

**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**

**MOTION RECORD
(Returnable August 5, 2022)**

August 2, 2022

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I N D E X

TAB	DOCUMENT
1	Notice of Motion
2	Affidavit of Silver Stephen Kim sworn July xx, 2022
	Exhibit "A" – Affidavit of Kuk-Ill John Kim sworn April 26, 2022
	Exhibit "B" – Affidavit of Silver Stephen Kim sworn June 22, 2022
	Exhibit "C" – Administration Order of Justice Conway dated April 28, 2022
	Exhibit "D" – Extension Order of Justice Osborne dated June 27, 2022
	Exhibit "E" – Term Sheet
	Exhibit "F" – Parcel Register
	Exhibit "G" – PPSR Search Results
	Exhibit "H" – Debtors' Cashflow Statements
3	Third Report of Albert Gelman Inc. dated August 2, 2022
	Appendix "A" – Notice of Intention to Make a Proposal dated April 18, 2022 Certificate of Appointment

	Appendix "B" – Order of Justice Conway dated April 28, 2022
	Appendix "C" – First Report of the Proposal Trustee dated April 27, 2022
	Appendix "D" – Order of Justice Osborne dated June 27, 2022 Endorsement dated June 27, 2022
	Appendix "E" – Second Report of the Proposal Trustee dated June 27, 2022
4	Draft Order

TAB 1

**ONTARIO
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MAKE A PROPOSAL OF MYOUNG-JA KIM**

NOTICE OF MOTION

Kuk-Ill John Kim and Mary Myoung-Ja Kim (together, the “**Debtors**”) will make a motion to a judge presiding over the Commercial List on Friday, August 5, 2022 at 10:30 a.m., or as soon after that time as the motion can be heard, by judicial video conference at Toronto, Ontario.

PROPOSED METHOD OF HEARING: This motion is to be heard orally via judicial video conference.

THE MOTION IS FOR an Order, substantially in the form attached hereto as **Schedule “A”**, including:

- (a) if necessary, abridging the time for service and filing of the notice of motion and motion record in respect of this motion, validating same such that this motion is properly returnable on the day it is heard, and dispensing with further service of same;
- (b) extending the time for the filing of a proposal by the Debtors by a period of forty-five (45) days from August 16, 2022, up to and including September 30, 2022;

- (c) authorizing and empowering the Debtors 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;
- (d) granting the DIP Lender a priority 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;
- (e) approving the third report of the Albert Gelman Inc. in its capacity as proposal trustee of the Debtors (the “**Proposal Trustee**”), and the actions, conduct and activities of the Proposal Trustee as described therein; and,
- (f) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

- (g) The Debtors are individuals resident in the City of Toronto, in the Province of Ontario, and are spouses of each other;
- (h) 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**”);
- (i) The Debtors’ primary business asset is the Property, which is a vacant commercial property;
- (j) The Property had been used historically to conduct a dry-cleaning business and is the subject of two court actions relating to alleged environmental contamination (the “**Environmental Litigation**”);

- (k) As a result, the Property has remained vacant for approximately 9 years;
- (l) The Debtors intend to sell the Property with a commercial listing agent and to utilize the proceeds derived therefrom to make a proposal to their creditors;
- (m) The Debtors have decided to engage certain environmental work prior to listing the Property for sale and require interim financing to support the work and other costs and expenses that may be required to prepare the Property for sale (the “**DIP Financing**”);
- (n) Since the June 27, 2022, the Debtors, through their counsel, have:
 - (i) 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,
 - (ii) worked with financing advisory firm, Isaacs Advisory (the “**Financing Advisor**”) to source DIP Financing, engaged in negotiations with Hillmount Capital Inc. (the “**DIP Lender**”), and finalized the terms and conditions, on which the DIP Lender would provide interim financing to the Debtors;

DIP Financing

- (o) Subject to certain terms and conditions, the DIP Lender is prepared to provide the “**DIP Financing**” to the Debtors for the purpose of covering (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;

- (p) One of the conditions to the DIP Financing is the DIP Lender receiving a super priority charge (the “**DIP Lender’s Charge**”), which will be subject only to the Administration Charge;
- (q) the Property is unencumbered, and the Debtors have no secured creditors;
- (r) the terms of the DIP Facility are reasonable and 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;

Extension of Time

- (s) Pursuant to subsection 50.4(8) of the *BIA*, and the Orders of Justice Conway dated April 28, 2022 and of Justice Osborne dated June 27, 2022, the Debtors have until August 16, 2022 to file a proposal unless they obtain an extension of time to file a proposal under subsection 50.4(9) prior to that date;
- (t) The Debtors have acted and are acting in good faith and with due diligence;
- (u) The requested 45-day extension of time to file a proposal will provide the Debtors with time to complete the interim financing transaction (if approved by this Court), instruct the Environmental Consultant to complete the Scope of Work, and continue working with the Proposal Trustee on a viable proposal;
- (v) No creditor will be materially prejudiced if the extension sought is granted;

General and Statutory Provisions

- (w) The Proposal Trustee is supportive of the relief sought;
- (x) The *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, including sections 50.4(9), 50.6(1) and (3) and 183(1) thereof;
- (y) The *Rules of Civil Procedure*, RRO 1990, Reg. 194, including rules 2.03, 3.02 and 6 thereof; and

- (z) Such other and further grounds as counsel may advise and this Honourable Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

- (a) The Affidavit of Silver Kim sworn August 2, 2022, and exhibits thereto;
- (b) The Third Report of the Proposal Trustee; and
- (c) Such further and other materials as counsel may advise and the Court may permit.

Dated: August 2, 2022

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

TAB 2

**ONTARIO
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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 "A"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

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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

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:

- (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

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 "1"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

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



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 Notice of Intention to make a proposal of:

Myoung-Ja Mary Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 19, 2022, 10:07

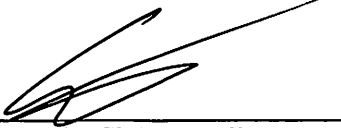
Official Receiver

E-File/Dépôt Electronique

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

Canada

This is **Exhibit "2"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
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Toronto, Ontario, M3J 2T2
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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 Notice of Intention to make a proposal of:

Kuk-III John Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 19, 2022, 10:13

Official Receiver

E-File/Dépôt Electronique

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

Canada

This is **Exhibit "3"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LEE-MAR DEVELOPMENTS LIMITED

Plaintiff

and

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM

Defendants

STATEMENT OF CLAIM
(Notice of action issued on June 12, 2009)

1. The Plaintiff claims against the Defendants:

- (a) damages in the amount of \$5,000,000.00 for:
 - (i) damaging, contaminating, sterilizing and stigmatizing the Lee-Mar Property;
 - (ii) property devaluation, loss of development opportunity, business interference, loss of profit, interference with the Plaintiff's ability to re-finance and re-sell the Lee-Mar Property and costs for investigating and responding to allegations of contamination on and under the Lee-Mar Property;
 - (iii) the costs and fees associated with the investigation of the Ontario Ministry of the Environment ("MOE") with respect to the contamination of the Lee-Mar Property;
 - (iv) the costs and fees associated with investigating and determining the acts and omissions of the Defendants which caused the contamination;
 - (v) the costs and fees for future repair to the Lee-Mar Property and/or adjoining properties necessitated by the acts and omissions of the Defendants.

- (vi) the costs and fees incurred in responding to any directions, requirements, restrictions, orders and/or remediation requirements issued by the Province of Ontario or City of Toronto,
- (b) an Order that the Defendants abate, remediate and contain ongoing groundwater contamination migrating from the Kim Property,
- (c) a declaration that the Defendants are liable to indemnify the Plaintiff in respect of any claims, damages, costs, liabilities or governmental orders (including the Plaintiff's costs of investigating and defending any such claims or orders or taking any other action whatsoever), as well as legal fees on a substantial indemnity basis and reasonable engineering fees, associated with or arising from claims that contamination on or formerly on the Lee-Mar property has spread or otherwise reached, polluted, contaminated or in any way affected property or interests in use of property adjacent to or beyond the Lee-Mar Property;
- (d) pre-judgment and post-judgment interest;
- (e) costs of this action on a substantial indemnity basis, together with applicable taxes thereon; and
- (f) such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff Lee-Mar Developments Limited ("Lee-Mar") is a corporation incorporated pursuant to the laws of Ontario and the registered owner of property known municipally as 389 Spadina Road, Toronto, Ontario (the "Lee-Mar Property").
3. The Defendants Kuk-Il John Kim and Myoung-Ja Mary Kim (collectively referred to as "the Kims") are the registered owners of property known municipally as 385 Spadina Road, Toronto, Ontario, which property has been and continues to be used for a dry cleaning operation (the "Kim Property")

Claims against the Defendants

4. The Kim Property is hydrogeologically upgradient from the Lee-Mar Property. The dry cleaning operation on the Kim Property uses and/or has used a toxic chemical known as perchloroethylene ("PCE").
5. PCE and associated chemicals (the "Contamination") from the operations conducted on the Kim Property have migrated onto and, possibly, beyond the Lee-Mar Property, in concentrations which exceed applicable Ministry of Environment standards and are causing ongoing damage and risk of damage to Lee-Mar.
6. Contamination of the Lee-Mar Property is a result of the Kims causing or permitting the operation on the Kim Property of activities which they knew could and which in fact did contaminate such lands and the aquifers under such lands or failing to take any or appropriate actions to prevent the contamination of such lands and aquifers, failing to determine the extent of the contamination on or under such lands and the aquifers below them and failing to prevent the escape of contamination from such lands, with the result that the Lee-Mar Property and the groundwater on and other such lands were also contaminated.
7. The Kims caused or permitted PCE and associated chemicals to be improperly and negligently used, handled, stored and disposed, so as to cause or permit the release of the Contamination into the soil and groundwater on, in or under their own property and adjacent properties. In particular, the Kims:
 - (a) permitted the release or discharge of the Contamination while such was in their control or possession or that of their tenants and agents;
 - (b) failed to properly store and dispense or failed to ensure that their tenants and agents properly stored and dispensed the Contamination under their control or possession;
 - (c) failed to take proper precautions or failed to ensure that their tenants and agents took proper precautions to prevent the release or discharge of the Contamination;

- (d) failed to use reasonable care or failed to ensure that their tenants and agents used reasonable care with respect to the handling, storage and monitoring of the Contamination;
 - (e) failed to monitor or failed to ensure that their tenants and agents monitored the Contamination; and
 - (f) failed to clean-up or failed to ensure that their tenants and agents cleaned-up the Contamination which had been released, spilled or discharged by prior owners of the Kim Property.
8. By improperly and negligently using, handling, storing and dispensing the Contamination, or by permitting the improper use, handling, storage and dispensing of the Contamination, the Kims failed to adhere to the standard of care of a reasonable landowner and reasonably competent business operator requisite to the use, handling, storage and dispensing of dangerous and toxic products.
 9. It was reasonably foreseeable by the Kims that the use, handling, storing, dispensing and spilling of the Contamination on their property would cause an adjacent property owner to suffer damage.
 10. As a direct result of the escape of the Contamination, as well as the Kims' acts, omissions, failure to supervise, monitor and clean-up and negligence in respect thereto, the Lee-Mar Property has been contaminated and Lee-Mar has suffered damages.
 11. The release, discharge, and spilling of the Contamination by the Kims so as to cause soil and groundwater contamination on, in or under the adjacent properties has resulted in devaluation of the Lee-Mar Property, loss of development opportunity, interference with the business of Lee-Mar and interference with the ability of Lee-Mar to re-finance and re-sell the Lee-Mar Property.
 12. The release, discharge, and spilling of the Contamination by the Kims so as to cause soil and groundwater contamination on, in or under the adjacent properties has resulted in damage to and unreasonable interference with the use and enjoyment of the Lee-Mar Property.

13. The PCE and associated chemicals brought onto, used, handled, stored, disposed of and spilled on the Kim Property and which escaped therefrom are unnatural substances which are inherently dangerous.
14. The escape of the Contamination from the Kim Property has resulted in the Contamination seeping into, onto or under the adjacent properties. Lee-Mar has suffered damages and is exposed to statutory and civil liability as a result.
15. Lee-Mar pleads and relies upon the doctrine of strict liability arising from *Rylands v. Fletcher*.
16. Further, Lee-Mar claims against the Kims under the Ontario *Environmental Protection Act*, as amended ("*EPA*"), and in particular claims compensation pursuant to Section 99 thereof as well as damages in respect of the failure of the Kims to prevent, eliminate and ameliorate the adverse effects of the Contamination and to do everything practicable to restore the natural environment. These breaches resulted in the damage accruing to Lee-Mar and the Lee-Mar Property.
17. Lee-Mar seeks an interlocutory and permanent injunction requiring the Kims to take all necessary steps to contain and remediate the ongoing migration of the Contamination.

Place of Trial

18. The Plaintiff proposes that this action be tried at Toronto

Date: July 10, 2009

BORDEN LADNER GERVAIS LLP
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Lawyers for the Plaintiff

LEE-MAR DEVELOPMENTS LIMITED
Plaintiff

- vs. -

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

STATEMENT OF ACTION
(Notice of Action issued on June 12, 2009)

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors

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Lawyers for the Plaintiff

This is Exhibit "4" referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
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Tel: (416) 661-4529 Fax: (416) 661-5529

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LEE-MAR DEVELOPMENTS LIMITED

Plaintiff

- and -

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM

Defendants

STATEMENT OF DEFENCE

- 1 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, admit the allegations contained in paragraphs 2, 3 (first part of sentence) and 4 (second sentence) of the Statement of Claim.
- 2 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, deny the allegations contained in paragraphs 1, 3 (second part of sentence), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim.
- 3 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, have no knowledge in respect of the allegations contained in paragraphs 4 (first sentence) and 5 of the Statement of Claim.

A. THE PARTIES AND THE PROPERTIES

4 Mr. and Mrs. Kim are the registered owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("Kim Property"). Mr. Kim and Mrs. Kim purchased the Kim Property in February 1994.

5 In June 1989, Mr. and Mrs. Kim purchased the dry cleaning business, "Valet Care" that was operating at the Kim Property prior to Mr. and Mrs. Kim's purchase of the Kim Property. In February 2003, Mr. and Mrs. Kim sold Valet Care.

6 Lee-Mar Developments Limited is the registered owner of the property municipally known as 389 Spadina Road, Toronto, Ontario ("Lee-Mar Property"). Lee-Mar purchased the Lee-Mar Property on September 23, 2004. The Lee-Mar Property is leased to a retail grocery business.

7 The Kim Property and the Lee-Mar Property are not adjacent nor abutting properties.

B. ALLEGED PRESENCE OF PERC AT THE LEE-MAR PROPERTY

8 Mr. and Mrs. Kim plead that the alleged migration of perchloroethylene and its degradation products ("Perc") from the Kim Property to the Lee-Mar Property was not the result of the actions or omissions of Mr. and Mrs. Kim. Rather the actions or omissions of other individuals and/or corporations who operated businesses at the Lee-Mar Property, Kim Property or nearby properties resulted in the alleged presence of Perc at the Lee-Mar Property.

