any errors of any public officials and/or surveyors;
- (k) **Municipal and Other Agreements:** Any subdivision, site plan, development, servicing or industrial agreement with any governmental authority; and
- (l) **Permits & Work Orders:** Any open or active permit, permit application, work order or deficiency notice in respect of the Property.

Specific:

- (a) **Instrument No. CA264699** registered on February 7, 1994, being a Transfer of Easement in favour of Part 2 on Plan 64R-14057; and
- (b) **Instrument No. AT2951115** registered on February 23, 2012, being a Land Registrar's Order to Amend the legal description of the Property.

SCHEDULE "D"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-III John Kim and Myoung-Ja Mary Kim, as Vendor

ENVIRONMENTAL RELEASE

TO: Kuk-III John Kim and Myoung-Ja Mary Kim
RE: Kuk-III John Kim and Myoung-Ja Mary Kim (the "Vendor") sale to [Joseph Messina in trust for a company to be incorporated] (the "Purchaser") pursuant to an agreement of purchase and sale dated [February 18,2023] (the "Purchase Agreement") of the lands and premises legally described as PIN 21188-0135 (LT) and municipally known as 385 Spadina Road, Toronto, Ontario (the "Property")

WHEREAS:

- (A) The Vendor has agreed to sell, transfer and convey the Property to the Purchaser and the Purchaser has agreed to purchase the Property, all in accordance with and subject to the terms and conditions of the Purchase Agreement;
- (B) In accordance with the terms and conditions of the Purchase Agreement and notwithstanding the delivery of the Environmental Reports (as defined below), the Purchaser agreed to purchase the Property on an "as is" basis as of the Closing Date (as such term is defined in the Purchase Agreement) without any express or implied agreement, representation or warranty of any kind whatsoever;
- (C) Pursuant to the Purchase Agreement, the Purchaser acknowledged and agreed that it will be fully aware of the contents of the environmental reports contained in the Data Room (the "**Environmental Reports**");
- (D) Pursuant to Section 2 of Schedule "A" to the Purchase Agreement, the Purchaser agreed to provide the Vendor with a release incorporating the terms provided for therein;
- (E) All capitalized terms and phrases defined in the Purchase Agreement and not otherwise expressly defined herein shall have the same meaning herein as in the Purchase Agreement;

NOW THEREFORE IN CONSIDERATION of the completion of the transaction contemplated by the Purchase Agreement, the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the undersigned, the undersigned hereby covenants, agrees and undertakes as follows:

- 1) "**Environmental Laws**" for purposes of this Release includes, but is not limited to: all applicable federal, provincial, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licences, permits, orders, directives, guidelines and standards that have the force of law, decisions rendered by any Governmental Authority relating to the protection of the environment, pollution, natural resources, health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance and includes any certificate of property use issued under the *Environmental Protection Act*, R.S.O. 1990, c. E19, the *Ontario Water Resources Act*, R.S.O., 1990, c. O.40, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Safe Drinking Water Act*, 2003, S.O. 2002, c.32, and applicable air quality guidelines, as such statutes, regulations, and guidelines may be amended from time to time.
- 2) "**Contaminant(s)**" for purposes of this Release includes, but is not limited to: (i) any substance which, when it exists in the Property or the water supplied to, on or in the Property, or when it is released into the Property or any part thereof, or into the water or the natural environment, may cause, at any time, material harm or degradation to the Property or any part thereof, or to the natural environment or material risk to human health; (ii) any substance, when it exists in the Property or the water supplied to, on or in the Property, or when it is

SCHEDULE "D"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim , as Vendor

released into the Property or any part thereof, or into the water or the natural environment will exceed the applicable full depth generic site condition standards under O. Reg. 153/04 as amended, or any substance declared to be hazardous or toxic under any Environmental Laws now or hereafter enacted or promulgated by any Governmental Authority, including, any "contaminant" as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E19 (and including the requirements of any and all guidelines and/or policies issued by the Ontario Ministry of the Environment, Conservation & Parks pursuant thereto); and/or (iii) any hazardous or toxic chemical, waste, by-product, pollutant, compound, product or substance, the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, clean-up, removal, remediation or handling of, which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Laws.

- 3) "**Hazardous Substance**" for purposes of this Release includes, but is not limited to any hazardous, noxious, dangerous, potentially dangerous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, biological materials and organisms (including viral agents, mold, fungus and bacteria), flammable materials, explosive materials, radioactive materials, asbestos, urea formaldehyde foam insulation, radiation, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of, which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Laws or is declared or defined thereunder as being hazardous, toxic, a contaminant or pollutant.
- 4) The undersigned, including its successors and permitted assigns, hereby remises, releases and forever discharges the Vendor, its' affiliates, shareholders, employees, representatives and agents (collectively, "**Releasees**") from, without limitation, any and all actions liabilities, demands, claims, remediation cost, recovery actions, losses, damages, orders, fines, penalties, costs and expenses (including without limitation, reasonable legal costs on a substantial indemnity basis) (collectively, the "**Claims**") whenever occurring or caused which the Purchaser has, may have, or will have arising from or in any way related to the Property including without limitation the presence of Contaminants, Hazardous Substances on, under or from, or the environmental condition at the Property and any contravention of Environmental Laws.
- 5) The undersigned covenants and agrees that it will not take any direct or indirect steps to cause, precipitate or encourage the issuance of any proceeding or order against the Releasees pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E19 or any other applicable Environmental Laws, provided that this agreement shall not prevent or bar the Purchaser from defending any action brought by any third party.
- 6) The undersigned shall do and sign or execute without delay all such other documents and provide other further assurances as may be necessary or desirable to give full effect to this Release.
- 7) The provisions of this Release shall extend to and enure to the benefit of the Releasees and shall be binding upon the undersigned and its heirs, legal representatives, administrators, estates, successors and assigns.
- 8) This Release is severable and in the event that any part or portion of any provision contained herein is rendered to be void, the remaining part or portion thereof and the remaining provisions of this Release shall be deemed to be in full force and effect and binding upon the parties hereto.
- 9) This Release and the rights, obligations and relations of the parties hereto and benefitting hereunder shall be governed by the and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 10) This Release may be executed and delivered by facsimile or other form of electronic transmission (including by electronic mail via the Internet) and in any number of counterparts and all such facsimile or other electronic copies and counterparts shall be deemed to be an original hereof and for all purposes constitute one document,

