Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

TUNG KEE INVESTMENT CANADA LTD. and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

REPORT OF THE PROPOSED RECEIVER
DATED OCTOBER 4, 2023

INTRODUCTION

1. Ernst & Young Inc. ("**EY**" or the "**Receiver**") is filing this pre-filing report (the "**Pre-Filing Report**") in connection with an application by Romspen Investment Corporation ("**Romspen**" or the "**Applicant**") to appoint EY as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, assets and properties of Tung Kee Investment Canada Ltd. ("**TKIC**") and Tung Kee Investment Limited Partnership ("**TKI LP**" and together with TKIC, collectively, the "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors, including and without in any way limiting the generality of the foregoing, the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Property**").

2. This Pre-Filing Report has been prepared by the proposed Receiver prior to its appointment as Receiver, should this Court grant the receivership Order being sought, to provide information to the Court for its consideration in respect of the Applicant's receivership Application.

PURPOSE

3. The purpose of this Pre-Filing Report is to:

(a) provide background information to the Court regarding the Property and the Debtors;

(b) summarize the Sale Process (defined below) undertaken by Romspen, and related offers made for the Property therein;

(c) summarize the appraisals for the Property;

(d) summarize the terms of the competing Agreements of Purchase and Sale entered into by Romspen and by Sow Capital Ontario Limited ("**Sow Capital**") under power of sale proceedings, in their respective capacities as first and fifth mortgagees over the Property;

(e) provide the proposed Receiver's views on the following:

a) the Receivership Order;

b) the issuance of an Approval and Vesting Order without the Receiver (if appointed) launching a marketing and sale process for the Property, which:

i. approves the pre-Receivership Sale Process undertaken by Romspen that resulted in the Times APS (as defined below) between Romspen and Times 3143 Limited Partnership (as buyer) and 3143 Holdings Inc. (as nominee, collectively the "**Times Group**"); and

ii. authorizes the Receiver (if appointed) to execute and implement the Times APS; and

c) the Sealing Order sealing the terms of the Times APS, the Competing Offers (as defined below) and the appraisals for the Property.

TERMS OF REFERENCE

4. Capitalized terms used but not defined in this Pre-Filing Report are as defined in the Affidavit of Wesley Roitman sworn July 19, 2023 (the "**Moving Roitman Affidavit**") and the Supplemental Affidavit of Wesley Roitman sworn September 29, 2023 (the "**Reply Roitman Affidavi**t") sworn in support of the Romspen Application herein, and the responding Affidavit of Philip Wong sworn September 26, 2023 on behalf of Sow Capital (the "**Sow Affidavit**").

5. In preparing this Pre-Filing Report and making the comments herein, the proposed Receiver has been provided with, and has relied upon, certain materials prepared and provided by Romspen and materials as filed in these proceedings (collectively, the "**Information**"). The proposed Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided.

6. The proposed Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the proposed Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. Some of the Information referred to in this Pre-Filing Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

7. Unless otherwise indicated, the proposed Receiver's understanding of factual matters expressed in this Pre-Filing Report concerning the Debtors and their business is based on the materials filed in these proceedings, and not independent factual determinations made by the proposed Receiver.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND AND FINANCIAL POSITION OF THE DEBTORS

9. TKIC is an Ontario corporation, and is the registered owner of the Property. TKI LP is an Ontario limited partnership, and is the beneficial owner of the Property. The Property consists of three separate legally described parcels which collectively comprise approximately 66.29 acres of developable vacant land at the southeast corner of 19th Avenue and Woodbine Avenue East in Markham, and collectively bear the municipal address of 3143 19th Avenue, Markham, Ontario. The Debtors planned to develop the Property as a mixed used development comprised of film studios, offices, a hotel and retail.

Secured Creditors

10. The proposed Receiver understands there are five mortgages registered on title to the Property, summarized below:

Ranking Priority	**Creditor**	**Principal Face Amount**
First	Romspen	$30 million
Second	Amber Mortgage Investment Corporation	$8.5 million
Third	2149602 Ontario Inc.	$3,744,759.41 (CAD) and $26,279,223.54 (HKD) (which is equivalent to approximately $4,600,000 CAD)
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	Sow Capital	$20 million

11. The proposed Receiver understands that pursuant to Subordination and Postponement Agreements dated January 2022 (see Exhibits 47 to the Moving Roitman Affidavit) between Romspen and each of Amber Mortgage Investment Corporation (“**Amber**”), Sow Capital, 2149602 Ontario Inc. (“**214**”), Frank Pa and Steven Tung (“**Pa and Tung**” and collectively with Amber, Sow Capital and 214, the “**Subordinate Encumbrancers**”), each of the Subordinate Encumbrancers subordinated and postponed all of their rights under their security over the Property of the Debtors in favour of Romspen.