C. MR. AND MRS. KIM AS OWNERS AND OPERATORS OF VALET CARE

9 From June 1989 to February 2003, Mr. and Mrs. Kim owned and operated Valet Care at the Kim Property.

10 Mr. and Mrs. Kim admit that laundry soap and perchloroethylene was used during Mr. and Mrs. Kim's operation of Valet Care at the Kim Property. However, Mr. and Mrs. Kim deny that they discharged or permitted the loss of perchloroethylene from Valet Care's operation at the Kim Property.

11 Mr. and Mrs. Kim took the following precautions to prevent the loss of perchloroethylene during Mr. and Mrs. Kim's operation of Valet Care at the Kim Property:

- (a) Mr. and Mrs. Kim did not store perchloroethylene at the Kim Property aside from perchloroethylene stored in the dry cleaning machines for ongoing use
- (b) the dry cleaning machines were self-contained and closed loop
- (c) the perchloroethylene was recycled and then properly and lawfully disposed
- (d) used filters from the dry cleaning machines were properly and lawfully disposed, and
- (e) the collection, removal and transportation of perchloroethylene and used filters to and from the Kim Property was at all times undertaken in compliance with industry standards and practices and by certified waste disposal contractors.

- 12 Mr. and Mrs. Kim state, in their capacity as owners and operators of Valet Care, that they never:
- (a) caused or permitted the loss of perchloroethylene on, at or from the Kim Property
 - (b) caused or permitted the escape of perchloroethylene on, at or from the Kim Property, or
 - (c) caused or permitted the migration of perchloroethylene beyond the Kim Property to the Lee-Mar Property or to any other property.
- 13 In fact, Mr. and Mrs. Kim, in their capacity as owners and operators of Valet Care, state that they knew nothing about the alleged presence of perchloroethylene in soil and/or groundwater at the Kim Property (and continue to not know to this day) nor did Mr. and Mrs. Kim know anything about the alleged migration of perchloroethylene from the Kim Property to the Lee-Mar Property until Mr. and Mrs. Kim were served with Lee-Mar's Statement of Claim.
- 14 Mr. and Mrs. Kim plead that at all material times during their ownership and operation of Valet Care they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty or contrary to the doctrine of strict liability.

D. MR. AND MRS. KIM AS OWNERS OF THE KIM PROPERTY

15 Mr. and Mrs. Kim became owners of the Kim Property in February 1994. At that time, Mr. and Mrs. Kim were the owners and operators of Valet Care. In February 2003, Mr. and Mrs. Kim sold the Valet Care business to another proprietor who now leases the premises at the Kim Property from Mr. and Mrs. Kim.

16 As landlord, Mr. and Mrs. Kim state that they are not responsible for any nuisance that may have been created by any tenant(s) at the Kim Property (which is not admitted but specifically denied) because the Kim Property was not let for a purpose calculated to cause a nuisance.

17 Further, any nuisance created by any tenant(s) of Mr. and Mrs. Kim resulting from the alleged loss of perchloroethylene at the Kim Property (which is not admitted but specifically denied) was not expressly authorized or a necessary consequence of the purpose for which the Kim Property was let during Mr. and Mrs. Kim's ownership of the Kim Property.

18 Mr. and Mrs. Kim plead that no adverse inference should be drawn against Mr. and Mrs. Kim because neither had knowledge about the alleged Perc contamination (which is not admitted but specifically denied) during the time of any tenancy at the Kim Property while Mr. and Mrs. Kim were landlords.

19 Mr. and Mrs. Kim state, in their capacity as owners of the Kim Property, that they never:

- (a) caused or permitted the loss of perchloroethylene on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene beyond the Kim Property to the Lee-Mar Property or to any other property.

20 In fact, Mr. and Mrs. Kim, in their capacity as owners of the Kim Property, state that they knew nothing about the alleged presence of perchloroethylene in soil and/or groundwater at the Kim Property (and continue to not know to this day) nor did Mr. and Mrs. Kim know anything about the alleged migration of perchloroethylene from the Kim Property until Mr. and Mrs. Kim were served with Lee-Mar's Statement of Claim.

21 Mr. and Mrs. Kim plead that at all material times during their ownership of the Kim Property they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty.

E. LEE-MAR'S ENVIRONMENTAL DUE DILIGENCE WHEN PURCHASING THE LEE-MAR PROPERTY

- 22 On September 23, 2004, Lee-Mar purchased the Lee-Mar Property.
- 23 In advance of or concurrent with the purchase, Lee-Mar ought to have completed pre-purchase environmental due diligence at the Lee-Mar Property. This would have involved Lee-Mar retaining an environmental consultant to complete Phase 1 and Phase 2 Environment Site Assessments for the Lee-Mar Property.
- 24 By September 2004, it was standard and prudent practice for purchasers of commercial properties in urban areas in Ontario to complete purchaser's own pre-purchase environmental due diligence.
- 25 If Lee-Mar completed its own pre-purchase environmental due diligence at the Lee-Mar Property in advance of or concurrent with the timing of the purchase, Lee-Mar ought to have discovered or did discover that the Lee-Mar Property was contaminated by Perc. In light of this, Lee-Mar's decision to close the purchase transaction was at Lee-Mar's own peril and Lee-Mar was the author of its own misfortune. Accordingly, Lee-Mar ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that Lee-Mar could have and should have avoided.
- 26 In the alternative, if Lee-Mar did not complete its own pre-purchase environmental due diligence in advance of or concurrent with the timing of the purchase of the Lee-Mar Property, Lee-Mar proceeded with the purchase at its own peril and Lee-Mar was the author of Lee-Mar's own misfortune. Accordingly,

Lee-Mar ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that Lee-Mar could have and should have avoided.

27 It is inequitable and unfair for Lee-Mar to gain any benefit by suing Mr. and Mrs. Kim when Lee-Mar ought to have discovered or did discover the presence of Perc at the Lee-Mar Property in advance of or concurrent with the timing of Lee-Mar's purchase of the Lee-Mar Property in September 2004.

F. LEE-MAR'S ACTION IS STATUTE BARRED

28 Mr. Kim and Mrs. Kim state that this action was commenced on June 10, 2007 by Lee-Mar after expiry of the limitation period and therefore this action ought to be dismissed.

29 Mr. Kim and Mrs. Kim state that Lee-Mar ought to have discovered or did discover the alleged presence of Perc at the Lee-Mar Property and the alleged migration of Perc from the Kim Property to the Lee-Mar Property (which is not admitted and specifically denied) prior to June 10, 2007. More specifically, Lee-Mar knew about the presence of Perc at the Lee-Mar Property no later than April 4, 2005, and likely in advance of or concurrent with the timing of the purchase of the Lee-Mar Property in September 2004.

30 By April 2005, Lee-Mar's environmental consultant, AiMS Environmental, found Perc at the Lee-Mar Property at levels in excess of the Ministry of the Environment *Soil, Groundwater and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act* ("MOE Standards"). In fact, AiMS Environmental likely discovered the presence of contamination at the Lee-Mar

Property in September 2004 when boreholes were drilled and groundwater monitoring wells were installed at the Lee-Mar Property.

- 31 Lee-Mar, upon discovering the presence of Perc, by no later than April 4, 2005, and likely in September 2004, should have made all reasonable inquires about the presence of Perc at the Lee-Mar Property, including ascertaining the source(s) of Perc.
- 32 By no later than April 2005 and more likely in September 2004 or shortly thereafter, Lee-Mar should have or could have determined from which property or properties Perc originated, the owners of the source properties and any tenants at the source properties pursuant to, and in consideration of, section 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24.
- 33 Given that the Kim Property is situate only a few metres from the Lee-Mar Property and that the Kim Property has been historically used for dry cleaning as is clearly evident from looking at the Kim Property store front signage, the Kim Property ought to have been readily identified by Lee-Mar and Lee-Mar's environmental consultant AiMS Environmental as a potential source property of Perc (which is not admitted but specifically denied).
- 34 Lee-Mar issued its Statement of Claim on June 10, 2009. This was 57 months after September 2004 and 45 months after April 2005 when Lee-Mar ought to have discovered or did discover Lee-Mar's claim against Mr. and Mrs. Kim.

35 Lee-Mar's failure to issue its claim within the two (2) year limitation period is fatal. Accordingly, Mr. and Mrs. Kim plead that Lee-Mar's claim is statute barred and ought to be dismissed with costs.

G. SPOILIATION OF EVIDENCE

36 Mr and Mrs. Kim state that there has been spoliation of evidence by Lee-Mar when Lee-Mar carried out environmental investigation and remediation (including hydrogen compound release injections into the subsurface) at the Lee-Mar Property. Specifically, Mr. and Mrs. Kim state that Lee-Mar has failed to preserve evidence of the alleged presence of Perc at the Lee-Mar Property.

37 Mr. and Mrs. Kim state that Lee-Mar has failed to preserve evidence of the alleged presence of Perc at the Lee-Mar Property including after Lee-Mar issued this action.

38 Mr. and Mrs. Kim state that Lee-Mar's destruction of evidence or partial destruction of evidence of the alleged presence of Perc at the Lee-Mar Property has resulted in prejudice to Mr. and Mrs. Kim. Mr. and Mrs. Kim were precluded from:

- (a) investigating the alleged presence of Perc at the Lee-Mar Property for which Lee-Mar alleges that Mr. and Mrs. Kim are liable (which is not admitted but specifically denied)
- (b) reviewing, commenting on or having input into the proposed work plan and budget for investigation and remediation of the alleged presence of Perc at the Lee-Mar Property

- (c) attending, observing, monitoring, taking split-samples or otherwise participating in any investigation and/or remediation of the alleged presence of Perc at the Lee-Mar Property, and
- (d) properly defending this action.

H. DAMAGES

39 Mr. and Mrs. Kim have no knowledge about the Plaintiff's alleged damages.

Mr. and Mrs. Kim deny that the Plaintiff has sustained damages and/or that the Plaintiff has sustained damages to the extent alleged. Mr. and Mrs. Kim put the Plaintiff to the strict proof thereof. In the alternative, if such damages as claimed by the Plaintiff were sustained by the Plaintiff (which is not admitted but specifically denied) such damages are excessive and too remote.

40 Mr. and Mrs. Kim plead that Lee-Mar has sustained no interference with Lee-Mar's use and enjoyment of the Lee-Mar Property as a result of the alleged presence of Perc at the Lee-Mar Property and/or the alleged migration of Perc from the Kim Property to the Lee-Mar Property.

41 Specifically, Mr. and Mrs. Kim state that Lee-Mar has maintained ownership of the Lee-Mar Property since September 23, 2004 and throughout Lee-Mar's ownership has and continues to let the Lee-Mar Property and to collect full market value rent for lease of the Lee-Mar Property.

I. STATUTES

42 Mr. and Mrs. Kim plead and rely on the following statutes, as amended:

(a) *Environmental Protection Act*, R.S.O. 1990, c. E.19

(b) *Negligence Act*, R. S.O. 1990, c. N.1

(c) *Limitations Act, 2002*, S.O. 2002, C. 24 and

(d) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

43 Mr. and Mrs. Kim submit that this action should to be dismissed with costs payable by Lee-Mar to Mr. and Mrs. Kim on a substantial indemnity basis.

July 12, 2010

WILLMS & SHIER
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Myoung-Ja Mary Kim

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Lawyers for the Plaintiff,
Lee-Mar Developments Limited

LEE-MAR DEVELOPMENTS LIMITED
Plaintiff

-and-

KUK-ILL JOHN KIM et al.
Defendants

Court File No. CV-09-380822

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

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Lawyers for the Defendants,
Kuk-III John Kim and Myoung-Ja Mary Kim

This is **Exhibit "5"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
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Court File No. *CV-14-00516260-0000*

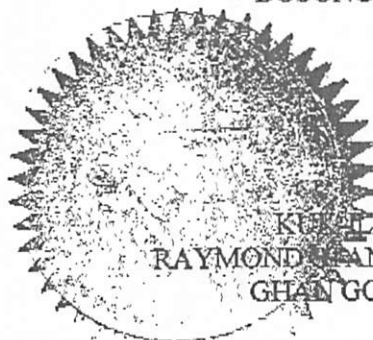
**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BOSUNG INVESTMENTS INC., BY YOUNG OK HAN
and JAE YOL HAN.

Plaintiffs

- and -

 KEH ALL JOHN KIM, MYOUNG-JA MARY KIM,
RAYMOND STANCER, STANCER GOSIN ROSE LLP, EUNICE KIM
GHAN GON CHEE and URBAN REAL ESTATE LTD.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 12th, 2014

Issued by: *A. Kivimäki*
Local Registrar

ADDRESS OF COURT OFFICE:
393 University Avenue
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Toronto, ON M5G 1E6

TO: **KUK-ILL JOHN KIM**
385 Spadina Road
Toronto, ON M5T 2G6

MYOUNG-JA MARY KIM
385 Spadina Road
Toronto, ON M5T 2G6

RAYMOND STANCER
310-1210 Sheppard Ave East
Toronto ON M2K 1E3

STANCER GOSIN ROSE LLP
310-1210 Sheppard Ave East
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EUNICE KIM
130 Dundas Street East
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Mississauga, ON L5A 3V8

GHAN GOE CHEE
2498 Yonge Street
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Toronto, ON M4P 2H8

URBAN REAL ESTATE LTD.
2498 Yonge Street
Unit 206
Toronto, ON M4P 2H8

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CLAIM

1. The Plaintiffs claim against Kuk-Il John Kim and Myoung-Ja Mary Kim (collectively referred to as "the Kims") in negligence, nuisance, strict liability and trespass for:
 - (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) A declaration that the Kims are responsible for the Contamination;
 - (c) An order requiring the Kims to take all appropriate and necessary measures at their cost to prevent any further migration of Contaminants onto, through or under the Plaintiffs' Lands;
 - (d) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (e) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (f) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (g) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (h) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The Plaintiffs claim against Raymond Stancer and Stancer Gosin Rose LLP in breach of contract and in negligence for:
 - (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands

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described below;

- (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.
3. The Plaintiffs claim against Eunice Kim in breach of contract and in negligence for:
- (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.

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4. The Plaintiffs claim against Ghan Ghon Chee and Urban Real Estate Ltd. in breach of contract, negligence, and breach of fiduciary duty, for:
- (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.

The Parties

5. The Plaintiff Bosung Investments Inc. ("Bosung") is a corporation established pursuant to the laws of Ontario, with its registered offices located in Toronto, Ontario. Bosung currently is the registered owner of the lands located at 387 Spadina Road, Toronto, Ontario ("the Plaintiffs' Lands").
6. The Plaintiffs Byoung Ok Han and Jae Yol Han (collectively referred to as "The Hans") were the registered owners of the Plaintiffs' Lands from in or about July 25, 2002, to in or about April 13, 2012.