SCHEDULE "D"

Attached hereto and forming part of this Agreement of Purchase and Sale between Joseph Messina in trust for a company to be incorporated ., as Purchaser, and Kuk-Il John Kim and Myoung-Ja Mary Kim , as Vendor

be binding on the parties hereto, provided each party hereto has executed and delivered at least one counterpart, and each may be relied upon by each party hereto as such for any and all purposes.

2/20/2023 | 2:23 PM EST

DATED as of this ____ day of _____, 2023.

[Purchaser]

DocuSigned by:

Per: Joseph Messina

Name: Joseph Messina

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.



Confirmation of Co-operation and Representation Buyer/Seller



Form 320

for use in the Province of Ontario

BUYER: Joseph Messina in trust for a company to be incorporated

SELLER: Kuk-Il John Kim and Myoung-Ja Mary Kim

For the transaction on the property known as: 385 Spadina Road Toronto ON M5P2W1

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Co-operation and Representation: "Seller" includes a vendor, a landlord, lessor or a prospective seller, vendor, landlord or lessor and "Buyer" includes a purchaser, tenant, lessee or a prospective buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002, (REBBA).

1. LISTING BROKERAGE

- a) The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
 - 1) The Listing Brokerage is not representing or providing Customer Service to the Buyer.
(If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
 - 2) The Listing Brokerage is providing Customer Service to the Buyer.
- b) **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
 - That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - The price the Buyer should offer or the price the Seller should accept;
 - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

Additional comments and/or disclosures by Listing Brokerage: (e.g., The Listing Brokerage represents more than one Buyer offering on this property.)

2. PROPERTY SOLD BY BUYER BROKERAGE – PROPERTY NOT LISTED

- The Brokerage (does/does not) represent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid
 - by the Seller in accordance with a Seller Customer Service Agreement
- or: by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: (e.g., The Buyer Brokerage represents more than one Buyer offering on this property.)

INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)

DS
JM
BUYER

CO-OPERATING/BUYER BROKERAGE

MK
SELLER

DS DS
SH JS
LISTING BROKERAGE

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3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

CO-OPERATING BROKERAGE - REPRESENTATION:

- a) [] The Co-operating Brokerage represents the interests of the Buyer in this transaction.
b) [] The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
c) [] The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

CO-OPERATING BROKERAGE - COMMISSION:

- a) [] The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property
(Commission As Indicated In MLS® Information) to be paid from the amount paid by the Seller to the Listing Brokerage.
b) [] The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)
Total Commission is 6% + HST of the Purchase Price.

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations.

SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)


Form with signature lines for Co-operating/Buyer Brokerage and Listing Brokerage (RE/MAX ULTIMATE JULIE SEO REALTY & RE/MAX ULTIMATE REALTY INC), including fields for name, address, phone, fax, and date.

CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction). The Buyer and Seller consent with their initials to their Brokerage representing more than one client for this transaction. Includes ovals for INITIALS OF BUYER(S) and INITIALS OF SELLER(S).

ACKNOWLEDGEMENT

I have received, read, and understand the above information. Includes signature lines for Buyer (Joseph Messina) and Seller (Kuk-Hi John Kim and Myoung-Ju Mary Kim) with dates.

This is **Exhibit “N”** referred to in the Affidavit of
Silver Stephen Kim, sworn before me remotely
this 10th day of April, 2023.

DocuSigned by:

17FB8F81996146B...

A Commissioner for taking Affidavits, etc.



Certificate of Incorporation

Certificat de constitution

Business Corporations Act

Loi sur les sociétés par actions

MESSINA'S IN THE VILLAGE LTD.

Corporation Name / Dénomination sociale

1000494900

Ontario Corporation Number / Numéro de société de l'Ontario

This is to certify that these articles are effective on

La présente vise à attester que ces statuts entreront en
vigueur le

April 03, 2023 / 03 avril 2023

V. Quintanilla W.

Director / Directeur

Business Corporations Act / Loi sur les sociétés par actions

The Certificate of Incorporation is not complete
without the Articles of Incorporation.

Certified a true copy of the record of the
Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar



Le certificat de constitution n'est pas complet s'il
ne contient pas les statuts constitutifs.

Copie certifiée conforme du dossier du
ministère des Services au public et aux
entreprises.

V. Quintanilla W.

Directeur ou registrateur



Articles of Incorporation

Business Corporations Act

1. Corporation Name

MESSINA'S IN THE VILLAGE LTD.

2. Registered Office Address

26 A Austin Terrace, Toronto, Ontario, Canada, M5R 3E3

3. Number of Directors

Minimum/Maximum

Min 1 / Max 10

4. The first director(s) is/are:

Full Name

JOSEPH MESSINA

Resident Canadian

Yes

Address for Service

26 A Austin Terrace, Toronto, Ontario, Canada, M5R 3E3

5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise. If none, enter "None":

NOT APPLICABLE

6. The classes and any maximum number of shares that the corporation is authorized to issue:

COMMON SHARES, OF WHICH AN UNLIMITED AMOUNT MAY BE ISSUED.