12. The proposed Receiver has not yet performed an independent security review of any of the five mortgages to determine validity or priority.

13. On or about September 1, 2022, the Debtors defaulted in payment of interest due under the loan that Romspen extended to the Debtors (the “**Romspen Mortgage Loan**”). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (see Exhibit 49, Moving Roitman Affidavit). The proposed Receiver understands the Debtors failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

POWER OF SALE BY ROMSPEN

14. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage (see Exhibit 50, Moving Roitman Affidavit) . After the redemption period under Romspen’s Notice of Sale expired, Romspen commissioned an appraisal of the Property, which is marked as Confidential Exhibit “3” to the Reply Roitman Affidavit.

15. On or about April 3, 2023, Royal LePage Your Community Realty (“**Royal LePage**”) and Romspen entered into a listing agreement (the “**Royal LePage Listing Agreement**”) whereby Royal LePage was engaged to conduct a process for the marketing and sale of the Property. The Royal Lepage Listing Agreement provides for a commission of 2% plus HST of the gross sale price if there is no co-operating broker. If there is a co-operating broker, the commission increases to 3% plus HST. A copy of the Royal LePage listing agreement for the Property is attached hereto as **Appendix** “**A**”.

16. On April 4, 2023, Royal LePage launched its sale process for the Property (the "**Sale Process**"). It listed the Property for sale for $69.5 million, and set a bid deadline of April 27, 2023 (the "**Initial Bid Deadline**"). A copy of the initial Royal Lepage marketing brochure is part of Exhibit "B" to the Reply Roitman Affidavit

17. On the same day, the Property was listed on Multiple Listing Service (MLS#: N6007225). A copy of the MLS listing is attached hereto as **Appendix** "**B**".

18. From April 4, 2023, through to the Initial Bid Deadline, Royal LePage received two offers (discussed below). However, neither of these offers resulted in an unconditional Agreement of Purchase and Sale.

19. On July 12, 2023, Royal LePage, with Romspen's consent, lowered the listing price of the Property to $64.5 million. A copy of the Royal Lepage marketing brochure with the updated purchase price is also part of Exhibit "B" to the Reply Roitman Affidavit.

20. Below is a summary of the timeline setting out the key dates with respect to the Sale Process:

Timeline	**Activity**
April 3, 2023	Romspen engaged Royal LePage
April 4, 2023	Royal LePage launched the Sale Process and listed the Property on MLS
April 4, 2023 through April 27, 2023	Royal LePage took steps to implement the Sale Process, as further described below
April 27, 2023	Initial Bid Deadline for submission of an executed and binding agreement of purchase and sale
April 27, 2023 / April 28, 2023	Two offers received, as further described below.
May 1, 2023	Romspen selected and signed back the First Offer (as defined below) which was subject to a 45-day due diligence condition.

June 19, 2023	Due diligence condition in the First Offer is not waived. Romspen and the proposed purchaser under the First Offer execute a mutual release
July 12, 2023	Listing Price was amended to $64.5 million
July 14, 2023 – July 18, 2023	Two amended offers and a Letter of Intent were received, as further described below.
August 25, 2023	Times Offer delivered, as further described below
September 15, 2023	Romspen and Times Group enter into the Times APS. First deposit received.
September 28, 2023	Letter from Times Group's financier serving as a positive reference for the Times Group
September 29, 2023	Times Group waives due diligence condition albeit with a lower purchase price, subject to the issuance of an Approval and Vesting Order
October 4, 2023	Second deposit received. Times APS is firm, subject to issuance of an Approval and Vesting Order

21. In addition to the marketing and sales steps in the Sale Process set out in paragraph 8 of the Reply Roitman Affidavit, the proposed Receiver understands that Royal LePage also undertook the following additional steps during the marketing period to sell the Property:

(a) attended the 2023 Building Industry luncheon in April 2023 to meet with local developers and builders to promote the Property, and followed up with emails with certain potentially interested parties;

(b) on April 4, 2023, emailed the acquisition opportunity internally to over 900 Royal LePage sales agents, and emailed them again on July 12, 2023, to indicate the revised listing price;

(c) created and posted a listing on Multiple Listing Service (MLS#: N6007225);

(d) communicated with potential interested parties via email and phone calls;

(e) established a Google Drive link to provide information for interested parties to conduct their due diligence; and

(f) gathered information for interested parties to conduct due diligence.