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7. On or about April 13, 2012, for estate planning purposes, the Hans effected a rollover and transfer of the Plaintiffs' Lands to Bosung. The Hans are the principals and directing minds of Bosung.
8. The Kirns are individuals residing in the City of Toronto and are the owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("the Kim property") which property has been used for a laundry and dry cleaning business from in or about 1989 to in or about the summer of 2013.
9. The Defendant Raymond Stancer ("Stancer") is an individual who resides in the City of Toronto, Ontario.
10. Stancer is a lawyer and a member of the Law Society of Upper Canada licensed to practice law in the Province of Ontario. At all times relevant to this action, Stancer practiced in the area of corporate, commercial and real estate law.
11. The Hans retained Stancer to act as their lawyer with respect to their purchase of the Plaintiffs' Lands.
12. Stancer was retained to undertake all tasks associated with the lawyer's role in acting for the purchaser of a commercial property.
13. Stancer at all times relevant to this action was a partner in the law firm of Stancer Gosin Rose LLP.
14. The Defendant Eunice Kim ("Kim") resides in the City of Toronto. Kim is a lawyer and a member of the Law Society of Upper Canada licensed to practice law in the Province of

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Ontario. Kim practices in the area of corporate, commercial and real estate law.

15. In or about April of 2012, Kim was retained by the Hans for the purpose of transferring ownership of the Plaintiffs' Lands to a corporation to be incorporated by Kim, which transaction was effected for estate planning purposes.
16. The Defendant Ghan Gon Chee ("Chee") resides in the City of Toronto and is a duly licensed real estate agent.
17. The Defendant Urban Real Estate Ltd. ("Urban") is a duly licensed real estate brokerage.
18. Chee at all relevant times was the Hans' real estate agent with respect to their purchase of the Plaintiffs' Lands.
19. At all times relevant to this action Chee worked for Urban who was the listing and selling brokerage with respect to the Hans' purchase of the Plaintiffs' Lands.

The Contamination

20. The Kim Property is located to the south of the Plaintiffs' Lands. The Kim Property is hydrogeologically upgradient from the Plaintiffs' Lands.
21. The soil and groundwater on and under the Plaintiffs' Lands is contaminated with various chlorinated volatile organic compounds, including perchloroethylene and its various degradation products (the "Contamination"). The Contamination originated, in whole or in part, from the Kim Property and has migrated through the subsurface onto and under the Plaintiffs' Lands and the area surrounding the Plaintiffs' Lands. The Contamination continues to migrate onto the Plaintiffs' Lands and is currently present at concentrations

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exceeding provincial standards.

22. The Plaintiffs became aware of the Contamination in September of 2013.

Claim against the Kims

23. The Contaminants escaped or were spilled, released or discharged, from the Kims' operations on or near the Kim Property, into the natural environment, including into the soil and groundwater. The Kims are liable to the Plaintiffs for all Contamination on the Plaintiffs' Lands that originated in whole or in part, as a result of the Kims' operations on the Kim Property.
24. The Kims are liable in negligence to the Plaintiffs. The Kims owed the Plaintiffs a duty of care to ensure that the Contaminants were wholly contained on their own property and did not migrate offsite to surrounding lands. The Kims also owed the Plaintiffs a duty of care to warn them of the Contamination and to take active steps to ensure the presence of the Contamination on, under or in proximity to the Plaintiffs' Lands did not cause any injury to the Plaintiffs and/or the Plaintiffs' Lands. The Kims, including their agents, employees, and tenants for whose actions the Kims are legally responsible, breached their duty to the Plaintiffs by:
- (a) failing to take reasonable precautions in handling, storing, using, and disposing of the Contaminants;
 - (b) failing to warn the Plaintiffs of the Contamination and the ongoing migration of the Contamination in the area surrounding the Plaintiffs' Lands; and
 - (c) failing to prevent or mitigate the ongoing migration of the Contamination off of the Kim Property and within the surrounding area.
25. It was reasonably foreseeable by the Kims that the use, handling, storage, dispensing and

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spilling of the Contamination on their property would cause an adjacent property owner to suffer damage.

26. The present, and ongoing and past migration, of the Contamination onto, through, and under the Plaintiffs' Lands constitutes an unreasonable interference with the use and enjoyment of the lands and also constitutes a substantial and unreasonable physical harm to the property. The levels of the Contamination are such that the use of the land and the rights associated with the ownership of the land have been detrimentally affected. The Kims are therefore liable to the Plaintiffs in private nuisance for all damages occasioned by the presence and ongoing migration of Contamination onto the Plaintiffs' Lands and any expense necessary to abate the ongoing migration.
27. The Kims made a non-natural use of the Kim Property by, among other things, failing to comply with regulatory restrictions of the use, storage, handling, and disposal of the Contaminants. The Kims brought the Contaminants onto the Kim Property. The Contaminants are substances that are likely to do mischief if they escape. The Contaminants, did, in fact, escape from the Kim Property and have caused injury to the Plaintiffs. The Kims are therefore strictly liable for damages caused by the escape of the Contaminants from the Kim Property, pursuant to the doctrine of strict liability as established in *Rylands v. Fletcher*.
28. The migration and continuing presence of the Contamination on the Plaintiffs' Lands constitutes an actionable and ongoing trespass. The Contaminants were and continue to be the personal property of the Kims. The Plaintiffs have not consented to the presence of the Contaminants on their lands and the Kims have had a reasonable opportunity to remove the Contaminants from those lands. As such, the presence of the Contaminants of the Plaintiffs' Lands is an ongoing trespass.

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29. The Plaintiffs plead that the Kims' acts and omissions as aforesaid have interfered substantially with the use and enjoyment of the Plaintiffs' Lands and have caused a permanent reduction in the value of the Plaintiffs' Lands, in addition to other damages, as a result of the presence and threat of continued impacts from the Contaminants originating from the Kims operations on the Kim Property.
30. The Plaintiffs further claim against the Kims under the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E.19 ("EPA") and in particular claims compensation pursuant to section 99 thereof as well as damages in respect of the failure of the Kims to prevent, eliminate and ameliorate the adverse effects of the Contamination and to do everything practicable to restore the natural environment. These breaches result in damages accruing to the Plaintiffs' Lands.

Claim against Raymond Stancer and Stancer Gosin Rose LLP

31. The Plaintiffs state that it was an express or an implied term of Stancer's retainer that he would act diligently and competently on behalf of the Hans and in their best interests in all matters pertaining to their purchase of the Plaintiffs' Lands in or about July of 2002.
32. The Plaintiffs state that Stancer at all relevant times owed the Hans a duty of care which included the duty to act diligently and competently on their behalf and in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent lawyer acting in the best interests of his or her client.
33. The Plaintiffs state that Stancer was in breach of contract and was negligent with respect to the duty of care owed to them.

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34. Particulars of Stancer's breach of contract and breach of his duty of care include the following:
- (a) He failed to meet the standard of care of a reasonably competent lawyer practicing in the area of commercial and real estate law;
 - (b) He failed to maintain up-to-date knowledge of the standard practices required of the a commercial and real estate lawyer in 2002;
 - (c) He failed to accurately and fairly advise the Hans of environmental risks and adverse consequences of purchasing a commercial property and purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated; and
 - (d) He failed to accurately and fairly advise the Hans of all necessary environmental inquiries to be made with respect to purchasing a commercial property and purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
35. Stancer's breach of contract and negligence have caused the damages suffered by the Plaintiffs.
36. The Defendant Stancer Gosin Rose LLP is liable in law for the damages incurred by the Plaintiffs as a result of Stancer's breach of contract and negligence.

Claim against Eunice Kim.

37. The Plaintiffs state that it was an express or an implied term of Eunice Kim's retainer that she act diligently and competently on their behalf and in their best interests in all matters relating to the transfer of the ownership of the Plaintiffs' Lands from the Hans to Bosung in or about April of 2012.

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38. The Plaintiffs state that Eunice Kim at all relevant times owed them a duty of care which included a duty to act diligently and competently on their behalf and in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent lawyer acting in the best interests of his or her client.
39. The Plaintiffs state that Kim breached her contract and was negligent with respect to the duty of care owed to them.
40. Particulars of Kim's breach of contract and breach of duty of care include the following:
- (a) She failed to meet the standard care of a reasonably competent lawyer practicing in the area of corporate, commercial and real estate law;
 - (b) She failed to maintain up-to-date knowledge of the standard practices required by a corporate, commercial and real estate in 2012.
 - (c) She failed to accurately and fairly advise the Plaintiffs about the potential environmental risks and adverse consequences of transferring and acquiring a commercial property and transferring and acquiring a property immediately adjacent to a property upon which an active dry cleaning business was being operated;
 - (d) She failed to accurately and fairly advise the Plaintiffs of all necessary environmental inquiries to be made with respect to acquiring ownership of a commercial property and with respect to acquiring ownership of a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
 - (e) She failed to accurately and fairly advise the Plaintiffs of the potential adverse consequences of transferring ownership of the Plaintiffs' Lands.
41. Eunice Kim's breach of contract and negligence have caused the damages suffered by the Plaintiffs.

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Claim against Ghan Gon Chee and Urban Real Estate Ltd.

42. The Plaintiffs state that it was an express or implied term of Chee's retainer with the Hans as their agent that she act diligently and competently on behalf of them and in their best interests in all matters relating to the purchase of the Plaintiffs' Lands in 2002.
43. The Plaintiffs state that Chee at all relevant times owed the Hans a duty of care which included a duty to act diligently and competently in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent real estate agent acting in the best interests of his or her client.
44. The Plaintiffs state that Chee breached her contract and was negligent with respect to her obligations to the Hans.
45. Particulars of Chee's breach of contract and breach of duty of care include the following:
- (a) She failed to meet the standard of care of a reasonably competent real estate agent involved in the sale of commercial real estate;
 - (b) She failed to maintain up-to-date knowledge of the standard practices required of a real estate agent in 2002;
 - (c) She failed to accurately and fairly advise the Hans about the potential adverse consequences and environmental risks involved in purchasing a commercial property and in purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
 - (d) She failed to accurately and fairly advise the Hans of all necessary inquiries to be made with respect to purchasing a commercial property and with respect to purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.

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- (e) She placed herself in a position of conflict to the interests of the Hans by providing advice to the Hans with respect to both the purchase of the Plaintiffs' Lands and other properties for which Chee had prepared and submitted offers to purchase on behalf of the Hans without disclosing to the Hans that she stood to earn a substantially larger real estate commission if the Hans purchased the Plaintiffs' Lands and not any competing property;
 - (f) She failed to disclose to the Hans that the Plaintiffs' Lands had been listed for a lengthy period of time in a previous listing which listing expired without the property having been sold.
 - (g) She failed to disclose to the Hans important information known to Chee concerning the Plaintiffs' Lands.
 - (h) She provided misleading information to the Hans with respect to the Plaintiffs' Lands.
46. Chee's breach of contract and negligence have caused the damages suffered by the Plaintiffs.
47. The Plaintiffs further state that Chee at all material times owed the Hans a fiduciary duty, which included:
- (a) A duty to act in the Hans' best interests;
 - (b) A duty to accurately and fairly advise the Hans with respect to:
 - (i) purchasing a commercial property;
 - (ii) purchasing a property located immediately adjacent to a property upon which an active dry cleaning business was being operated; and
 - (c) A duty not to place herself in a position which conflicted with the Hans' best interests.

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48. The Plaintiffs state that in addition and in the alternative to the allegations of negligence set out in paragraph 45 above, to the extent that the matters alleged therein were occasioned by Chee with an intent to prefer her interests to the interests of the Hans, Chee breached her fiduciary duty with respect to her obligations to the Hans.
49. Chee's breach of fiduciary duty has caused the damages suffered by the Plaintiffs.
50. The Defendant Urban is liable in law for the damages incurred by the Plaintiffs as a result of Chee's breach of contract, negligence and breach of fiduciary duty.
51. The Plaintiffs plead that as a result of the Contamination on the Plaintiffs' Lands, all of the Defendants are liable for:
- (a) The costs associated with the remediation of the Plaintiffs' Lands, and costs of obtaining environmental, legal and consulting advice to address the contamination issue both pre and post-issuance of this action, the amount of which will be provided prior to trial;
 - (b) Damages arising from any claims that may be made by adjoining property owners and the owners of property beyond those property adjacent thereto;
 - (c) Diminution of the value of the Plaintiffs' Lands; and
 - (d) Damages as a result of the loss of use of the Plaintiffs' Lands;
52. The Plaintiffs plead and rely on the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, the *Negligence Act*, R.S.O. 1990, c.N.1 and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

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53. The Plaintiffs propose that this action be tried at the City of Toronto.

DATE: November 17th, 2014

KLEIN & SCHONBLUM ASSOCIATES

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Lawyers for the Plaintiffs

CV-14-00512260-0000

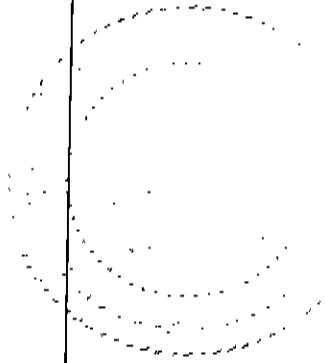
BOSUNG INVESTMENTS INC. ET AL.
Plaintiffs

- and -

KUK-ILL JOHN KIM ET AL.
Defendants

Court File No.

<p align="center">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Proceeding commenced at Toronto</p>	<p align="center">STATEMENT OF CLAIM</p>	<p>KLEIN & SCHONBLUM ASSOCIATES Barristers & Solicitors Yonge-Eglinton Centre, Box 2406 2300 Yonge Street, Suite 2901 Toronto, ON M4P 1E4</p> <p>Simon Schonblum Law Society No. 021845Q Tel: (416) 480-0221 Fax: (416) 480-0017</p> <p>Lawyers for the Plaintiffs</p>
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This is **Exhibit "6"** referred to
in the Affidavit of Kuk-Il John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BOSUNG INVESTMENTS INC., BYOUNG OK HAN and JAE YOL HAN

Plaintiffs

and

**KUK-ILL JOHN KIM, MYOUNG-JA MARY KIM, RAYMOND STANCER,
STANCER GOSIN ROSE LLP, EUNICE KIM, GHAN GOE CHEE and
URBAN REAL ESTATE LTD.**

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE DEFENDANTS
KUK-ILL JOHN KIM AND MYOUNG-JA MARY KIM**

1. The Defendants, Mr. and Mrs. Kim, admit the allegations contained in paragraphs 8 (subject to the dry cleaning ceasing operations in summer 2013) and 20 of the Statement of Claim.
2. The Defendants, Mr. and Mrs. Kim, deny the allegations contained in paragraphs 1, 8 (as to the dry cleaning operations which ceased in January 2013), 21, 23-30, 56, and 58 of the Statement of Claim.
3. The Defendants, Mr. and Mrs. Kim, have no knowledge in respect of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 9, 10-19, 22, and 31-55 of the Statement of Claim.