The endorsed Articles of Incorporation are not complete without the Certificate of Incorporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar, Ministry of Public and Business Service Delivery

BCA - Articles of Incorporation - MESSINA'S IN THE VILLAGE LTD. - OCN:1000494900 - April 03, 2023

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors' authority with respect to any class of shares which may be issued in series. If there is only one class of shares, enter "Not Applicable":

NOT APPLICABLE

8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows. If none, enter "None":

NO SHARES OF THE CORPORATION WILL BE TRANSFERED WITHOUT THE EXPRESS CONSENT OF ALL OF THE DIRECTORS, TO BE SIGNIFIED BY A RESOLUTION PASSED BY THE BOARD.

9. Other provisions, if any. Enter other provisions, or if no other provisions enter "None":

1. That the invitation to the public to subscribe for any shares of securities of the Corporation is hereby prohibited. 2. That the number of shareholders of the Corporation, exclusive of the person who are in its employment and exclusive of person, who, having been formerly in the employment of the Corporation were, while in that employment and continued after termination of that employment to be shareholders of the Corporation, is limited to not more than fifty, two or more persons who are joint registered owners of one or more shares being counted as one shareholder.

10. The name(s) and address(es) of incorporator(s) are:

Full Name

JOSEPH MESSINA

Address for Service

26 A Austin Terrace, Toronto, Ontario, Canada, M5R 3E3

The articles have been properly executed by the required person(s).

The endorsed Articles of Incorporation are not complete without the Certificate of Incorporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar, Ministry of Public and Business Service Delivery

BCA - Articles of Incorporation - MESSINA'S IN THE VILLAGE LTD. - OCN:1000494900 - April 03, 2023

Supporting Information - Nuans Report Information

Nuans Report Reference #

121864043

Nuans Report Date

March 31, 2023

The endorsed Articles of Incorporation are not complete without the Certificate of Incorporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar, Ministry of Public and Business Service Delivery



Terms & Conditions

The following are the Terms and Conditions for filing with the Ministry of Public and Business Service Delivery ("Ministry") under the Business Corporations Act, Business Names Act, Corporations Act, Corporations Information Act, Extra-Provincial Corporations Act, Limited Partnerships Act and Not-for-Profit Corporations Act, 2010.

Agreement to these Terms and Conditions by the following persons and entities is a mandatory condition of filing:

(i) the person(s) signing or otherwise authorizing the filing and any person(s) acting on their behalf (collectively, the "authorizers"); and

(ii) the corporation or other entity that is the subject of the filing (the "entity") and any person(s) acting on behalf of the entity

These Terms and Conditions are made under the authority of the requirements established by the Director or Registrar appointed under the applicable Act. These Terms and Conditions are in addition to and subject to the applicable Acts, regulations and requirements of the Director or Registrar.

By proceeding with this filing under any of the above-named Acts, the authorizer(s), the entity and any person(s) acting on behalf of the entity accept and agree to be bound by these Terms and Conditions.

1. The sole responsibility for correctness and completeness of the filing, and for compliance with the applicable Act and all regulations and Director's or Registrar's requirements made under it, lies with the authorizer(s) and the entity. The authorizer(s), the entity and any person(s) acting on behalf of the entity agree that any information provided by the Ministry in or related to the making of a filing is not legal advice, and that they have obtained their own legal or other advice as appropriate.

2. All filings must meet any signature or authorization requirements established by the Director or Registrar under the applicable Act. Where signatures are required for electronic filing, the applicable articles, application, declaration, other approved form or other document must be

Conditions

Vous trouverez ci-dessous les conditions générales de dépôt auprès du ministère des Services au public et aux entreprises (le « Ministère ») en vertu de la Loi sur les sociétés par actions, la Loi sur les noms commerciaux, la Loi sur les sociétés par actions, la Loi sur les renseignements exigés des personnes morales, la Loi sur les personnes morales extraprovinciales, la Loi sur les sociétés en commandite et la Loi de 2010 sur les organisations sans but lucratif.

L'acceptation des conditions générales par les personnes et entités suivantes est une condition obligatoire du dépôt :

(i) personnes qui signent ou autorisent autrement le dépôt et toute personne agissant en leur nom (collectivement dénommés les « signataires autorisés »);

(ii) personne morale ou autre entité visée par le dépôt (l'« entité ») et toute personne agissant au nom de l'entité

Ces conditions générales sont régies par les exigences établies par l'administrateur ou le registrateur désigné en vertu de la Loi applicable. Elles s'ajoutent et sont assujetties aux Lois, aux règlements et aux exigences établies par l'administrateur ou le registrateur.

En procédant à ce dépôt en vertu de toute Loi citée ci-dessus, les signataires autorisés, l'entité et toute personne agissant au nom de l'entité acceptent et conviennent d'être liés par les présentes conditions générales.

1. La seule responsabilité relative à l'exactitude et à l'exhaustivité du dépôt, à la conformité avec la Loi et tous les règlements applicables et avec les exigences de l'administrateur ou du registrateur incombe aux signataires autorisés et à l'entité. Les signataires autorisés, l'entité et toute personne agissant au nom de l'entité reconnaissent que toute information fournie par le Ministère ou en lien avec une procédure de dépôt ne constitue pas un conseil juridique, et qu'ils ont obtenu leur propre conseil juridique ou autre avis, selon le cas.

2. Tous les dépôts doivent répondre aux exigences en matière de signature ou d'autorisation établies par l'administrateur ou le registrateur en vertu de la Loi applicable. Si les signatures sont requises pour un dépôt électronique, les statuts, la

saved or printed and signed in accordance with the instructions provided. The entity must keep a properly executed version of the applicable document in paper or electronic format, together with any records that may exist related to an electronic signature, if signed by electronic signature, as follows: If the subject of a filing is a corporation, the corporation must keep these documents and records at its registered office. If the subject of the filing is an Ontario limited partnership, the limited partnership must keep these documents and records at the limited partnership's principal place of business in Ontario. If the subject of the filing is an extra-provincial limited partnership that does not have a principal place of business in Ontario, the extra-provincial limited partnership must keep these documents and records at the address of the limited partnership's attorney and representative in Ontario set out in the declaration filed under the Limited Partnerships Act and stated in the power of attorney executed under the Act. If required by notice from the Director or Registrar, the corporation, limited partnership, the attorney and representative in Ontario or other person as applicable must provide a copy of the properly executed version of the applicable document to the Director or Registrar within the time period set out in the notice, together with any records that may exist related to an electronic signature, if signed by electronic signature.