Results of the Sale Process

22. On or around the Bid Deadline of April 27, 2023, two parties submitted conditional binding offer to Romspen. In July 2023, two additional binding offers and a letter of intent were submitted with various conditions. A summary of these offers and the letter of intent (the "**Competing Offers**") received by Romspen (the "**Summary of Offers**") is attached hereto as **Confidential Appendix "A"**.

The First Offer and Revised First Offer

23. The first offer dated May 1, 2023 (the "**First Offer**"), included the highest cash purchase price and was subject to a 45-day due diligence condition in favour of the buyer. A copy of the First Offer is attached as the Confidential Appendix A to the Moving Roitman Affidavit.

24. On May 3, 2023, Romspen entered into an agreement of purchase and sale with the first offeror (the "**First APS**"), and an initial deposit was submitted to Romspen. However, the proposed purchaser did not waive the due diligence condition prior to the due diligence deadline. On June 19, 2023, the parties executed a mutual release terminating the First APS, and the deposit was returned.

25. On or around July 12, 2023, the first offeror submitted a revised offer (the "**Revised First Offer**") to Romspen that was for approximately 25% less than the First APS. Romspen did not accept this offer. A copy of the Revised First Offer is attached as Confidential Appendix B to the Moving Roitman Affidavit.

The Second Offer and Revised Second Offer

26. The second offer, dated April 28, 2023 (the "**Second Offer**"), provided for a cash purchase price that was approximately 45% lower than the First Offer, and subject to a 60-day due diligence condition in favour of the buyer. Romspen did not accept this offer. A copy of the Second Offer is included as part of Confidential Exhibit 1 to the Reply Roitman Affidavit**.**

27. On or around July 18, 2023, this buyer submitted a revised offer to Romspen for the Property. However, it was for an amount that was lower than the proposed purchase price in a letter of intent received the day before (as further described below) (the "**Revised Second Offer**"). Romspen did not accept the Revised Second Offer. A copy of the Revised Second Offer is included as part of Confidential Exhibit 1 in the Reply Roitman Affidavit**.**

28. Romspen and Royal LePage continued to market the property after the First Offer was terminated in June 2023. On July 12, 2023, the listing price of the Property was reduced to $64.5 million.

The Letter of Intent

29. A letter of intent dated July 17, 2023 (the "**Letter of Intent**"), was for a purchase price higher than the Revised Second Offer and subject to a 45-day due diligence condition. The proposed Receiver understands that Romspen negotiated with the party who delivered the Letter of Intent in an effort to convert it into an agreement of purchase and sale. However, the negotiations did not result in the parties advancing to that stage. A copy of the Letter of Intent is included as part of Confidential Exhibit 1 to the Reply Roitman Affidavit.

SUCCESSFUL BID

The Times APS

30. On August 25, 2023, Romspen received a conditional offer (the "**Times Offer**") from the Times Group. The proposed Receiver understands Romspen entered into discussions with the Times Group, which resulted in an increase in the cash value of the offer. On September 15, 2023, Romspen and the Times Group entered into the Times APS that provided for a

due diligence condition deadline of September 30, 2023.

31. The Times APS represents the highest and best offer received through Romspen's marketing and sale process (or through Sow Capital's attempts to market and sell the Property, as set out below under the heading "Sow Capital").

32. The proposed Receiver understands that Times Group made the first deposit required under the Times APS. While the Times Group subsequently requested, and Romspen granted, an extension of the due diligence deadline to October 2, 2023, this condition was waived on September 29, 2023 subject to the appointment of Ernst & Young Inc. as receiver and manager of the Debtors and the issuance of an order approving the sale, authorizing the Receiver to complete the Transaction, and vesting title to the Property in Times (see paras. 11 and 14 of the Reply Roitman Affidavit). On the same date, the Times APS was amended to, among other things, substitute the proposed purchaser, and to reduce the purchase price, although the net purchase price remained higher than the purchase price in the Sow APS (as defined below).