I. THE PARTIES AND THE PROPERTIES

4. Mr. and Mrs. Kim are the registered owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("Kim Property"). Mr. Kim and Mrs. Kim purchased the Kim Property in February 1994.

5. Between June 1989 and February 2003, Mr. and Mrs. Kim operated a dry cleaning business at the Kim Property.

6. The Kim Property is adjacent to the property municipally known as 387 Spadina Road, Toronto, Ontario ("Bosung Property").

II. ALLEGED PRESENCE OF VOLATILE ORGANIC COMPOUNDS AT THE BOSUNG PROPERTY

7. Mr. and Mrs. Kim plead that the alleged migration of various chlorinated volatile organic compounds ("VOCs") from the Kim Property to the Bosung Property was not the result of the actions or omissions of Mr. and Mrs. Kim. Rather the actions or omissions of other individuals and/or corporations who operated businesses at the Bosung Property, the Kim Property or nearby properties resulting in the alleged presence of VOCs at the Bosung Property.

III. MR. AND MRS. KIM AS OWNERS AND OPERATORS OF A DRY CLEANING BUSINESS

8. From June 1989 to February 2003, Mr. and Mrs. Kim owned and operated a dry cleaning business at the Kim Property.

9. Prior to Mr. and Mrs. Kim, unrelated parties operated a dry cleaning business at the Kim Property. A dry cleaning business continued to operate at the Kim Property

following Mr. and Mrs. Kim ceasing to operate their dry cleaning business in February 2003 until January 2013.

10. Mr. and Mrs. Kim admit that laundry soap and perchloroethylene were used during Mr. and Mrs. Kim's operation of the dry cleaning business at the Kim Property. However, Mr. and Mrs. Kim deny that they discharged or permitted the loss of any perchloroethylene or VOCs from the dry cleaning operation at the Kim Property during Mr. and Mrs. Kim's operation.

11. Mr. and Mrs. Kim took the following precautions to prevent the loss of perchloroethylene or VOCs during Mr. and Mrs. Kim's operation of the dry cleaning business at the Kim Property:

- (a) Mr. and Mrs. Kim did not store perchloroethylene or VOCs at the Kim Property aside from perchloroethylene or VOCs contained within the dry cleaning machines for ongoing use
- (b) the dry cleaning machines were self-contained and closed loop
- (c) the perchloroethylene or VOCs were recycled and properly and lawfully disposed
- (d) used filters from the dry cleaning machines were properly and lawfully disposed, and
- (e) the collection, removal and transportation of perchloroethylene or VOCs and used filters to and from the Kim Property was at all times undertaken in

compliance with industry standards and practices, and by certified waste disposal contractors.

12. Mr. and Mrs. Kim, in their capacity as owners and operators of the dry cleaning business never:

- (a) caused or permitted the loss of perchloroethylene or VOCs on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene or VOCs on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene or VOCs beyond the Kim Property to the Bosung Property or to any other property.

13. Mr. and Mrs. Kim plead that at all material times during their ownership and operation of the dry cleaning business they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty or contrary to the doctrine of strict liability.

IV. MR. AND MRS. KIM AS OWNERS OF THE KIM PROPERTY

14. Mr. and Mrs. Kim became the owners of the Kim Property in February 1994. At that time, Mr. and Mrs. Kim were the owners and operators of the dry cleaning business. In February 2003, Mr. and Mrs. Kim sold the dry cleaning business to another proprietor who leased the premises at the Kim Property from Mr. and Mrs. Kim until January 31, 2013.

15. As landlord, Mr. and Mrs. Kim state that they are not responsible for any nuisance that may have been created by any tenant(s) at the Kim Property (which is not admitted and specifically denied) because the Kim Property was not let for a purpose calculated to cause a nuisance.

16. Further, any nuisance created by any tenant(s) of Mr. and Mrs. Kim resulting from the alleged loss of perchloroethylene or VOCs at the Kim Property (which is not admitted and specifically denied) was not expressly authorized or a necessary consequence of the purpose for which the Kim Property was let during Mr. and Mrs. Kim's ownership of the Kim Property.

17. Mr. and Mrs. Kim state that, in their capacity as owners of the Kim Property, that they never:

- (a) caused or permitted the loss of perchloroethylene or VOCs on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene or VOCs on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene or VOCs beyond the Kim Property to the Bosung Property or to any other property.

18. Mr. and Mrs. Kim plead that at all material times during their ownership of the Kim Property they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty.

V. THE HANS PURCHASE OF THE BOSUNG PROPERTY

19. On or about July 25, 2002, Mr. and Mrs. Han purchased the Bosung Property.

20. In advance of, or concurrent with, the purchase, the Hans ought to have completed pre-purchase environmental due diligence at the Bosung Property. This would have involved the Hans retaining an environmental consultant to complete Phase One and Phase Two Environmental Site Assessments for the Bosung Property.

21. By 1990, and certainly by 2002, the time of purchase, it was standard and prudent practice for purchasers of commercial properties in urban areas in Ontario, and in particular in Toronto, to complete purchaser's own pre-purchase environmental due diligence.

22. The Hans ought to have discovered or did discover that the Bosung Property was contaminated by VOCs at or concurrent with their purchase. In light of this, the Hans decision to close the purchase transaction was at the Plaintiffs' own peril and the Plaintiffs were the authors of their own misfortune. Accordingly, the Plaintiffs ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that the Plaintiffs could have and should have avoided.

23. In the alternative, if the Plaintiffs did not complete their own pre-purchase environmental due diligence in advance of or concurrent with the timing of the purchase of the Bosung Property, the Plaintiffs proceeded with the purchase at its own peril and the Plaintiffs are the author of their own misfortune. Accordingly, the Plaintiffs ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that the Plaintiffs could have and should have avoided.

24. It is inequitable and unfair for the Plaintiffs to gain any benefit by suing Mr. and Mrs. Kim when the Plaintiffs ought to have discovered or did discover the presence of perchloroethylene or VOCs at the Bosung Property in advance of or concurrent with the timing of the Plaintiffs purchase of the Bosung Property in July 2002.

VI. THE HANS AND BOSUNGS ACTION IS STATUTE BARRED

25. Mr. and Mrs. Kim state that this action was commenced on November 17, 2014 by the Plaintiffs after expiry of the limitation period and therefore this action ought to be dismissed as it is statute-barred.

26. Mr. and Mrs. Kim state that the Plaintiffs ought to have discovered or did discover the alleged presence of perchloroethylene or VOCs at the Bosung Property and the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property (which is not admitted and specifically denied) prior to November 17, 2014.

27. Further, the Plaintiffs knew about the presence of perchloroethylene or VOCs at the Bosung Property no later than June 2005 when the Hans received notification from the owner of the property municipally known as 389 Spadina Road, Toronto, Ontario, alleging that perchloroethylene or VOCs were migrating from the Kim Property through the Bosung Property to 389 Spadina Road (which is not admitted and specifically denied).

28. Mr. and Mrs. Kim plead and rely on paragraphs 34-39 of the Plaintiffs' Statement of Claim that the Hans received notice of the alleged presence of perchloroethylene or VOCs at the Bosung Property and that perchloroethylene or VOCs may be migrating from the Kim Property, through the Bosung Property to 389 Spadina Road (which is not admitted and specifically denied).

29. Mr. and Mrs. Kim also plead and rely on paragraphs 10-16 of Raymond Stancer and Stancer Gossin Rose LLP's Statement of Defence, specifically that

- (a) the Plaintiffs were given notice of the alleged presence of perchloroethylene or VOCs at the Bosung Property and the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property (which is not admitted and specifically denied) prior to November 17, 2014 and at least as early as June 2005
- (b) the Plaintiffs contacted at least two environmental consultants who advised that perchloroethylene or VOCs may be originating at the Kim Property (which is not admitted and specifically denied)
- (c) the Plaintiffs were considering further testing and monitoring to assess whether perchloroethylene or VOCs were present at the Bosung Property, and
- (d) the Plaintiffs were given legal advice by Mr. Stancer to take steps to address any perchloroethylene or VOCs and that in or about June 2005 the Hans likely had a claim against the owners of the dry cleaning business at the Kim Property.

30. The Plaintiffs, upon discovering the presence of perchloroethylene or VOCs, by no later than June 2005, should have made all reasonable inquiries about the presence of VOCs at the Bosung Property, including ascertaining the source(s) of perchloroethylene or VOCs.

31. By no later than June 2005, the Plaintiffs should have, could have or did determine from which property or properties perchloroethylene or VOCs originated, the owners of the source properties and any tenants at the source properties pursuant to, and in consideration of, section 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24.

32. The Plaintiffs issued their Statement of Claim on November 17, 2014. This is nine (9) years and five (5) months after June 2005 when the Plaintiffs ought to have discovered or did discover the Plaintiffs' claim against Mr. and Mrs. Kim.

33. The Plaintiffs' failure to issue its claim within the two (2) year limitation period is fatal. Accordingly, Mr. and Mrs. Kim plead that the Plaintiffs' claim is statute barred and ought to be dismissed with substantial indemnity costs.

VII. DAMAGES

34. Mr. and Mrs. Kim have no knowledge about the Plaintiffs' alleged damages. Mr. and Mrs. Kim deny that the Plaintiffs have sustained damages and/or that the Plaintiffs have sustained damages to the extent alleged. Mr. and Mrs. Kim put the Plaintiffs to the strict proof thereof. In the alternative, if such damages as claimed by the Plaintiffs were sustained by the Plaintiffs (which is not admitted and specifically denied) such damages are excessive and too remote.

35. Mr. and Mrs. Kim plead that the Plaintiffs have sustained no interference with the Plaintiffs' use and enjoyment of the Bosung Property as a result of the alleged presence of perchloroethylene or VOCs at the Bosung Property and/or the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property.

36. Specifically, Mr. and Mrs. Kim state that the Plaintiffs have maintained ownership of the Bosung Property and throughout the Plaintiffs' ownership have, continued to and continue to lease the Bosung Property and to collect full market value rent for the Bosung Property.

VIII. STATUTES

37. Mr. and Mrs. Kim plead and rely on the following statutes, as amended:

- (a) *Environmental Protection Act*, R.S.O. 1990, c. E.19
- (b) *Negligence Act*, R.S.O. 1990, c.N.1
- (c) *Limitations Act, 2002*, S.O. 2002, C. 24 and
- (d) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

38. The Defendants, Mr. and Mrs. Kim ask that this action be dismissed with costs payable by the Plaintiffs to Mr. and Mrs. Kim on a substantial indemnity basis.

CROSSCLAIM

39. The Defendants, Kuk-III John Kim and Myoung-Ja Mary Kim, claim against the Defendants:

- (a) contribution and indemnity under sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, for any amounts which Kuk-III John Kim and Myoung-Ja Mary Kim may be found to be responsible to the Plaintiffs

- (b) contribution and indemnity under the common law and equity for any amounts which Kuk-III John Kim and Myoung-Ja Mary Kim may be found to be responsible to the Plaintiffs.
- (c) the costs of the main action, plus all applicable taxes
- (d) the costs of this Crossclaim, plus all applicable taxes, and
- (e) Such further and other Relief as to this Honourable Court may seem just.

40. The Defendants, Mr. and Mrs. Kim, repeat and rely upon the allegations contained in their Statement of Defence in support of the Crossclaim.

41. The Defendants, Mr. and Mrs. Kim, request that the Crossclaim be heard at the same time as the Main Action.

June 25, 2015

WILLMS & SHIER
ENVIRONMENTAL LAWYERS LLP
4 King Street West, Suite 900
Toronto, ON M5H 1B6

Marc McAree / Jacquelyn E. Stevens
LSUC # 36807C / 49234E

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mmcaree@willmsshier.com
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Lawyers for the Defendants,
Kuk-III John Kim and Myoung-Ja Mary Kim

TO: KLEIN & SCHONBLUM ASSOCIATES
Yonge-Eglinton Centre, Box 2406
2300 Yonge Street, Suite 2901
Toronto ON M5P 1E4

Simon Schonblum
LSUC # 21845Q

Tel: 416-480-0221
Fax: 416-480-0017

Lawyers for the Plaintiffs

AND TO: LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
Barristers and Solicitors
130 Adelaide Street West
Suite 2600
Toronto ON M5H 3P5

Peter J. Osborne / Vanessa Park-Thompson
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Tel: 416-865-3094 / 416-865-2885
Fax: 416-865-3974 / 416-865-3708

Lawyers for the Defendants,
Raymond Stancer and Stancer Gossin Rose LLP

AND TO: EUNICE KIM
130 Dundas Street East, Suite 205
Mississauga ON L5A 3V8

Defendant

AND TO: GHAN GOE CHEE
2498 Yonge Street, Suite 206
Toronto ON M4P 2H8

Defendant

AND TO: URBAN REAL ESTATE LTD.
2498 Yonge Street, Suite 206
Toronto ON M4P 2H8

Defendant

BOSUNG INVESTMENTS INC. et al.
Plaintiffs

-and- **KUK-ILL JOHN KIM et al.**
Défendants

Court File No. CV-14-00516260-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE AND CROSSCLAIM

WILLMS & SHIER
ENVIRONMENTAL LAWYERS LLP
4 King Street West, Suite 900
Toronto, ON M5H 1B6

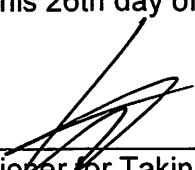
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Tel: 416-862-4820 / 416-862-4828
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mmcarea@willmsshier.com
jstevens@willmsshier.com

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

This is **Exhibit "7"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

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



Charge/Mortgage of Land

Form 2 - Land Registration Reform Act

1997 & 1998 AM CO INC
Form 2 (Rev. 97)

B

FOR OFFICE USE ONLY

C 4 3 0 0 3 4
New Property Identifiers

10 26
07 06 26

Additional See Schedule

(1) Registry Land Titles (2) Page 1 of _____ pages

(3) Property Identifier(s) Block _____ Property _____ Additional See Schedule

(4) Principal Amount
SEVENTY THOUSAND----- Dollars \$70,000.00

(5) Description
Part of Lots 31 and 32, Plan 861, City of Toronto Municipality of Metropolitan Toronto, designated as Parts 1 and 3, Plan 64R-14057, Land Registry Office for the Land Registry Division of Metropolitan Toronto (No. 64)

Executions
Additional See Schedule

(6) This Document Contains (a) Redescription New Easement Plan/Sketch (b) Schedule for Description Additional Parties Other (7) Interest/Estate Charged Fee Simple

(8) Standard Charge Terms - The parties agree to be bound by the provisions in Standard Charge Terms filed as number _____ and the Charge(s) hereby acknowledge(s) receipt of a copy of these terms

(9) Payment Provisions			(b) Interest Rate	(c) Calculation Period
(a) Principal Amount \$	70,000.00		9.5 % per annum	half-yearly not in advance
(i) Adjustment Date	Y M D	(j) Payment Date and Period	(k) First Payment Date	Y M D
1997	06	26	26th of each and every month	1997 07 26
(l) Last Payment Date	2001 05 26	(m) Amount of Each Payment	ONE THOUSAND SEVEN HUNDRED & FIFTY-TWO & 52/100 Dollars \$1,752.52	
(n) Balance Due Date	2001 06 26	(o) Insurance	Full Replacement Value Dollars \$	

(10) Additional Provisions
Continued on Schedule

(11) Charge(s) The chargor hereby charges the land to the chargee and certifies that the chargor is at least eighteen years old and that We are spouses of one another.