3. In addition to retaining and filing supporting documents in accordance with the applicable Act and regulations, the entity must keep a copy of all filed supporting documents and provide a copy in accordance with any written notice from the Director or Registrar. In the case of a consent from a Minister or the Public Guardian and Trustee (PGT) that is required to support a filing made by a corporation, the corporation agrees that the Ministry may contact that Minister or the PGT, as applicable, to confirm that the necessary consent has been obtained and to record this in the electronic business registration system maintained by the Ministry.

4. The entity assumes full responsibility for any risk of confusion or legal action, including the risk of a lawsuit or name hearing under the applicable Act, resulting from a filing that sets out a name that is the same or similar to that of an existing corporation, business name or trademark, or that is otherwise contrary to the applicable Act or regulations.

5. Filings must be made in the required form and format, and must meet the technical requirements or other specifications and requirements established by the Director or Registrar.

6. Valid email address(es) must be provided as specified in the transaction for administrative purposes, and all mandatory fields must be completed.

7. The business information provided in this filing may be shared with other government bodies. The business

demande et la déclaration applicables, ainsi que toute autre formulaire approuvé ou autre document doivent être sauvegardés ou imprimés et signés conformément aux instructions fournies. L'entité doit conserver un exemplaire dûment signé du document applicable, sous forme imprimée ou électronique, avec tout dossier qui pourrait exister en lien avec une signature électronique, le cas échéant, comme suit : Si l'entité visée par le dépôt est une personne morale, cette dernière doit conserver ces documents et dossiers à son siège social. Si l'entité visée par le dépôt est une société par actions de l'Ontario, la société par actions doit conserver ces documents et dossiers à son établissement principal en Ontario. Si l'entité visée par le dépôt est une société à responsabilité limitée extraprovinciale qui n'a pas d'établissement principal en Ontario, la société doit conserver ces documents et dossiers à l'adresse de son avocat et représentant en Ontario stipulée dans la déclaration déposée en vertu de la Loi sur les sociétés en commandite et dans la procuration signée en vertu de la Loi. Si un avis de l'administrateur ou du registrateur l'exige, la personne morale, la société en commandite, l'avocat et représentant en Ontario ou toute autre personne, selon le cas, doit fournir une copie de l'exemplaire dûment signé du document applicable à l'administrateur ou au registrateur dans les délais stipulés dans l'avis, ainsi que tout dossier qui pourrait exister en lien avec une signature électronique, le cas échéant.

3. En plus de conserver et de déposer les documents à l'appui conformément à la Loi et aux règlements applicables, l'entité doit conserver une copie de tous les documents d'appui déposés, et en fournir une copie conformément à tout avis écrit de l'administrateur ou du registrateur. Si un consentement du Ministre ou du tuteur et curateur public (TCP) est requis pour appuyer un dépôt effectué par une personne morale, cette dernière convient que le ministère peut communiquer avec ce Ministre ou le TCP, selon le cas, pour confirmer que le consentement nécessaire a été obtenu et l'enregistrer dans le système d'enregistrement électronique des sociétés tenu à jour par le ministère.

4. L'entité assume la pleine responsabilité de tout risque de confusion ou d'action en justice, y compris le risque de poursuite ou d'instruction judiciaire en vertu de la Loi applicable, résultant d'un dépôt qui stipule une dénomination identique ou similaire à celle d'une société, à un nom commercial ou à une marque de commerce existants, ou qui enfreint autrement la Loi et les règlements applicables.

5. Les dépôts doivent être effectués sous la forme et dans le format requis, et répondre aux exigences techniques ou autres spécifications et exigences établies par l'administrateur ou le registrateur.

6. Les adresses de courriel valides doivent être fournies tel que stipulé dans la transaction pour les besoins

information that is collected may be used and disclosed for the purpose of administering their programs.

8. Payment of the required fee must be made at the time of submission, and any certificate or other documentation issued by the Ministry is subject to compliance action and cancellation if payment is disputed or fraudulent. Payment of fees for electronic filings must be made electronically using the payment options provided.

9. If an application is for a corrected certificate, and the application is approved under the applicable Act, the corporation or limited partnership as applicable will be notified when the certificate has been issued. The corporation or limited partnership, as applicable, agrees to review the issued corrected certificate in the records maintained by the Ministry forthwith and to confirm that the issued certificate corresponds with the final approved application for correction. The corporation or limited partnership, as applicable, agrees to be responsible and assume all liability for any discrepancies between the issued corrected certificate and the final approved application if these are not immediately brought to the attention of the Ministry.

10. If this is a new filing, a company key consisting of a unique series of digits will be provided electronically by the Ministry to the entity at the time of completion of the transaction, together with the final documentation for the transaction. If this is not a new filing, the entity will have received a company key. The company key provides authority over the entity; by proceeding with this transaction, any person(s) acting on behalf of the entity is confirming that they are duly authorized by the entity.

11. The company key will be required for any subsequent paper or online filings regarding the entity. The entity is responsible for the care and control of the company key. The entity is responsible for treating this key as confidential information and not sharing it unless it is in the course of providing delegated authority to a trusted service provider or trusted intermediary to make filings on their behalf. The recipient of the company key agrees to notify the Ministry as soon as they become aware that the key has been lost, stolen or misused to request a replacement key. The entity agrees to be responsible and assume all liability for all filings authorized by the key in respect of the entity. Unauthorized use of the company key or delegated authority may result in suspension of access to the electronic business registration system.

12. The Ministry may take appropriate compliance action at any time if it comes to the attention of the Ministry that a filing does not comply with the applicable Act, regulations or the requirements of the Director or Registrar.