33. A redacted copy of Times APS as amended is marked as Exhibits "D" and "G" to the Reply Roitman Affidavit, and an unredacted copy with the purchase price is marked as Confidential Exhibits "2A"and "2B" to the Reply Roitman Affidavit.

34. On October 4, 2023, the Times Group delivered the second deposit due under the Times APS. Upon the payment of the second deposit, Times APS became a firm and binding agreement, subject to the issuance of a Receivership Order and an Approval and Vesting Order.

Evaluation of the Times APS

35. The Times APS is the result of a competitive sale process, and the negotiation between Romspen, the Times Group and their respective counsel. The Times Group and the Debtors are not related parties pursuant to section 65.13 of the BIA.

36. The Times APS provides that closing will occur on November 15, 2023.

37. The background and ability of the Times Group to complete the Times APS is set out at paragraphs 12 and 13 of the Reply Roitman Affidavit, and Exhibits “E” and “F to that affidavit.

38. The purchase price for the Property will be paid in cash and is sufficient to repay the indebtedness to the First, Second, Third and Fourth ranking secured creditors in full. Sow Capital, the Fifth ranking secured creditor, will receive a substantial payment but is not expected to be repaid in full.

39. A general summary of the key terms and conditions of the Times APS are set out below under the headings “Comparison of the Key Terms under the Times APS and the Sow APS”.

POWER OF SALE BY SOW CAPITAL

40. On July 18, 2023, Sow Capital and 2816513 Ontario Inc. (“**281 Ontario**”) entered into an agreement of purchase and sale which was amended on August 17, 2023 (the “**Sow APS**”, which is marked as Exhibit “C” to the Sow Affidavit and Exhibit “G” to the Reply Romspen Affidavit).

41. The proposed purchase price under the Sow APS is also lower than the proposed net purchase price under the Times APS.

42. As with the Times APS, the purchase price under the Sow APS will be paid in cash and is also sufficient to repay the indebtedness to the First, Second, Third and Fourth ranking secured creditors in full. However, while Sow Capital (the Fifth ranking secured creditor) will also not be repaid in full by the Sow APS (like with the Times APS), it will receive even less net proceeds under the Sow APS than the Times APS.

43. Romspen’s concerns regarding Sow Capital, 281 Ontario and the Sow APS, and why Sow Capital would want to proceed with the Sow APS instead of the Times APS, are set out in paragraphs 16 to 34 of the Reply Roitman Affidavit.

44. As set out in the Factum Sow Capital delivered in the herein proceeding dated September 26, 2023 (the “**Sow Factum**”), 281 Ontario waived the due diligence condition period and

paid the first and second deposits to Sow Capital. However, while the Sow APS has allegedly gone firm, for reasons not explained yet by Sow Capital, even though the Sow APS provides that closing will occur on October 16, 2023, the closing date has been amended to November 30, 2023, contrary to the terms of the Sow APS (or 15 days after the scheduled closing date under the Times APS).

45. Furthermore, while the Sow APS indicates that the purchase price is not subject to payment of a sale commission, as set out in paragraph 35 of the Reply Roitman Affidavit, the proposed Receiver understands that Royal LePage may assert that it is entitled to a commission from the sale under the Sow APS because the authorized signing officer for 281 Ontario that executed the Sow APS had initially reached out to Royal LePage about the Property on June 20, 2023, while Royal LePage was acting as sales broker.

46. A general summary of the key terms and conditions of the Sow APS are set out below.

COMPARISON OF THE KEY TERMS IN THE TIMES APS AND THE SOW APS

47. A summary and comparison of the significant terms of the Times APS and the Sow APS is attached hereto as **Confidential Appendix "A"**. A comparison, excluding financial information, is set out below:

	Times APS	**Sow APS**
Purchase Price	Higher than Sow APS	Lower than Times APS
Closing Date	November 15, 2023	November 30, 2023
Conditions	Approval and Vesting Order	None
Deposit	Same as Sow APS	Same as Times APS
Ability to Close	Romspen satisfied with evidence of financial wherewithal to close	No evidence of financial wherewithal to close provided to Romspen.

