

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

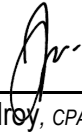
24. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- 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.

Date: April 19, 2022, 10:13

E-File/Dépôt Electronique

Official Receiver

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

Canada

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

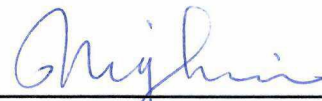
- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

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

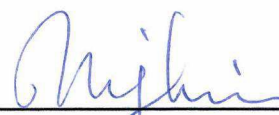
Official Receiver

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-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.

A handwritten signature in blue ink, appearing to read "Conway", is written over a horizontal line.

**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.

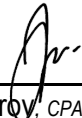
XII. PROPOSAL TRUSTEE'S RECOMMENDATION

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

**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.

**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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P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

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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:

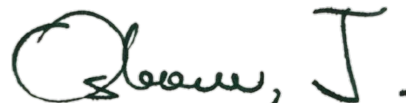
- PLAINTIFF(S) Philip Cho (pcho@weirfoulds.com) for the Debtor
- APPLICANT(S)
- PETITIONER(S)

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.



**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