13. The Acts set out penalties, including fines, for submitting

administratifs, et tous les champs obligatoires doivent être remplis.

7. Les renseignements sur l'entreprise fournis dans le cadre de ce dépôt peuvent être partagés avec d'autres organismes gouvernementaux. Les renseignements sur l'entreprise qui sont recueillis peuvent être utilisés et divulgués pour les besoins de l'administration des programmes.

8. Le paiement des droits requis doit être effectué au moment de la soumission et tout certificat ou autre document émis par le Ministère est passible d'une mesure de conformité et d'une annulation si le paiement est contesté ou frauduleux. Le paiement des droits des dépôts électroniques doit être effectuée électroniquement à l'aide des options de paiement proposées.

9. Si une demande est faite pour un certificat corrigé et si la demande est approuvée en vertu de la Loi applicable, la personne morale ou la société en commandite, selon le cas, sera avisée lorsque le certificat sera émis. La personne morale ou la société en commandite, selon le cas, accepte d'examiner sur-le-champ le certificat corrigé émis dans les dossiers tenus par le Ministère et de confirmer qu'il correspond à la demande de correction approuvée et finale. La personne morale ou la société en commandite, selon le cas, reconnaît qu'elle est responsable et assume la pleine responsabilité de toute différence éventuelle entre le certificat corrigé émis et la demande approuvée finale qui n'est pas immédiatement portée à l'attention du ministère.

10. S'il s'agit d'un nouveau dépôt, le Ministère fournira à l'entité, au moment de l'achèvement de la transaction, une clé d'entreprise composée d'une série unique de chiffres, ainsi que la documentation finale de la transaction. S'il ne s'agit pas d'un nouveau dépôt, l'entité recevra une clé d'entreprise. La clé d'entreprise fournit le pouvoir relatif à l'entité; en exécutant cette transaction, toute personne qui agit au nom de l'entité confirme qu'elle est dûment autorisée par l'entité.

11. La clé d'entreprise sera requise pour tout dépôt effectué en ligne par la suite concernant l'entité. L'entité est responsable de protéger la clé d'entreprise et d'en assurer le contrôle. L'entité est responsable de traiter la clé comme de l'information confidentielle et de ne pas l'échanger, à moins que ce soit dans le but de déléguer le pouvoir à un prestataire de services ou à un intermédiaire de confiance pour qu'il effectue les dépôts en son nom. La personne qui reçoit la clé d'entreprise convient d'aviser le Ministère dès que la perte, le vol ou l'utilisation inappropriée de la clé est porté(e) à sa connaissance, afin d'en demander le remplacement. L'entité reconnaît qu'elle est responsable et assume la pleine responsabilité de tous les dépôts la concernant qui sont autorisés par la clé. L'utilisation non autorisée de la clé d'entreprise ou du pouvoir délégué peut résulter en une

false or misleading information.

14. The corporation agrees to file restated articles at any time required by the Director under the Business Corporations Act or Not-for-Profit Corporations Act, 2010.

15. Where a filing under the Business Corporations Act, Extra-Provincial Corporations Act or Not-for-Profit Corporations Act, 2010 must be supported by an Ontario biased or weighted Nuans search report, and the identifying information is provided, the authorizer(s) consents for the Director appointed under the Act or other person delegated by the Director to retrieve the Nuans report directly from the appropriate department of the Government of Canada. The corporation agrees to keep a copy of the Nuans report in electronic or paper format at the corporation's registered office.

16. A corporation under the Business Corporations Act or Not-for-Profit Corporations Act, 2010 that continues out of Ontario agrees to file with the Ministry a copy of the instrument of continuance issued to it by the other jurisdiction within 60 days after the date of issuance.

17. If this is a filing made in respect of an arrangement under the Business Corporations Act or Not-for-Profit Corporations Act, 2010, the corporation acknowledges that it must give the Director notice of the application to the court and that the Director is entitled to appear in court and be heard in person or by counsel. The corporation agrees to submit the required notice and a draft copy of the Plan of Arrangement under the applicable Act for review through the electronic system maintained by the Ministry at least seven business days before seeking an interim and/or final order with the court. The corporation agrees to make changes required by the Director to ensure that the Plan complies with the applicable Act and Ministry requirements, and is capable of being implemented in the electronic system maintained by the Ministry under the applicable Act. The corporation agrees that if the Ministry does not receive a draft of the application or sufficient notice of the application, additional time may be required for review. The corporation acknowledges that the Ministry may seek an adjournment if the corporation fails to provide a draft of the application or sufficient notice of the application. The corporation agrees that if it obtains a court order without providing the required notice of the application to the Ministry, revisions may be required to any Plan of Arrangement attached to a court order and a further court order may be required before the articles of arrangement are endorsed.

suspension de l'accès au système d'enregistrement électronique des sociétés.

12. Le Ministère peut prendre en tout temps la mesure de conformité appropriée si un dépôt non conforme à la Loi, aux règlements applicables ou aux exigences de l'Administrateur et du registrateur est porté à sa connaissance.

13. La Loi prévoit des pénalités, y compris des amendes, pour toute communication de renseignements faux ou trompeurs.

14. La personne morale convient de déposer en tout temps les statuts constitutifs requis par l'administrateur en vertu de la Loi sur les sociétés par actions ou la Loi de 2010 sur les organisations sans but lucratif.

15. Si un dépôt est effectué en vertu de Loi sur les sociétés par actions, de la Loi sur les personnes morales extraprovinciales, de la Loi sur les sociétés en commandite ou de la Loi de 2010 sur les organisations sans but lucratif, il doit être appuyé par un rapport de recherche NUANS axé sur l'Ontario ou pondéré, et si les renseignements identificatoires sont fournis, les consentements des signataires autorisés pour l'administrateur nommé en vertu de la Loi ou tout autre personne désignée par l'administrateur doivent être obtenus pour récupérer le rapport NUANS directement auprès du ministère approprié du gouvernement du Canada. La personne morale convient de conserver un exemplaire du rapport NUANS à son siège social, sous forme électronique ou imprimée.