The charge(s) acknowledge(s) receipt of a true copy of this charge

Name(s)	Signature(s)	Date of Signature
KIM, Kuk-Il John	X	1997 06 25
KIM, Myoung-Ja Mary	X	1997 06 25

(12) Spouse(s) of Charge(s) I hereby consent to this transaction
Name(s) _____ Signature(s) _____ Date of Signature Y M D

(13) Charge(s) Address for Service
385 Spadina Road, Toronto, Ontario M5T 2G6

(14) Chargee(s)
LAURENTIAN TRUST OF CANADA INC. IN TRUST FOR SELF-DIRECTED RRSP 710467

(15) Chargee(s) Address for Service
Suite 404, 130 Adelaide Street West, Toronto, Ontario M5H 3P5

(16) Assessment Roll Number of Property	City	Mun	Map	Sub	Par	FOR OFFICE USE ONLY	Fees
	19	04	111	280	00200		Registration Fee
(17) Municipal Address of Property	(18) Document Prepared by: STANLEY J. ARBUS Barrister & Solicitor 615A Bloor Street West TORONTO, Ontario M6G 1K8 (KIM 3545)						
385 Spadina Road TORONTO, Ontario M5T 2G6							Total

2

SCHEDULE "A"

PREPAYMENT PRIVILEGE

PROVIDED that the mortgagors, after June 26, 1999, shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times upon the payment of three months interest as a bonus.

SALE OF PROPERTY

It is further understood and agreed between the parties hereto that in the event of the Mortgagor selling or agreeing to sell or otherwise disposing of the mortgaged premises or part thereof the whole of the principal sum then remaining unpaid and all other sums secured hereby shall, at the sole option of the Mortgagee and notwithstanding any other provision of this mortgage forthwith become due and payable, and all powers in and by this mortgage conferred shall become exercisable.

POST-DATED CHEQUES

The Mortgagor shall provide a series of twelve post-dated cheques prior to the commencement of the within mortgage and shall provide a further set of twelve post-dated cheques on each anniversary date of the within mortgage.

NSF FEE

In the event that any of the Mortgagors' cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn, the Mortgagor shall pay to the Mortgagee for each such returned cheque a servicing fee of \$150.00 as a liquidated amount to cover the Mortgagee's administrative costs which respect to same. In the event that the said cheque which has not been honoured by the Mortgagor's bankers is not forthwith replaced by the Mortgagor, the Mortgagee shall be entitled to a further servicing fee equal to \$50.00 for each written request which may be necessitated by the Mortgagor not forthwith replacing such dishonoured cheque.

INSURANCE FEE

In the event that the Mortgagor does not provide insurance in accordance with the terms of this Mortgage, the Mortgagee shall be entitled to place such insurance with a company of the Mortgagee's choice and in addition to the insurance company charges, the Mortgagee shall be entitled to a \$150.00 servicing fee as a liquidated amount to cover the Mortgagee's administrative costs with respect to same.

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

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

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

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

Proceeding commenced at TORONTO

AFFIDAVIT OF KUK-IL JOHN KIM SWORN APRIL 26, 2022

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

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

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

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

This is **Exhibit "B"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

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**”).

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 Terraprobe 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.

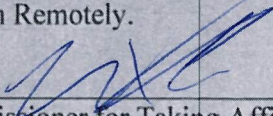
Other matters including extension of time

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.

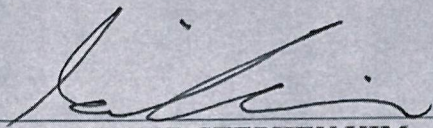
20. As such, I believe that the Debtors have acted in good faith and with due diligence with respect to the NOI proceedings. The Administration Order extended the time by which the Debtors must file a proposal to July 2, 2022. For the reasons described above, the Debtors are not in a position to put 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.



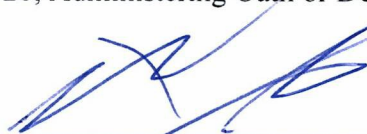
Commissioner for Taking Affidavits etc.



SILVER STEPHEN KIM

Max Skow LSD # 79799L

This is Exhibit "A" referred to in the Affidavit of Silver Stephen Kim sworn by Silver Stephen Kim of 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 Oath or Declaration Remotely.

A handwritten signature in blue ink, consisting of several stylized, overlapping loops and lines, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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

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:

- (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

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 by Silver Stephen Kim of 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 Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'M. P.', is written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

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-Ill 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.



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

Proceeding commenced at TORONTO

ORDER
**(Re Administrative Consolidation, Sale Approval,
Administration Charge and Related Relief)**

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

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pcho@weirfoulds.com

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

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

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

This is Exhibit "C" referred to in the Affidavit of Silver Stephen Kim sworn by Silver Stephen Kim of 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 Oath or Declaration Remotely.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that are difficult to decipher as specific letters.

Commissioner for Taking Affidavits (or as may be)



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND REGISTRY OFFICE #66

21188-0135 (LT)

PAGE 1 OF 1 PREPARED FOR ASHLEY SMITHSON ON 2022/04/07 AT 13:16:49

teranet eXpress

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

PROPERTY DESCRIPTION:

LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057; S/T EXECUTION 00-004393, IF ENFORCEABLE; S/T EXECUTION 00-005891, IF ENFORCEABLE; S/T EXECUTION 01-006823, IF ENFORCEABLE; S/T EXECUTION 91-016837, IF ENFORCEABLE; S/T EXECUTION 96-001511, IF ENFORCEABLE; S/T EXECUTION 96-012411, IF ENFORCEABLE; S/T EXECUTION 96-014901, IF ENFORCEABLE; S/T EXECUTION 97-003560, IF ENFORCEABLE; S/T EXECUTION 97-003773, IF ENFORCEABLE; S/T EXECUTION 97-003776, IF ENFORCEABLE; S/T EXECUTION 97-003777, IF ENFORCEABLE; S/T EXECUTION 97-003778, IF ENFORCEABLE; S/T EXECUTION 97-005165, IF ENFORCEABLE; S/T EXECUTION 97-006759, IF ENFORCEABLE; S/T EXECUTION 97-008854, IF ENFORCEABLE; S/T EXECUTION 97-008855, IF ENFORCEABLE; S/T EXECUTION 98-001870, IF ENFORCEABLE; S/T EXECUTION 98-005454, IF ENFORCEABLE; S/T EXECUTION 98-016209, IF ENFORCEABLE; S/T EXECUTION 99-003376, IF ENFORCEABLE;; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2 PLAN 64R14057 AS IN CR264699; CITY OF TORONTO

PROPERTY REMARKS:

PLANNING ACT CONSENT AS IN CA264699.

ESTATE/QUALIFIER:

RECENTLY: FIRST CONVERSION FROM BOOK

FEE SIMPLE

LT CONVERSION QUALIFIED

OWNERS' NAMES

KIM, KUK-ILL JOHN
KIM, MYOUNG-JA MARY

CAPACITY SHARE

JTEN
JTEN

PIN CREATION DATE:

2002/09/23

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **				
**SUBJECT,		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO				
**		SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISEDSCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2002/09/23 **						
64R14057	1993/12/09	PLAN REFERENCE				C
CR264699	1994/02/07	TRANSFER	\$750,000		KIM, KUK-ILL JOHN KIM, MYOUNG-JA MARY	C
CA480034	1997/06/26	CHARGE	\$70,000		LAURENTIAN TRUST OF CANADA INC. IN TRUST (FOR SELF-DIRECTED RRSF 710467)	C
AT2951115	2012/02/23	LR'S ORDER				C
		REMARKS: AMEND DESCRIPTION		LAND REGISTRAR, NO. 66		

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

This is Exhibit "D" referred to in the Affidavit of Silver Stephen Kim sworn by Silver Stephen Kim of 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 Oath or Declaration Remotely.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized, illegible name.

Commissioner for Taking Affidavits (or as may be)



LAND REGISTRY OFFICE #66

21188-0135 (LT)

PAGE 1 OF 2
PREPARED FOR elombard
ON 2022/06/21 AT 11:00:53

PROPERTY 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

PROPERTY REMARKS: PLANNING ACT CONSENT AS IN CA264699.

ESTATE/QUALIFIER: RECENTLY: FIRST CONVERSION FROM BOOK

FIN_CREATION_DATE: 2002/09/23

FEE SIMPLE LT CONVERSION QUALIFIED

OWNERS' NAMES: CAPACITY SHARE
KIM, KUK-ILL JOHN JTEN
KIM, MYOUNG-JA MARY JTEN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2002/09/20 **				
**SUBJECT,		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:				
**		SUBSECTION 4(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2002/09/23 **						
64R14057	1993/12/09	PLAN REFERENCE				C
CA264699	1994/02/07	TRANSFER	\$750,000		KIM, KUK-ILL JOHN KIM, MYOUNG-JA MARY	C
CA453386	1997/02/11	CHARGE		*** COMPLETELY DELETED ***	ROYAL BANK OF CANADA	
CA480034	1997/06/26	CHARGE	\$70,000		LAURENTIAN TRUST OF CANADA INC. IN TRUST (FOR SELF-DIRECTED RRSP 710467)	C
AT100352	2003/02/12	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
REMARKS: RE: CA453386						
AT2951115	2012/02/23	LR'S ORDER		LAND REGISTRAR, NO. 66		C
REMARKS: AMEND DESCRIPTION						

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT6065594	2022/05/03	APL DEL EXECUTION		*** COMPLETELY DELETED *** KIM, KUK-ILL JOHN KIM, MYOUNG-JA MARY		
REMARKS: 00-004393 01-006823 91-016837 96-001511 96-012411 96-014901 97-003560 97-003773 97-003776 97-003777 97-003778 97-005165 97-006759 97-008854 97-008855 98-001870 98-005454 98-016209 99-003376						
AT6065595	2022/05/03	APL (GENERAL)		*** COMPLETELY DELETED *** KIM, MYOUNG-JA MARY		
REMARKS: EXECUTION 00-005891						
AT6111306	2022/06/21	DISCH OF CHARGE		LAURENTIAN TRUST OF CANADA INC. IN TRUST (FOR SELF-DIRECTED RRSP 710467)		
REMARKS: CA480034.						

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

This is **Exhibit "C"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

**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.



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

Proceeding commenced at TORONTO

**ORDER
(Re Administrative Consolidation, Sale Approval,
Administration Charge and Related Relief)**

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

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

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

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

This is **Exhibit "D"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

**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.

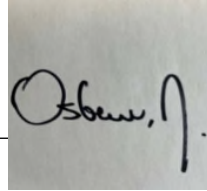
4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Debtor as set out in the fee affidavit appended to the Second Report be and are hereby approved, and that the Proposal Trustee is hereby authorized and directed to pay the same from available funds.

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.



2022.06.2

7 14:10:16

-04'00'

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

Proceeding commenced at TORONTO

**ORDER
(Extension and approval of activities and fees)**

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

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

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

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

This is **Exhibit "E"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

July 29, 2022

Private and ConfidentialIsaacs 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:
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: 

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

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

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

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

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

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

PERMITTED FEES & EXPENSES: Permitted Fees and Expenses includes:

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

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

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

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

Borrower(s)/Guarantor(s) Initials:



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

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

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

PURPOSE OF LOAN:

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

DEFAULT:

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

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

REMEDIES:

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

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

Borrower(s)/Guarantor(s) Initials:



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

ADDITIONAL CONDITIONS
AND REPRESENTATIONS:

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

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

Borrower(s)/Guarantor(s) Initials:

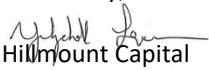


where the bore holes were drilled, what testing was done and the results of those testing) (collectively, the "Environmental Information").

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

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

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

Yours truly,

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

ACCEPTANCE OF TERM SHEET BY BORROWER


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

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

Accepted this 29 day of July 2022.

Borrower(s) / Guarantor(s)


Name: Kuk-Il John Kim (Borrower)



Name: Myoung-Ja Mary Kim (Borrower)

SCHEDULE A – CONDITIONS

Borrower(s)/Guarantor(s) Initials: 

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

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

Borrower(s)/Guarantor(s) Initials: 

This is **Exhibit "F"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)



LAND REGISTRY OFFICE #66

21188-0135 (LT)

PAGE 1 OF 2
PREPARED FOR elombard
ON 2022/06/21 AT 11:00:53

PROPERTY 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

PROPERTY REMARKS: PLANNING ACT CONSENT AS IN CA264699.
ESTATE/QUALIFIER: RECENTLY: FIRST CONVERSION FROM BOOK
FEE SIMPLE LT CONVERSION QUALIFIED

OWNERS' NAMES: CAPACITY SHARE
KIM, KUK-ILL JOHN JTEN
KIM, MYOUNG-JA MARY JTEN

FIN CREATION DATE: 2002/09/23

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2002/09/20 **				
**SUBJECT,		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:				
**		SUBSECTION 4(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2002/09/23 **						
64R14057	1993/12/09	PLAN REFERENCE				C
CA264699	1994/02/07	TRANSFER	\$750,000		KIM, KUK-ILL JOHN KIM, MYOUNG-JA MARY	C
CA453386	1997/02/11	CHARGE		*** COMPLETELY DELETED ***	ROYAL BANK OF CANADA	
CA480034	1997/06/26	CHARGE	\$70,000		LAURENTIAN TRUST OF CANADA INC. IN TRUST (FOR SELF-DIRECTED RRSP 710467)	C
AT100352	2003/02/12	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
REMARKS: RE: CA453386						
AT2951115	2012/02/23	LR'S ORDER		LAND REGISTRAR, NO. 66		C
REMARKS: AMEND DESCRIPTION						

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT6065594	2022/05/03	APL DEL EXECUTION		*** COMPLETELY DELETED *** KIM, KUK-ILL JOHN KIM, MYOUNG-JA MARY		
REMARKS: 00-004393 01-006823 91-016837 96-001511 96-012411 96-014901 97-003560 97-003773 97-003776 97-003777 97-003778 97-005165 97-006759 97-008854 97-008855 98-001870 98-005454 98-016209 99-003376						
AT6065595	2022/05/03	APL (GENERAL)		*** COMPLETELY DELETED *** KIM, MYOUNG-JA MARY		
REMARKS: EXECUTION 00-005891						
AT6111306	2022/06/21	DISCH OF CHARGE		LAURENTIAN TRUST OF CANADA INC. IN TRUST (FOR SELF-DIRECTED RRSP 710467)		
REMARKS: CA480034.						