Relationship to Debtors	Unrelated	Appears Related
Commission	2%	None, but potentially subject to claim by Royal Lepage for its commission

COMPARISON OF THE APPRAISALS, TIMES APS AND THE SOW APS

48. A total of three appraisals were commissioned for this Property.

49. Romspen commissioned an appraisal from Altus Group with the effective date of January 28, 2023 (see Confidential Exhibit "3" to the Reply Roitman Affidavit).

50. Sow Capital commissioned two appraisal reports from Wagner Andrews Kovacs and Avison Young, each with the effective date of July 17, 2023 (see Exhibits "K" and "L" to the Sow Affidavit).

51. The Times APS provides for a gross purchase price that is higher than all three appraisals. The proposed Receiver notes that the purchase price in the Times APS, net of sale commission, is also higher than all three appraisals.

52. The Sow APS provides for a gross purchase price that is higher than the two appraisals it commissioned, but lower than the Altus Group appraisal.

53. A summary of these three appraisals for the Property is attached hereto as **Confidential Appendix "B".**

OBSERVATIONS OF ROMSPEN'S SALE PROCESS

54. The proposed Receiver believes that Romspen's Sale Process was conducted in a manner that:

(a) was fair to all who participated in it and considered the interests of all parties;

(b) maintained appropriate efficacy, integrity, and a level playing field for all potential and actual bidders;

(c) was marketed to a wide range of audience, including land developers and commercial brokers;

(d) made sufficient efforts to obtain the best price and not act improvidently;

(e) resulted in an offer for the Property that provides certainty as to closing; and

(f) resulted in an offer for the Property that is higher than all other offers, and higher than the three appraisals commissioned for the Property.

55. In the circumstances, the proposed Receiver does not believe that further marketing campaign of the Property would yield any higher or better offers.

56. The proposed Receiver notes that when Sow Capital filed its responding material, it did not redact confidential information in the Sow APS (including the purchase price), or in the appraisals that it had commissioned. These amounts are also reproduced in the Sow Factum (paras 6, 18 and 19), which the proposed Receiver understands was also filed with the Court in an unredacted form. Disclosure of this confidential information is likely to have a negative impact on any future sales process, as it effectively sets a price ceiling at an amount between the two appraisal values disclosed by Sow Capital.

Approval and Vesting Order

57. The proposed Receiver has reviewed the terms of the proposed Approval and Vesting Order and believes that it is reasonable.

Sealing Order

58. The Confidential Appendices attached hereto contain financial and other information. The proposed Receiver believes that disclosure of this information could further adversely affect any further sale process for the Property in the event the Times APS does not close.

Receivership Order

59. The proposed Receiver has reviewed the terms of the proposed Receivership Order. The draft order is substantially similar to the model receivership order of this Court.

All of which is respectfully submitted this 4th day of October, 2023.

ERNST & YOUNG INC.,
solely in its capacity as Proposed Receiver of the assets, property and undertaking of the Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership and not in its personal capacity

Per:
Jeffrey D. Kerbel
Senior Vice-President

Appendix “A”

016

OREA Ontario Real Estate Association

Form 520
for use in the Province of Ontario

Listing Agreement - Commercial
Seller Representation Agreement
Authority to Offer for Sale

This is a Multiple Listing Service® Agreement MG (Seller's Initials) **OR** **This Listing is Exclusive** **EXCLUSIVE** (Seller's Initials)

BETWEEN:
BROKERAGE: ROYAL LEPAGE YOUR COMMUNITY REALTY

8854 YONGE STREET RICHMOND HILL, ONT L4C 0T4 (the "Listing Brokerage") Tel. No. (905) 731-2000

SELLER: ROMSPEN INVESTMENT CORPORATON (AS TRUSTEE UNDER POWER OF SALE) (the "Seller")

In consideration of the Listing Brokerage listing the real property **for sale** known as 3143 19TH AVENUE

MARKHAM ON L6C 1L8 (the "Property")
the Seller hereby gives the Listing Brokerage the **exclusive and irrevocable** right to act as the Seller's agent,

commencing at 12:01 a.m. on the 4 day of April, 20 23,

until 11:59 p.m. on the 4 day of January, 20 24 (the "Listing Period"),

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA), **if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials.** MG (Seller's Initials)

to offer the Property **for sale** at a price of:

Sixty-Nine Million Five Hundred Thousand Dollars ($CDN) 69,500,000.00
and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property. MG (Seller's Initials)

1. **DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Agreement ("Authority" or "Agreement"):
"Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. **COMMISSION:** In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission of 3% + HST % of the sale price of the Property or ....