16. Une personne morale constituée en vertu de la Loi sur les sociétés par actions ou de la Loi de 2010 sur les organisations sans but lucratif qui maintient son activité à l'extérieur de l'Ontario convient de déposer auprès du Ministère une copie de l'acte de maintien qui lui a été émis dans l'autre territoire de compétence dans les 60 jours qui suivent la date d'émission.

17. S'il s'agit d'un dépôt concernant un arrangement effectué en vertu de la Loi sur les sociétés par actions ou la Loi de 2010 sur les organisations sans but lucratif, la personne morale reconnaît qu'elle doit prévenir l'administrateur de la demande présentée au tribunal et que l'administrateur a le droit de se présenter au tribunal et d'être entendu en personne ou d'être représenté par l'avocat. La personne morale convient de soumettre l'avis requis et une copie provisoire du plan d'arrangement en vertu de la Loi applicable aux fins d'examen par le système électronique tenu à jour par le Ministère au moins sept jours ouvrables avant de demander une ordonnance provisoire ou finale au tribunal. La personne morale convient d'apporter les modifications requises par l'administrateur afin de s'assurer que le plan est conforme à la Loi applicable et aux exigences du Ministère et qu'il peut être mis en place dans le système électronique tenu à jour par le

Ministère en vertu de la Loi applicable. La personne morale reconnaît que si le Ministère ne reçoit pas une version provisoire de la demande ou un préavis suffisant, l'examen pourrait prendre plus de temps. La personne morale reconnaît que le Ministère pourrait demander l'ajournement si elle ne fournit pas une version provisoire de la demande ou un préavis suffisant. La personne morale reconnaît que si elle obtient une ordonnance du tribunal sans avoir fourni au Ministère le préavis requis relatif à la demande, des révisions pourraient être nécessaires pour tout plan d'arrangement joint à une ordonnance du tribunal, et une autre ordonnance du tribunal pourrait être requise avant que les statuts d'arrangement soient approuvés.



You may be required to register with the Ministry of Finance

If you recently registered a business with ServiceOntario you may also be required to register with the Ministry of Finance for Employer Health Tax or another tax program.

You may be required to register and pay Employer Health Tax if:

- You are an employer with employees that report to a permanent establishment in Ontario, or your employees are paid through your Ontario permanent establishment payroll, and
- Your payroll exceeds your annual allowable exemption amount.

If you have questions or would like to register for Employer Health Tax or another tax program, please call the Ministry of Finance toll-free at 1-866-ONT-TAXS (1-866-668-8297).

Please visit ontario.ca/finance for tax programs, registration and payment information.

Registering with the WSIB

If you recently registered a business with ServiceOntario you may also be required to register your business with the Workplace Safety and Insurance Board (WSIB). If you have employees, including full-time, part-time, contract, casual labour, students and/or family members, or run a business in construction, please visit wsib.ca to learn more about registering with us.

By registering with us and paying premiums, your business is covered by the WSIB which means you:

- get affordable workplace insurance you can rely on to protect your employees
- have no-fault workplace insurance that protects you from costly court settlements and provides services and support when you and your employees need it
- have peace of mind of knowing you have the best coverage for your business
- can access programs and services designed to help improve your workplace health and safety over time. This will help keep you informed, prepared and allow you to adjust for the future

If you have any questions, please call us at 416-344-1000 or 1-800-387-0750 (TTY 1-800-387-0050) and a representative can help you.

TAB 3

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtors is hereby authorized and approved, with such minor amendments as the Debtors may deem necessary. The Debtors and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Asset to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**") all of the Debtors' right, title and interest in and to the Purchased Asset described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in Messina's In The Village Ltd., free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated April 28, 2022; (ii) any monetary claims for loss or damage by any person as a result of any environmental contamination arising on or before the date of this Order, including those claimed in the proceedings commenced by Lee-Mar Development Limited bearing Court File No. CV-09-380822 and by Bosung Investment Inc., Byoung Ok Han and Jae Yol Han bearing Court File No. CV-14-00516260-0000; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Asset are hereby expunged and discharged as against the Purchased Asset, provided that nothing in this Order shall be taken to affect any duties or obligations imposed on any person pursuant to any environmental protection laws or regulations, including, without limitation, the *Environmental Protection Act*, RSO 1990, c E19, as amended.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by

the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar for the Land Registry Office for the Land Titles Division of Toronto is hereby directed to enter Messina's In The Village Ltd. as the owner of the Purchased Asset in fee simple, and is hereby directed to delete and expunge from title to the Purchased Asset all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Asset shall stand in the place and stead of the Purchased Asset, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Asset with the same priority as they had with respect to the Purchased Asset immediately prior to the sale, as if the Purchased Asset had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee is to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Asset in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Debtors, the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Proposal Trustee, as may be necessary or desirable to give effect to this Order or to assist the Debtors, the Proposal Trustee and their agents in carrying out the terms of this Order.

Schedule A – Form of Proposal Trustee’s Certificate

Court File No. 31-2822607
Estate File No. 31-2822607

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

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

**IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM
AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. On April 19, 2022, pursuant to a Certificate of Filing of a Notice Intention to make a Proposal made under Part III, Division 1, of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, Albert Gelman Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”) of the proposals made by Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the “**Debtors**”).

B. On October 18, 2022, the Debtors filed proposals, respectively, with the Official Receiver of Office of the Superintendent of Bankruptcy Canada.