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

This is **Exhibit "G"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : ONCORP - WEIRFOULDS LLP (R. De Sousa) -
Reference : philip
Docket : philip
Search ID : 878376
Date Processed : 7/27/2022 3:19:17 PM
Report Type : PPSA Electronic Response
Search Conducted on : Kuk-Ill John KIM
Search Type : Individual Non Specific

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: INDIVIDUAL NON-SPECIFIC

CONDUCTED ON: Kuk-ill John KIM

FILE CURRENCY: July 26, 2022

ENQUIRY CONTAINS 0 PAGES, 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : ONCORP - WEIRFOULDS LLP (R. De Sousa) -
Reference : philip
Docket : philip
Search ID : 878377
Date Processed : 7/27/2022 3:19:22 PM
Report Type : PPSA Electronic Response
Search Conducted on : Kuk-Ill KIM
Search Type : Individual Non Specific

DISCLAIMER :

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MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: INDIVIDUAL NON-SPECIFIC

CONDUCTED ON: Kuk-111 KIM

FILE CURRENCY: July 26, 2022

ENQUIRY CONTAINS 0 PAGES, 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
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UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
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PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : ONCORP - WEIRFOULDS LLP (R. De Sousa) -
Reference : philip
Docket : philip
Search ID : 878379
Date Processed : 7/27/2022 3:19:32 PM
Report Type : PPSA Electronic Response
Search Conducted on : Myoung-Ja KIM
Search Type : Individual Non Specific

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: INDIVIDUAL NON-SPECIFIC

CONDUCTED ON: Myoung-Ja KIM

FILE CURRENCY: July 26, 2022

ENQUIRY CONTAINS 0 PAGES, 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : ONCORP - WEIRFOULDS LLP (R. De Sousa) -
Reference : philip
Docket : philip
Search ID : 878378
Date Processed : 7/27/2022 3:19:27 PM
Report Type : PPSA Electronic Response
Search Conducted on : Myoung-Ja Mary KIM
Search Type : Individual Non Specific

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: INDIVIDUAL NON-SPECIFIC

CONDUCTED ON: Myoung-Ja Mary KIM

FILE CURRENCY: July 26, 2022

ENQUIRY CONTAINS 0 PAGES, 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

This is **Exhibit "H"** referred to in the
Affidavit of Silver Stephen Kim sworn
by video conference in accordance with
O. Reg. 431/20, Administering Oath or Declaration
Remotely, this 2nd day of August, 2022.

A handwritten signature in blue ink, appearing to be 'Wojtek Jaskiewicz', written over a horizontal line.

A Commissioner for Taking Affidavits, etc.
Wojtek Jaskiewicz (LSO #49809L)

**In the Matter of the Notice of Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim
Statement of Projected Monthly Family Cash Flow
For April 2022**

Monthly family net income (after tax and deductions)

Kuk-III John Kim	\$	1,499	
Myoung-Ja Mary Kim		1,466	
		<u>2,965</u>	A

Disbursements

Expenses - Housing

Mortgage	-
Property taxes	-
Condo fees	-
Heating / Gas / Oil	-
Telephone	408
Hydro	-
Water	-
Cable	235
Furniture	-
Other	-

Expenses - Personal

Smoking	-
Alcohol	-
Dining / Lunches / Restaurants	1,500
Entertainment / Sports	-
Gifts / Charitable donations	-
Child care exp.	-
Other - Golf Dues	2,000
Church	500

Expenses - Medical

Prescriptions	-
Dental	-
Chiropractor	-
Other - Medical	-

Expenses - Living

Food / Grocery	1,000
Laundry / Dry cleaning	-
Grooming / Toiletries	-
Clothing	-
Other	-

Expenses - Transportation

Car lease	-
Repairs / maintenance / gas	500
Public transportation	-
Other	214

**In the Matter of the Notice of Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim
Statement of Projected Monthly Family Cash Flow
For April 2022**

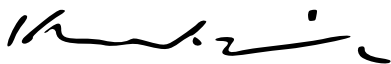
Disbursements (continued)

Expenses - Insurance		
House	-	
Vehicle	-	
Furniture / contents	-	
Life / Disability / Critical Illness	624	
Other	-	
Payments	-	
Professional dues	-	
To the estate	-	
Other	-	
Total expenses	<u>6,981</u>	B
Net monthly family cash flow	<u>\$ - 4,017</u>	A - B

NOTICE TO READER:

This statement of Projected Monthly Family Cash Flow of Kuk-III John Kim and Myoung-Ja Mary Kim dated April 24, 2022 is prepared in accordance with subsection 50.4(2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report On Cash-Flow Statement and the Report On Cash-Flow Statement By The Person Making The Proposal.

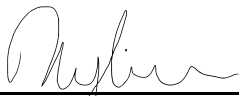
**Albert Gelman Inc., solely in its capacity as Trustee
in re the Notice of Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim and not
in its personal or any other capacity**



Kuk-III John Kim
Date: April 24, 2022



Per: Tom McElroy
Date: April 24, 2022



Myoung-Ja Mary Kim
Date: April 24, 2022

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

-- FORM 29 --

Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

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

The attached statement of projected cash flow of Kuk-III John Kim, as of the 24th day of April 2022, consisting of a cash flow projection for the period April 2022, has been prepared by the management of the insolvent person (or the insolvent debtor) for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by: the management and employees of the insolvent person or the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by: management or the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 24th day of April 2022.

Albert Gelman Inc. - Licensed Insolvency Trustee

Per:



Tom McElroy - Licensed Insolvency Trustee
100 Simcoe Street, Suite 125
Toronto ON M5H 3G2
Phone: (416) 504-1650 Fax: (416) 504-1655

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

FORM 29 - Attachment
Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

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

Purpose:

The purpose of the projection is to comply with the requirements set out in Section 50.4(2) of the Bankruptcy and Insolvency Act (Canada).

Projection Notes:

Hypothetical assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions with respect to a set of economic conditions or courses of action which are not necessarily the most probable in the insolvent person's judgement, but are consistent with the purposes of the Statement of Projected Cash Flow.

Probable assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions that the insolvent person believes reflects the most probable set of economic conditions and expected courses of action.

Assumptions:

Hypothetical Assumptions

None.

Probable Assumptions

1. The Debtor is retired. His net monthly income is represented entirely by CPP/OAS. The Debtor's Spouse is also retired and her income includes only CPP/OAS.
2. The Debtor has forecasted certain annual expenses and has presented them in this statement based upon a monthly average.
3. The Debtor's adult children fund the Debtor's monthly cash flow deficit.

Dated at the City of Toronto in the Province of Ontario, this 24th day of April 2022.

Albert Gelman Inc. - Licensed Insolvency Trustee

Per:



Tom McElroy - Licensed Insolvency Trustee
100 Simcoe Street, Suite 125
Toronto ON M5H 3G2
Phone: (416) 504-1650 Fax: (416) 504-1655

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

Appendix F3

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

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

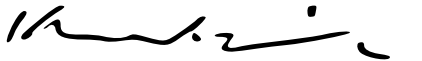
I, Kuk-III John Kim, have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 24th day of April 2022, consisting of a cash flow projection for the period April 2022.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Markham in the Province of Ontario, this 24th day of April 2022.



Kuk-III John Kim
Debtor

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

FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

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

Purpose:

The purpose of the projection is to comply with the requirements set out in Section 50.4(2) of the Bankruptcy and Insolvency Act (Canada).

Projection Notes:

Hypothetical assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions with respect to a set of economic conditions or courses of action which are not necessarily the most probable in the insolvent person's judgement, but are consistent with the purposes of the Statement of Projected Cash Flow.

Probable assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions that the insolvent person believes reflects the most probable set of economic conditions and expected courses of action.

Assumptions:

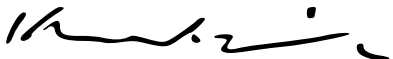
Hypothetical Assumptions

None.

Probable Assumptions

1. The Debtor is retired. His net monthly income is represented entirely by CPP/OAS. The Debtor's Spouse is also retired and her income includes only CPP/OAS.
2. The Debtor has forecasted certain annual expenses and has presented them in this statement based upon a monthly average.
3. The Debtor's adult children fund the Debtor's monthly cash flow deficit.

Dated at the City of Markham in the Province of Ontario, this 24th day of April 2022.



Kuk-III John Kim

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

Appendix F4

-- FORM 29 --

Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

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

The attached statement of projected cash flow of Myoung-Ja Mary Kim, as of the 24th day of April 2022, consisting of a cash flow projection for the period April 2022, has been prepared by the management of the insolvent person (or the insolvent debtor) for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by: the management and employees of the insolvent person or the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by: management or the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

(a) the hypothetical assumptions are not consistent with the purpose of the projection;

(b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or

(c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 24th day of April 2022.

Albert Gelman Inc. - Licensed Insolvency Trustee

Per:



Tom McElroy - Licensed Insolvency Trustee
100 Simcoe Street, Suite 125
Toronto ON M5H 3G2
Phone: (416) 504-1650 Fax: (416) 504-1655

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

FORM 29 - Attachment
Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

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

Purpose:

The purpose of the projection is to comply with the requirements set out in Section 50.4(2) of the Bankruptcy and Insolvency Act (Canada).

Projection Notes:

Hypothetical assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions with respect to a set of economic conditions or courses of action which are not necessarily the most probable in the insolvent person's judgement, but are consistent with the purposes of the Statement of Projected Cash Flow.

Probable assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions that the insolvent person believes reflects the most probable set of economic conditions and expected courses of action.

Assumptions:

Hypothetical Assumptions

None.

Probable Assumptions

1. The Debtor is retired. Her net monthly income is represented entirely by CPP/OAS. The Debtor's Spouse is also retired and his income includes only CPP/OAS.
2. The Debtor has forecasted certain annual expenses and has presented them in this statement based upon a monthly average.
3. The Debtor's adult children fund the Debtor's monthly cash flow deficit.

Dated at the City of Toronto in the Province of Ontario, this 24th day of April 2022.

Albert Gelman Inc. - Licensed Insolvency Trustee

Per:



Tom McElroy - Licensed Insolvency Trustee
100 Simcoe Street, Suite 125
Toronto ON M5H 3G2
Phone: (416) 504-1650 Fax: (416) 504-1655

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

Appendix F5

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

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

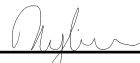
I, Myoung-Ja Mary Kim, have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 24th day of April 2022, consisting of a cash flow projection for the period April 2022.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Markham in the Province of Ontario, this 24th day of April 2022.



Myoung-Ja Mary Kim
Debtor

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

FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

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

Purpose:

The purpose of the projection is to comply with the requirements set out in Section 50.4(2) of the Bankruptcy and Insolvency Act (Canada).

Projection Notes:

Hypothetical assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions with respect to a set of economic conditions or courses of action which are not necessarily the most probable in the insolvent person's judgement, but are consistent with the purposes of the Statement of Projected Cash Flow.

Probable assumptions, as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals, are assumptions that the insolvent person believes reflects the most probable set of economic conditions and expected courses of action.

Assumptions:

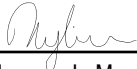
Hypothetical Assumptions

None.

Probable Assumptions

1. The Debtor is retired. Her net monthly income is represented entirely by CPP/OAS. The Debtor's Spouse is also retired and his income includes only CPP/OAS.
2. The Debtor has forecasted certain annual expenses and has presented them in this statement based upon a monthly average.
3. The Debtor's adult children fund the Debtor's monthly cash flow deficit.

Dated at the City of Markham in the Province of Ontario, this 24th day of April 2022.



Myoung-Ja Mary Kim

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A 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

AFFIDAVIT OF SILVER STEPHEN KIM

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

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

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

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

TAB 3

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

**In the Matter of the Notice of Intention to
Make a Proposal of Kuk-Il John Kim**

**and in the Matter of the Notice of Intention to
Make a Proposal of Myoung-Ja Mary Kim**

**THIRD REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated August 2, 2022)

I. INTRODUCTION

1. This third report (“**Third Report**”) is filed by Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with a Notice of Intention to Make a Proposal (“**NOI**”) filed by Kuk-Il John Kim (“**John Kim**”) and Myoung-Ja Mary Kim (“**Mary Kim**”) and, together with John Kim, the “**Debtors**”) on April 18, 2022 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). Attached hereto at **Appendix “A**” are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Debtors.

2. On April 28, 2022 on a motion made by the Debtors the Honourable Justice Conway granted an order (the “**April 28 Order**”) approving, among other things, an administrative consolidation of the Debtors proposal proceedings, an extension of the stay of proceedings afforded under the NOI to July 2, 2022 (the “**First Stay Extension**”), an administrative charge and authority for the Debtors’ to enter into a listing agreement with a real estate agent to list the Real Property. A copy of the April 28 Order and related Endorsement are attached hereto as **Appendix “B**”.

3. The Proposal Trustee prepared a report in respect of the April 28, 2022 motion dated April 27, 2022 (the “**First Report**”). Attached hereto as **Appendix “C**” is a copy of the First Report, without appendices.

4. On June 27, 2022, on a motion made by the Debtors, the Honourable Justice Osborne granted an order (the “**June 27 Order**”) approving, among other things, a further extension of the stay of proceedings afforded under the NOI to August 16, 2022. A copy of the June 27 Order and related Endorsement are attached hereto as **Appendix “D**”.

5. The Proposal Trustee prepared a report in respect of the June 27, 2022 motion dated June 22, 2022 (the “**Second Report**”). Attached hereto as **Appendix “E”** is a copy of the Second Report, without appendices.

6. The Debtors are making a motion to the Court returnable August 5, 2022 (the “**August 5 Motion**”) seeking various relief. This Third Report has been prepared in response to and in support of the Debtors’ August 5 Motion.

7. On their August 5 Motion, the Debtors are seeking, amongst other things, an Order:

- a. further extending the time for each of the Debtors to file a proposal to September 30, 2022 (the “**Third Stay Extension**”); and,
- b. approving the DIP Facility and DIP Charge (both terms define below).

8. Silver Kim, the adult son of both Debtors, has included with the August 5 Motion an affidavit sworn on August 2, 2022 (the “**Silver Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed the Silver Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

9. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Debtors at their August 5 Motion.

II. PURPOSE OF THIS REPORT

10. The purpose of this Third Report is to:

- a. provide the Court with relevant information pertaining to the Debtors which is not otherwise described in the Silver Affidavit;
- b. provide information to the Court regarding the actions and activities of the Proposal Trustee subsequent to the date of the Second Report; and,
- c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Debtors.

III. SCOPE AND TERMS OF REFERENCE

11. In preparing this Third Report, the Proposal Trustee has relied upon certain unaudited financial information, the Debtors books and records, discussions with the Debtors, discussions with Silver Kim and discussions with the Debtors’ legal counsel, WeirFoulds LLP.

12. While the Proposal Trustee has reviewed various documents provided by the Debtors, such review does not constitute an audit or verification of such information for accuracy or completeness.

13. This Third Report has been prepared for the use of this Court and the Debtors’ stakeholders as general information relating to the Debtors and to assist the Court in making a determination of whether to

approve the relief sought. Accordingly, the reader is cautioned that this Third Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Third Report contrary to the provisions of this paragraph.

14. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.

15. Terms not otherwise defined herein shall have the meanings ascribed to them in either the First Report and/or the Second Report.

IV. ACTIVITIES OF THE PROPOSAL TRUSTEE

16. Since the date of the Second Report the Proposal Trustee has undertaken, among other things, the following activities:

- a. communicated with the Debtors' legal counsel regarding the terms of the DIP Facility;
- b. continued to communicate with the Debtors' legal counsel regarding the process for marketing and selling the Real Property; and,
- c. maintained a Case Webpage with electronic copies of the Court materials related to these restructuring proceedings, located at www.albertgelman.com/corporate-solutions/other-engagements.

V. DEBTOR-IN-POSSESSION FINANCING

17. In order to fund certain costs associated with determining the scope and extent of environmental contamination in respect of the real property municipally known as 385 Spadina Road, Toronto (the "**Real Property**") the Debtors' require additional capital. As further described in the Silver Affidavit, the Debtors' sole asset is the Real Property. Further, the Debtors are both retired, have limited monthly income consisting only of government paid CPP and OAS and are generally supported financially by their adult children. As a result, the Debtors' do not have the financial resources to fund the environmental costs noted above and, therefore, have sought out third party financing to cover these costs.

18. As set out in the Silver Affidavit, Hillmount Capital Inc. (the "**DIP Lender**") has proposed to provide the Debtors with a debtor-in-possession credit facility (the "**DIP Facility**") to fund, among other things, the environmental costs described in the Silver Affidavit as well as the professional fees resulting from these restructuring proceedings. The proposed DIP Facility is conditional upon, among other things, this Honourable Court granting a priority charge, and permitting the Debtors to register a mortgage on title to the Real Property, in favour of the DIP Lender (the "**DIP Charge**") subordinate only to the Administration Charge.

19. The terms of the proposed DIP Facility are set out in a term sheet dated July 29, 2022 which is attached as Exhibit "E" to the Silver Affidavit. The material terms of the proposed DIP Facility are outlined below:

- a. permits the Debtor to borrow the aggregate sum of up to a maximum of \$250,000 in tranches of \$50,000 each;
- b. shall bear interest at a rate of 14% percent per annum compounded monthly;
- c. includes a lending fee of 5% of the DIP Facility;
- d. shall be repayable within one year;
- e. requires that the Debtors' provide a first place mortgage over the Real Property in favour of the DIP Lender, subordinate only to the Administration Charge; and,
- f. is subject to the Court approving the DIP Facility and DIP Charge.

20. In the Trustee's opinion, the proposed terms of the DIP Facility are reasonable and appropriate in the circumstances.

VI. REQUEST FOR EXTENSION

21. The Debtors are seeking the Third Stay Extension pursuant to subsection 50.4(9) of the BIA.

22. The Proposal Trustee supports the Third Stay Extension as it is of the opinion that:

- a. the Debtors have acted, and are acting, in good faith and with due diligence;
- b. the Debtors would likely be able to make a viable Proposal if the extension being applied for were granted; and,
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

23. The Proposal Trustee is also of the opinion that a Proposal developed by the Debtors would likely result in a more orderly and efficient process to realize upon the Debtors sole asset, being the Real Property, than would be the case if the Debtors were both deemed or otherwise become bankrupt.

VII. PROPOSAL TRUSTEE'S RECOMMENDATION

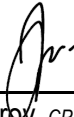
24. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the Third Stay Extension;
- b. the DIP Facility and DIP Charge; and,
- c. the actions and activities of the Proposal Trustee as described in this Third Report.

All of which is respectfully submitted this 2nd day of August 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim
and not its Personal or any other Capacity**

Per:



Tom McElroy, CPA, CA, CBV, CIRP, LIT

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

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

Take notice that:

1. I, Kuk-III John Kim, an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Albert Gelman Inc. of 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 18th day of April 2022.



Kuk-III John Kim
Insolvent Person

To be completed by Official Receiver:

Filing Date


Official Receiver

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -
 Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)

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

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Bosung Investments Inc., Byoung Han and Jae Yol Han Simon Sparano	c/o FIJ Law LLP 50 West Pearce St #10 Richmond Hill ON L4B 1C5		6,000,000.00
City of Toronto Maggie Wang	North York Civic Centre 5100 Yonge Street, lower level North York ON M2N 5V7		50,000.00
Hyon-Cheong Sally Westergren			1,000,000.00
Lee-Mar Developments Limited Rick Coburn	c/o Borden Ladner Gervais LLP Scotia PLaza, 40 King Street West Toronto ON M5H 3Y4		5,000,000.00
Willms & Shier Environmental Lawyers LLP Marc McAree	1 Toronto Street, Suite 900 Toronto ON M5C 2V6		100,000.00
Total			12,150,000.00



 Kuk-III John Kim
 Insolvent Person



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 Notice of Intention to make a proposal of:

Kuk-Il John Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

E-File/Dépôt Electronique

Date: April 19, 2022, 10:13

Official Receiver

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

Canada

District of:
Division No. -
Court No.
Estate No.

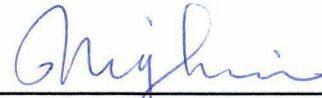
- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

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

Take notice that:

1. I, Myoung-Ja Mary Kim, an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Albert Gelman Inc. of 100 Simcoe Street, Suite 125, Toronto, ON, M5H 3G2, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 18th day of April 2022.



Myoung-Ja Mary Kim
Insolvent Person

To be completed by Official Receiver:

Filing Date

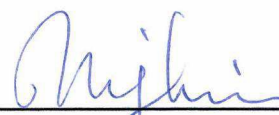
Official Receiver

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

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

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Bosung Investments Inc., Byoung Ok Han and Jae Yol Han Raffaele Sparano	c/o FIJ Law LLP 50 West Pearce St #10 Richmond Hill ON L4B 1C5		6,000,000.00
City of Toronto Maggie Wang	North York Civic Centre 5100 Yonge Street, lower level North York ON M2N 5V7		50,000.00
Hyon-Cheong Sally Westergren			1,000,000.00
Lee-Mar Developments Limited Rick Coburn	c/o Borden Ladner Gervais LLP Scotia Plaza, 40 King Street West Toronto ON M5H 3Y4		5,000,000.00
Willms & Shier Environmental Lawyers LLP Marc McAree	1 Toronto Street, Suite 900 Toronto ON M5C 2V6		100,000.00
Total			12,150,000.00



Myoung-Ja Mary Kim
Insolvent Person



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 Notice of Intention to make a proposal of:

Myoung-Ja Mary Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 19, 2022, 10:07

E-File/Dépôt Electronique

Official Receiver

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

Canada

**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-Ill 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.



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

Proceeding commenced at TORONTO

**ORDER
(Re Administrative Consolidation, Sale Approval,
Administration Charge and Related Relief)**

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

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

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

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



COUNSEL SLIP

COURT FILE NO.: BK-31-2822607 DATE: April 28, 2022

NO. ON LIST 6

TITLE OF PROCEEDING KUK-ILL JOHN KIM et al.

COUNSEL FOR: Kuk Ill John Kim & Myoung-Ja Mary Kim

- DEBTOR(S) Philip Cho & Max Skrow
- CREDITOR(S)

PHONE _____
 FAX _____
 EMAIL pcho@weirfoulds.com
mskrow@weirfoulds.com

COUNSEL FOR:

- DEBTOR(S)
- CREDITOR(S) Jacquelyn Stevens

PHONE _____
 FAX _____
 EMAIL jstevens@willmsshier.com

COUNSEL FOR: Boung Invest

- DEBTOR(S)
- CREDITOR(S) Raffaele Sparano

PHONE _____
 FAX _____
 EMAIL rsparano@fijlaw.com

COUNSEL FOR: Proposal Trustee

- OTHER Tom McElroy

PHONE _____
 FAX _____
 EMAIL _____

JUDICIAL NOTES:

Conway J. Endorsement

This motion is brought for an extension of time to file a proposal, administrative consolidation of certain files, grant of an administration charge, and authorizing the Debtors to enter into a listing agreement with a broker to list and sell the Property. The motion is unopposed, although counsel has not heard back from Laurentian – if it is any issues with this order, there is a come-back clause for it to attend court.

I am satisfied that all of the relief sought should be granted. Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

**In the Matter of the Notice of Intention to Make a Proposal of
Kuk-III John Kim of the city of Markham
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Myoung-Ja Mary Kim of the city of Markham
in the Province of Ontario**

**FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated April 27, 2022)

I. INTRODUCTION

1. This first report (“**First Report**”) is filed by Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with a Notice of Intention to Make a Proposal (“**NOI**”) filed by Kuk-III John Kim (“**John Kim**”) and Myoung-Ja Mary Kim (“**Mary Kim**”) and, together with John Kim, the “**Debtors**”) on April 18, 2022 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). Attached hereto at **Appendix “A**” are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Debtors.
2. The Debtors are making a motion to the Court, to be heard jointly, returnable April 28, 2022 (the “**April 28 Motion**”) seeking various relief. This First Report has been prepared largely in response to and in support of the Debtors’ April 28 Motion.
3. On their April 28 Motion, the Debtors are seeking, amongst other things, an Order:
 - a. administratively consolidating the Debtors’ proposal proceedings under one title of proceeding;
 - b. extending the time for each of the Debtors to file a proposal to July 2, 2022 (the “**Stay Extension**”);
 - c. granting a priority charge over the Real Property (term defined below) in the amount of \$125,000 to secure the fees and disbursements of counsel to the Companies, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administrative Charge**”);

- d. authorizing the Debtors to retain a licensed commercial realtor to list the Real Property for sale; and,
- e. approving this First Report and the activities of the Proposal Trustee described herein.

4. John Kim has included with the April 28 Motion an affidavit sworn on April 26, 2022 (the “**John Kim Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed the John Kim Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

5. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Debtors at their April 28 Motion.

II. PURPOSE OF THIS REPORT

6. The purpose of this First Report is to:

- a. provide the Court with relevant information pertaining to the Debtors which is not otherwise described in the John Kim Affidavit;
- b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Debtors subsequent to the filing of the NOI’s; and,
- c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Debtors.

III. SCOPE AND TERMS OF REFERENCE

7. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited financial information, the Debtors books and records, discussions with the Debtors, discussions with Silver Kim, the son of the Debtors and discussions with the Debtors’ legal counsel, WeirFoulds LLP.

8. While the Proposal Trustee has reviewed various documents provided by the Debtors, such review does not constitute an audit or verification of such information for accuracy or completeness.

9. This First Report has been prepared for the use of this Court and the Debtors’ stakeholders as general information relating to the Debtors and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

10. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.

IV. BACKGROUND INFORMATION

Reason for NOI Filing

11. The Debtors are married and are both retired. John Kim is 81 years of age and Mary Kim is 76 years of age. Their sole source of income is from government pensions including only CPP and OSA. The Debtor's monthly expenses exceed their pension income. As a result, the Debtors adult children fund their monthly cash flow deficit which is discussed in more detail below.

12. The Debtors have advised the Proposal Trustee that their sole asset is the real property municipally known as 385 Spadina Road, Toronto, Ontario (the "**Real Property**") which the Debtors own jointly. The Real Property is a two story commercial building located near the intersection of Spadina Avenue and St Clair Avenue, in a retail area in Toronto. The Debtors previously operated a dry cleaning business from the Real Property prior to their retirement in 2003, at which time the business was sold to an arm's length purchaser who continued the dry cleaning business and leased the Real Property from the Debtors. The Real Property is currently vacant. Further details regarding the Real Property are included in the John Kim Affidavit.

13. As described in more detail below, the Debtors are the defendants in two claims filed against them by the owners of lands which sit adjacent to the Real Property who claim that, among other things, environmental contamination resulting from the Debtors dry cleaning business has affected their respective properties. This litigation has been ongoing for more than 10 years.

14. The Debtors filed the NOI with the goal of ultimately filing a proposal to their creditors. The Debtors contemplated filing for bankruptcy, however, based on the advice of their legal counsel and discussions with the Proposal Trustee they both believe that the most cost effective way to maximize realization from the Real Property is for the Debtors to sell the Real Property while in possession of it, with the Trustee monitoring the sales process. The proceeds could then be divided amongst their creditors pursuant to a proposal process.

15. The Debtors are of the view that, in a bankruptcy scenario, the fees and disbursements of a Trustee in bankruptcy who could be required to take possession and sell the Real Property would be significantly higher than the Debtor selling the Real Property while in their possession. Furthermore, the potential environmental contamination of the Real Property could complicate the bankruptcy proceedings significantly for the Trustee in a bankruptcy scenario.

16. Further background information with respect to each of the Debtors is included in the John Kim Affidavit.

V. SECURED CREDITORS

17. Pursuant to PPSA searches conducted by the Proposal Trustee on April 7, 2022 (with a file currency date of April 6, 2022), no creditors have registered financing statements or a claim for lien against either of the Debtors. Attached hereto at **Appendix "B"** are copies of the PPSA searches.

Real Property

18. The Proposal Trustee obtained a parcel register of the Real Property from the Ontario Ministry on April 7, 2022 (the "**Title Search**"). Attached hereto at **Appendix "C"** is a copy of the Title Search.

19. The Title Search identified a charge in the amount of \$70,000 with a Parties To description of “Laurentian Trust of Canada Inc. in Trust (For Self-Directed RRSP 710467)” (“**Laurentian Trust**”) (registration no. CA480034). The Laurentian Trust registration was made on June 26, 1997. The Debtors believe that the charge was registered in relation to certain RRSPs. However, the RRSPs were collapsed and liquidated approximately 10 years ago and as a result, the Debtors are unaware of the current status of this registration and believe that this registration should be discharged. The Trustee has been advised by counsel to the Debtors that Laurentian Trust was served with notice of the April 28 Motion.

20. Title to the Real Property is described as being subject to a number of writs of execution, if enforceable. Counsel to the Debtor has advised the Proposal Trustee that all but one of the writs of execution have expired. These writs of execution are discussed in more detail below.

21. There are no other registrations identified on the Title Search.

VI. UNSECURED CREDITORS

22. The unsecured creditors of both Debtors are the same and include the following:

- a. Bosung Investments Inc., Byoung Han and Jae Yol Han (“**Bosung**”) filed a claim against the Debtors claiming damages in the sum of \$6 million for, amongst other things, losses and expenses resulting from contamination of the Bosung’s lands which sit adjacent to the Real Property (the “**Bosung Claim**”). As of the date of the NOI the Bosung Claim was ongoing and had not been reduced to judgment;
- b. Lee-Mar Developments Limited (“**Lee-Mar**”) filed a claim against the Debtors claiming damages in the sum of \$5 million for, amongst other things, losses and expenses resulting from contamination of Lee-Mar’s property which sits adjacent to the Real Property (the “**Lee-Mar Claim**”). As of the date of the NOI the Lee-Mar Claim was ongoing and had not been reduced to judgment;
- c. Hyon-Cheong Sally Westergren (“**Westergren**”), the daughter of the Debtors, in the amount of approximately \$1 million which represents funds provided by Westergren to the Debtors to fund the legal costs to defend against both the Bosung Claim and the Lee-Mar Claim; and,
- d. Willms & Shier Environmental Lawyers LLP (“**WSE**”), the Debtors former legal counsel, in the amount of approximately \$100,000.