B. Pursuant to an Order of the Court dated April 17, 2023, the Court approved the agreement of purchase and sale made as of February 18, 2023 (the “**Sale Agreement**”) between the Debtors and Joseph Messina, in trust for a company to be incorporated (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Asset, which vesting is to be effective with respect to the Purchased Asset upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming it has been advised

by the Debtors and the Purchaser that (i) the payment by the Purchaser of the Purchase Price for the Purchased Asset; (ii) that the conditions to Closing as set out in Schedule “A” of the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Debtors and the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES that it has been advised by the Debtors and the Purchaser of the following:

1. The Purchaser has paid and the Debtors have received the Purchase Price for the Purchased Asset payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Schedule “A” of the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Debtors and the Purchaser.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**ALBERT GELMAN INC., in its capacity as
Proposal Trustee for KUK-ILL JOHN KIM
and MYOUNG-JA KIM, and not in its
personal capacity**

Per:

Name:

Title:

Schedule B – Purchased Asset

LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057;
SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2
PLAN 64R14057 AS IN CA264699; CITY OF TORONTO, being all of PIN 21188-0135 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

nil

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

- (a) **Instrument No. 64R14057** registered on December 9, 1993, being a Reference Plan;
- (b) **Instrument No. CA264699** registered on February 7, 1994, being a Transfer of Easement in favour of Part 2 on Plan 64R-14057; and
- (c) **Instrument No. AT2951115** registered on February 23, 2012, being a Land Registrar's Order to Amend the legal description of the Property.

TAB 4

Court File No. ~~_____~~ BK-22-02322607-0031
Estate File No. 31-2822607

ONTARIO
SUPERIOR COURT OF JUSTICE

(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

THE HONOURABLE) ~~WEEKDAY~~ MONDAY, THE #17TH
)
JUSTICE ~~_____~~ CONWAY) DAY OF ~~MONTH~~ APRIL, ~~20~~ YR 2023

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

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

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the "~~Debtor~~" "Debtors")) for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the ~~Receiver~~ Debtors and ~~[NAME OF PURCHASER]~~ Joseph Messina, in trust for a company to be incorporated (the "Purchaser") dated ~~[DATE]~~ February 18, 2023 and ~~appended~~ appearing as Exhibit "N" to the ~~Report~~ Affidavit of ~~the Receiver~~ dated ~~[DATE]~~ Silver

Stephen Kim sworn on April 10, 2023 (the "~~Report~~" "Silver Affidavit"), and vesting in the Purchaser the ~~Debtor~~ Debtors' right, title and interest in and to the ~~assets~~ real property, municipally known as 385 Spadina Road, Toronto, Ontario, as more particularly described in the Sale Agreement (the "~~Purchased Assets~~" Asset"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~ Motion Record of the Debtors, including the Silver Affidavit and the exhibits thereto, and the fifth report of Albert Gelman Inc. ("AGI", and in its capacity as proposal trustee, the "Proposal Trustee") dated ** *, 2023, and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING]~~ 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~~ Affidavit of [NAME] sworn [DATE] filed¹:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the ~~Receiver~~³ Debtors is hereby authorized and approved, with such minor amendments as the ~~Receiver~~ Debtors may deem necessary. The ~~Receiver is~~ Debtors and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased ~~Assets~~ Asset to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver~~ Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Receiver~~" "Proposal Trustee's Certificate"); all of the ~~Debtor's~~ Debtors' right, title and interest in and to the Purchased ~~Assets~~ Asset described in the Sale Agreement {and

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

listed on Schedule B hereto⁴ shall vest absolutely in ~~the Purchaser~~ [Messina's In The Village Ltd.](#), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [\[NAME\] Conway](#) dated [\[DATE\] April 28, 2022](#); (ii) ~~all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system~~ [any monetary claims for loss or damage by any person as a result of any environmental contamination arising on or before the date of this Order, including those claimed in the proceedings commenced by Lee-Mar Development Limited bearing Court File No. CV-09-380822 and by Bosung Investment Inc., Byoung Ok Han and Jae Yol Han bearing Court File No. CV-14-00516260-0000](#); and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased ~~Assets~~ [Asset](#) are hereby expunged and discharged as against the Purchased ~~Assets~~ [Asset](#), [provided that nothing in this Order shall be taken to affect any duties or obligations imposed on any person pursuant to any environmental protection laws or regulations, including, without limitation, the *Environmental Protection Act*, RSO 1990, c E19, as amended.](#)

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver]~~ [Land Titles Division of {LOCATION} Toronto](#) of an Application for Vesting Order in the form prescribed by the *Land*

⁴ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting-out of "rights, titles and interests" is vague and therefore undesirable.~~

Titles Act and/or the *Land Registration Reform Act*⁶, the Land Registrar [for the Land Registry Office for the Land Titles Division of Toronto](#) is hereby directed to enter ~~the Purchaser~~ [Messina's In The Village Ltd.](#) as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ [Purchased Asset](#) in fee simple, and is hereby directed to delete and expunge from title to the ~~Real Property~~ [Purchased Asset](#) all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased ~~Assets~~ [Asset](#) shall stand in the place and stead of the Purchased ~~Assets~~ [Asset](#), and that from and after the delivery of the ~~Receiver~~ [Proposal Trustee's](#) Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased ~~Assets~~ [Asset](#) with the same priority as they had with respect to the Purchased ~~Assets~~ [Asset](#) immediately prior to the sale⁸, as if the Purchased ~~Assets~~ [Asset](#) had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the ~~Receiver~~ [Proposal Trustee is](#) to file with the Court a copy of the ~~Receiver~~ [Proposal Trustee's](#) Certificate, forthwith after delivery thereof.

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

6. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

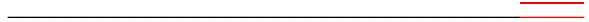
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Debtors;

the vesting of the Purchased ~~Assets~~Asset in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Debtors and shall not be void or voidable by creditors of the ~~Debtor~~Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

~~7.~~ **9. THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Debtors, the Proposal Trustee and ~~its~~their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Receiver, as an officer of this Court~~Debtors, the Proposal Trustee, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~Debtors, the Proposal Trustee and ~~its~~their agents in carrying out the terms of this Order.

⁸ ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~



Schedule A – Form of ~~Receiver~~Proposal Trustee's Certificate

Court File No. 31-2822607
Estate File No. 31-2822607

ONTARIO
SUPERIOR COURT OF JUSTICE

(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

~~BETWEEN:~~

~~PLAINTIFF~~

~~Plaintiff~~

~~—and—~~

~~DEFENDANT~~

~~Defendant~~

~~RECEIVER~~

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

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM

PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

A. ~~Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR]~~

~~(the “Debtor”).~~ On April 19, 2022, pursuant to a Certificate of Filing of a Notice Intention to make a Proposal made under Part III, Division 1, of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, Albert Gelman Inc. was appointed as the proposal trustee (the “Proposal Trustee”) of the proposals made by Kuk-Il John Kim and Myoung-Ja Kim (collectively, the “Debtors”).

B. On October 18, 2022, the Debtors filed proposals, respectively, with the Official Receiver of Office of the Superintendent of Bankruptcy Canada.

B. Pursuant to an Order of the Court dated ~~[DATE]~~ April 17, 2023, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ February 18, 2023 (the “Sale Agreement”) between the ~~Receiver~~ [Debtor] Debtors and ~~[NAME OF PURCHASER]~~ Joseph Messina, in trust for a company to be incorporated (the “Purchaser”) and provided for the vesting in the Purchaser of the ~~Debtor~~ Debtors’s right, title and interest in and to the Purchased ~~Assets~~ Asset, which vesting is to be effective with respect to the Purchased ~~Assets~~ Asset upon the delivery by the ~~Receiver~~ Proposal Trustee to the Purchaser of a certificate confirming it has been advised by the Debtors and the Purchaser that (i) the payment by the Purchaser of the Purchase Price for the Purchased ~~Assets~~ Asset; (ii) that the conditions to Closing as set out in ~~section~~ Schedule “A” of the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Debtors and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Debtors and the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~ PROPOSAL TRUSTEE CERTIFIES that it has been advised by the Debtors and the Purchaser of the following:

1. The Purchaser has paid and the ~~Receiver has~~ Debtors have received the Purchase Price for the Purchased ~~Assets~~ Asset payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~ Schedule “A” of the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Debtors and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the ~~Receiver~~ Debtors and the Purchaser.

4. ~~This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].~~

4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

~~{NAME OF RECEIVER}~~

ALBERT GELMAN INC., in its capacity as ~~Receiver of the undertaking, property and assets of {DEBTOR}~~ Proposal Trustee for KUK-ILL JOHN KIM and MYOUNG-JA KIM, and not in its personal capacity

Per:

Name:

Title:

Schedule B – Purchased ~~Assets~~ Asset

LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2 PLAN 64R14057 AS IN CA264699; CITY OF TORONTO, being all of PIN 21188-0135 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

nil

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

(a) **Instrument No. 64R14057** registered on December 9, 1993, being a Reference Plan;

(b) **Instrument No. CA264699** registered on February 7, 1994, being a Transfer of Easement
in favour of Part 2 on Plan 64R-14057; and

(c) **Instrument No. AT2951115** registered on February 23, 2012, being a Land Registrar's
Order to Amend the legal description of the Property.

IN THE MATTER OF THE PROPOSAL OF KUK-ILL
JOHN KIM et. al.

Court File No. 31-2822607
Estate File No. 31-2822607

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

APPROVAL AND VESTING 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 the Debtors,
Kuk-Ill John Kim and Myoung-Ja Mary Kim

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Deletions	145
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	294

TAB 5

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

THE HONOURABLE) MONDAY, THE 17TH
)
JUSTICE CONWAY) DAY OF APRIL, 2023

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

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA KIM

ORDER
(Ancillary)

THIS MOTION, made by made by Kuk-Ill John Kim and Myoung-Ja Kim (collectively, the “**Debtors**”) for, among other things, an order amending the Order of Justice Conway dated April 28, 2022, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Silver Stephen Kim sworn on April 10, 2023 and the exhibits thereto (the “**Silver Affidavit**”), and the fifth report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) dated [DATE] (the “**Fifth Report**”) and the appendices thereto, including the fee affidavit of ** sworn on April 10, 2023, and the fee affidavit of Tom McElroy sworn on [DATE] (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Debtor, and such other counsel who 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 [NAME] sworn on [DATE], 2023, filed:

SERVICE

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

INCREASE OF ADMINISTRATION CHARGE

2. **THIS COURT ORDERS** that paragraph 10 of the Order of the Honourable Justice Conway dated April 28, 2022 be and is hereby amended by replacing “\$125,000” with “\$300,000”, such that the Administration Charge ordered therein be and is hereby increased to an amount not exceeding an aggregate amount of \$300,000, and all references to “NOI Proceedings” shall also be taken to include the proceedings following the filing of proposals by the Debtors on October 18, 2022 pursuant to subsection 62(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended.

APPROVAL OF FIFTH REPORT AND FEES

3. **THIS COURT ORDERS** that the Fifth 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 AGI, 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.
4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Debtor and of the Proposal Trustee as set out in the Fee Affidavits, respectively, appended to the Fifth Report be and are hereby approved, and that the Proposal Trustee is hereby authorized and directed to pay the same from available funds.

SEALING

5. **THIS COURT ORDERS** that the Confidential Appendix “A” to the Fifth Report be and hereby is sealed until the earlier of (a) the filing of the Proposal Trustee’s Certificate following the completion of the transaction approved by the Court in this proceeding; and (b) further order of this Court.

GENERAL

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

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

Proceeding commenced at Toronto

MOTION RECORD
(returnable April 17, 2023)

WEIRFOULDS LLP
66 Wellington Street West, Suite 4100
Toronto-Dominion Centre
Toronto, ON M5K 1B7

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

Tel: 416-365-1110

Lawyers for the Debtors,
Kuk-Ill John Kim and Myoung-Ja Mary Kim