Execution Certificates

23. The Proposal Trustee obtained a Execution Certificates from the City of Toronto in respect of both Debtors which certificates are dated April 8, 2022 (the “**Execution Certificates**”). Attached hereto at **Appendix “D”** are copies of the Execution Certificates. According to the Execution Certificates no writs of execution, orders or certificate of lien were registered against John Kim. Further, according to the Execution Certificates a debtor with the name “Myoung Gyoo Kim” appeared on the execution certificate for Mary Kim. Although the name “Myoung Gyoo Kim” is similar to Mary Kim, the writ of execution was not registered against Mary Kim.

24. As reported above, one of the writs of execution has not expired. This remaining writ is in respect of “Myoung Gyoo Kim” who is not one and the same person as Mary Kim (Myoung-Ja Kim). Counsel to the Debtors have advised that the Debtors are in the process of making an application to the Land Registrar to have the reference to the writs of execution removed from the legal description of the Property.

VII. ACTIVITIES OF THE DEBTORS

25. Since the date of the filing of the NOI, the Debtors have undertaken, among other things, the following activities:

- a. had informal discussions, through their legal counsel, with various creditors in respect of these restructuring proceedings;
- b. attended meetings with their legal counsel and the Proposal Trustee to discuss their objectives and options in respect of these restructuring proceedings; and,
- c. prepared its Cash Flow Statement (defined below) with the assistance of the Proposal Trustee.

26. The Debtors are requesting an extension of time to file their proposals so that they may, among other things, market for sale the Real Property on a debtor-in-possession basis, in consultation with their creditors, in order to maximize realization for their creditors and minimize professional fees and develop a plan to distribute those proceeds through a Proposal process. As set out above, in a bankruptcy scenario the fees and disbursements of a Trustee and its legal counsel would likely be significantly higher.

27. The Proposal Trustee supports the Companies’ request for the Stay Extension.

VIII. ACTIVITIES OF THE PROPOSAL TRUSTEE

28. Since the date of the filing of the NOI the Proposal Trustee has undertaken, among other things, the following activities:

- a. on April 20, 2022 the Proposal Trustee mailed to every known creditor notice of the Debtors’ NOI as required under subsection 50.4(6) of the BIA. A copy of the affidavits of mailing are collectively attached hereto as **Appendix “E”**;
- b. assisted the Companies with the preparation of the Cash Flow Statement (defined below);

- c. communicated with the Debtors and the Companies' legal counsel to discuss, among other things, the options available to the Debtors in relation to the NOI proceedings;
- d. communicated with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings; and,
- e. established a Case Webpage to post the Court materials related to these restructuring proceedings, located at www.albertgelman.com/corporate-solutions/other-engagements/.

IX. CASH FLOW FORECASTS

29. On April 24, 2022 the Debtors filed with the Proposal Trustee a monthly cash flow statement for the month of April 2022 ("**Cash Flow Statement**"), along with the Debtors' report on the reasonableness of the Cash Flow Statement in accordance with subsection 50.4(2) of the BIA. Attached hereto as **Appendix "F"** are copies of the Cash Flow Statement along with Debtors' and the Proposal Trustee's report thereon.

30. The Debtors are both retired and rely on government pension and support from their adult children to fund their monthly expenses. The accuracy of the Cash Flow Statement is subject to the assumptions contained within the statement and set out in the statement notes.

X. ADMINISTRATIVE CHARGE

31. The Debtors are seeking an Order of the Court charging the Real Property in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise pursuant to section 64.2(1) of the BIA in an amount not to exceed \$125,000 to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee's legal counsel, if necessary, and legal counsel for the Debtor (defined above as the Administrative Charge).

32. As noted above, the Debtors are both retired and collect only pension income from the government. Further, their pension income is not sufficient to cover their monthly expenses and so their children assist them with making up the shortfall. The Debtors have no other assets other than the Real Property. As a result the Proposal Trustee has not received any material funding from the Debtors or another other party in order to administer these NOI/Proposal proceedings. The Administration Charge is intended to provide the restructuring professionals with certainty that their fees and disbursements arising from these restructuring proceedings will be funded. Without the Administration Charge the funding of the restructuring professionals fees and disbursements are at significant risk.

33. Administrative charges are common in proceedings such as this and are necessary to secure the fees and disbursements of the professionals involved to enable Debtors to successfully complete restructuring proceedings.

34. The Proposal Trustee recommends that the Court grant an order approving the Administrative Charge being sought by the Debtors.

XI. REQUEST FOR EXTENSION

35. The Debtors are seeking the Stay Extension pursuant to subsection 50.4(9) of the BIA.
36. The Proposal Trustee supports the Stay Extension as it is of the opinion that:
- a. the Debtors have acted, and are acting, in good faith and with due diligence;
 - b. the Debtors would likely be able to make a viable Proposal if the extension being applied for were granted; and,
 - c. no creditor would be materially prejudiced if the extension being applied for were granted.
37. The Proposal Trustee is also of the opinion that a Proposal developed by the Debtors would likely result in a more orderly and efficient process to realize upon the Debtors sole asset, being the Real Property, than would be the case if the Debtors were both deemed or otherwise become bankrupt and the Proposal Trustee was required to take possession of, list and sell the Real Property itself.

XII. PROPOSAL TRUSTEE'S RECOMMENDATION

38. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:
- a. the administrative consolidation of the Debtors' proposal proceedings under one title of proceeding;
 - b. the Stay Extension;
 - c. the Administrative Charge;
 - d. the Debtors to retain a licensed commercial realtor to list the Real Property for sale; and,
 - e. the actions and activities of the Proposal Trustee as described in this First Report.

All of which is respectfully submitted this 27th day of April 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim
and not its Personal or any other Capacity**

Per:



Tom McElroy, CPA, CA, CBV, CIRP, LIT

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.

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

Proceeding commenced at TORONTO

**ORDER
(Extension and approval of activities and fees)**

WeirFoulds LLP
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Tel: 416-365-1110
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Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim

COUNSEL SLIP/ENDORSEMENT

COURT FILE

NO.: BK-22-2822607-0031

DATE: June 27, 2022

NO. ON LIST 4

TITLE OF
PROCEEDING

Kim et al

COUNSEL FOR:

- PLAINTIFF(S) Philip Cho (pcho@weirfoulds.com) for the Debtor
- APPLICANT(S)
- PETITIONER(S)

COUNSEL FOR:

- DEFENDANT(S) Tom McElroy (tmcelroy@albertgelman.com) for the proposed Trustee
- RESPONDENT(S)

OSBORNE, J.

1. This is a motion by the Debtors for an extension of time to file a proposal.
2. The proposed Trustee, and all parties to all of the actions and proceedings referred to in the Motion Record of the Debtors were given notice of today's motion, served with the Motion Record, and consent to, or do not oppose, the relief sought.
3. The extension makes practical sense in that it is intended to afford the Debtors an opportunity to obtain environmental testing on the subject properties with a view to, as supported by the proposed Trustee, maximizing the information and certainty available to potential bidders or offerors as to the condition, and therefore the value, of the properties, with a view in turn to maximizing the recovery for creditors.
4. There being no opposition to the relief sought, I have signed the order attached to this endorsement which is effective without the necessity of it being issued or entered. As the order provides, any interested party may apply to vary or amend the order on notice to any party who may be affected.
5. Counsel for the Debtors is directed to upload to Caselines the Affidavit of Service.

Osborne, J.

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

**In the Matter of the Notice of Intention to
Make a Proposal of Kuk-Il John Kim**

**and in the Matter of the Notice of Intention to
Make a Proposal of Myoung-Ja Mary Kim**

**SECOND REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated June 22, 2022)

I. INTRODUCTION

1. This second report ("**Second Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed by Kuk-Il John Kim ("**John Kim**") and Myoung-Ja Mary Kim ("**Mary Kim**" and, together with John Kim, the "**Debtors**") on April 18, 2022 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Debtors.

2. On April 28, 2022 on a motion made by the Debtors the Honourable Justice Conway granted an order (the "**April 28 Order**") approving, among other things, an administrative consolidation of the Debtors proposal proceedings, an extension of the stay of proceedings afforded under the NOI to July 2, 2022 (the "**First Stay Extension**"), an administrative charge and authority for the Debtors' to enter into a listing agreement with a real estate agent to list the Real Property. A copy of the April 28 Order and related Endorsement are attached hereto as **Appendix "B"**.

3. The Proposal Trustee prepared a report in respect of the April 28, 2022 motion dated April 27, 2022 (the "**First Report**"). Attached hereto as **Appendix "C"** is a copy of the First Report, without appendices.

4. The Debtors are making a motion to the Court returnable June 27, 2022 (the "**June 27 Motion**") seeking various relief. This Second Report has been prepared in response to and in support of the Debtors' June 27 Motion.

5. On their June 27 Motion, the Debtors are seeking, amongst other things, an Order:

- a. further extending the time for each of the Debtors to file a proposal to August 16, 2022 (the **Second Stay Extension**"); and,
- b. approving the activities and fees of the Proposal Trustee; and
- c. approving the fees and disbursements of the Debtors' legal counsel, WeirFoulds LLP.

6. Silver Kim, the adult son of both Debtors, has included with the June 27 Motion an affidavit sworn on June 22, 2022 (the "**Silver Affidavit**"), in support of the relief being sought. The Proposal Trustee has reviewed the Silver Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

7. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Debtors at their June 27 Motion.

II. PURPOSE OF THIS REPORT

8. The purpose of this Second Report is to:

- a. provide the Court with relevant information pertaining to the Debtors which is not otherwise described in the Silver Affidavit;
- b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Debtors subsequent to the date of the First Report; and,
- c. provide the Court with the Proposal Trustee's recommendations in respect of the relief sought by the Debtors.

III. SCOPE AND TERMS OF REFERENCE

9. In preparing this Second Report, the Proposal Trustee has relied upon certain unaudited financial information, the Debtors books and records, discussions with the Debtors, discussions with Silver Kim and discussions with the Debtors' legal counsel, WeirFoulds LLP.

10. While the Proposal Trustee has reviewed various documents provided by the Debtors, such review does not constitute an audit or verification of such information for accuracy or completeness.

11. This Second Report has been prepared for the use of this Court and the Debtors' stakeholders as general information relating to the Debtors and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Report contrary to the provisions of this paragraph.

12. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.

13. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report.

IV. ACTIVITIES OF THE DEBTORS

14. The actions and activities of the Debtors since the date of the First Report are set out in Silver Affidavit at paragraph 7.

15. The Debtors are requesting an extension of time to file their Proposals so that they may, among other things, market for sale the Real Property on a debtor-in-possession basis, in consultation with their creditors, in order to maximize realization for their creditors and minimize professional fees and develop a plan to distribute those proceeds through the Proposal process. Prior to marketing the Real Property for sale the Debtor's are in the process of determining if, and to what extent, it is necessary to obtain a formal report from an environmental consultant (including potentially a Phase I and Phase II environmental site assessment) regarding the status and extent of environmental contamination with respect to the Real Property and surrounding area. As such, the Debtors require additional time prior to filing their Proposals.

16. The Proposal Trustee supports the Debtors' request for the Second Stay Extension.

V. ACTIVITIES OF THE PROPOSAL TRUSTEE

17. Since the date of the First Report the Proposal Trustee has undertaken, among other things, the following activities:

- a. continued to communicate with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings;
- b. continued to communicate with the Debtors' legal counsel regarding the process for marketing and selling the Real Property including the extent to which additional information is required from an environmental consultant before doing so; and,
- c. maintained a Case Webpage with electronic copies of the Court materials related to these restructuring proceedings, located at www.albertgelman.com/corporate-solutions/other-engagements.

VI. REQUEST FOR EXTENSION

18. The Debtors are seeking the Second Stay Extension pursuant to subsection 50.4(9) of the BIA.

19. The Proposal Trustee supports the Second Stay Extension as it is of the opinion that:

- a. the Debtors have acted, and are acting, in good faith and with due diligence;
- b. the Debtors would likely be able to make a viable Proposal if the extension being applied for were granted; and,
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

20. The Proposal Trustee is also of the opinion that a Proposal developed by the Debtors would likely result in a more orderly and efficient process to realize upon the Debtors sole asset, being the Real Property, than would be the case if the Debtors were both deemed or otherwise become bankrupt.

VII. ACCOUNTS OF THE PROPOSAL TRUSTEE

21. In accordance with paragraph 9 of the April 28 Order the fees and disbursements of the Proposal Trustee may be approved by the Court and referred to a judge for such purpose.

22. Attached hereto as **Appendix “D”** and **Appendix “E”** are the Affidavits of Tom McElroy regarding the Proposal Trustee’s fees to June 20, 2022 (accompanied by the supporting time dockets) for John Kim and Mary Kim, respectively (the **“Fee Affidavits”**).

23. The Proposal Trustee is of the opinion that its fees, as set out in the Fee Affidavits, are fair and reasonable, justified in the circumstances, and accurately reflect the work done by the Proposal Trustee in connection with these NOI proceedings.

24. Attached as **Appendix “F”** is the affidavit of Wojtek Jaskiewicz regarding the fees and disbursements of WeirFoulds LLP, counsel to the Debtors, to June 20, 2022 accompanied by the supporting time dockets (the **“Legal Counsel Fee Affidavit”**).

25. It is the Proposal Trustee’s opinion that the fees and disbursements of WeirFoulds LLP, as set out in the Legal Counsel Fee Affidavit are fair and reasonable and justified in the circumstances.

26. The Proposal Trustee therefore requests and recommends the approval the fees and disbursements set out in the Fee Affidavits and the Legal Counsel Fee Affidavit.

VIII. PROPOSAL TRUSTEE’S RECOMMENDATION

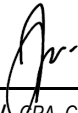
27. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the Second Stay Extension;
- b. the actions and activities of the Proposal Trustee as described in this Second Report; and,
- c. the fees and disbursements of the Proposal Trustee as set out in the Fee Affidavits;
- d. the fees and disbursements of the Debtor’s legal counsel, WeirFoulds LLP, as set out in the Legal Counsel Fee Affidavit.

All of which is respectfully submitted this 22nd day of June 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of
Kuk-III John Kim and Myoung-Ja Mary Kim
and not its Personal or any other Capacity**

Per:



Tom McElroy, CPA, CA, CBV, CIRP, LIT

TAB 4

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, 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 applications; (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 to lease or other agreements (collectively, an "**Agreement**") which binds 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 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.

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

Proceeding commenced at TORONTO

**ORDER
(DIP Approval and Charge)**

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

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

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

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

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

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

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

Proceeding commenced at TORONTO

**MOTION RECORD
(Returnable August 5, 2022)**

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

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