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period, as may be acceptable to the Seller.

INITIALS OF LISTING BROKERAGE: LC **INITIALS OF SELLER(S):** MG

The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of ....1....... % of the sale price of the Property or .... out of the commission the Seller pays the Listing Brokerage.

The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within ....90........ days after the expiration of the Listing Period (**Holdover Period**), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller.

All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. **REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships,including information on Seller Representation. Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage.

The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.

MULTIPLE REPRESENTATION: The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understand and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

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

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

INITIALS OF LISTING BROKERAGE: DS LC **INITIALS OF SELLER(S):** DS MG

4. **REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

5. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.

6. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

7. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement and, if attached, the accompanying data form.
   The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.

8. **ENVIRONMENTAL INDEMNIFICATION:** The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems.

9. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.

10. **FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

11. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

12. **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid.
    The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may: during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and

INITIALS OF LISTING BROKERAGE: DS LC **INITIALS OF SELLER(S):** DS MG selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling: consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.	(Does)	DS MG (Does Not)

13. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

14. CONFLICT OR DISCREPANCY: If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.

15. ELECTRONIC COMMUNICATION: This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

16. ELECTRONIC SIGNATURES: If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000,* S.O. 2000, c17 as amended from time to time.

17. SCHEDULE(S) .... and data form attached hereto form(s) part of this Agreement.

THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.

DocuSigned by: Laura Cormaggi 113F0A72B64047D... — 4/3/2023 | 13:17 EDT — LAURA CORMAGGI

(Authorized to bind the Listing Brokerage) (Date) (Name of Person Signing)

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

ROMSPEN INVESTMENT CORPORATION (AS TRUSTEE UNDER POWER OF SALE)

(Name of Seller)

DocuSigned by: Mary Gianfriddo B3BCFAEB8794E4... — 4/3/2023 | 13:32 EDT

(Signature of Seller/Authorized Signing Officer) Per:Mary Gianfriddo Authorized Signing Officer (Seal) (Date) (Tel. No.)

(Signature of Seller/Authorized Signing Officer) (Seal) (Date) (Tel. No.)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse) (Seal) (Date) (Tel. No.)

DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record ..... LAURA CORMAGGI

(Name of Salesperson/Broker/Broker of Record)

hereby declares that he/she is insured as required by REBBA.

DocuSigned by: Laura Cormaggi 113F0A72B64047D...

(Signature(s) of Salesperson/Broker/Broker of Record)

ACKNOWLEDGEMENT

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the .... day of ...., 20 .... 4/3/2023 | 13:32 EDT

DocuSigned by: Mary Gianfriddo B3BCFAEB8794E4... — 4/3/2023 | 13:32 EDT

(Signature of Seller) Per:Mary Gianfriddo Authorized Signing Officer (Date)

(Signature of Seller) (Date)

Appendix “B”

Prepared by: LAURA CORMAGGI, CLHMS, ASA, Salesperson
ROYAL LEPAGE YOUR COMMUNITY REALTY, BROKERAGE
8854 Yonge Street, Richmond Hill, ON L4C0T4 905-731-2000

Printed on 04/21/2023 3:03:38 PM

3143 19th Ave **List: $69,500,000.00**
Markham Ontario L6C 1L8 **For Sale**
Markham Victoria Square York 344-29-N
SPIS: N **For:** Sale
Taxes: $6,534.00 / 2023 / Annual **Last Status:** New
Legal: See Schedule C For Full Legal Description **DOM: 17**

Land **Occup:** Vacant **Lse Term Mnths:** /
Designated **Freestanding:** **SPIS:** N **Holdover:** 90
Franchise:
Com Cndo Fee:
Dir/Cross St: Woodbine Avenue + 19th Avenue

MLS#: N6007225 **Sellers:** Romspen Investment Corporation (As Trustee Under Power Of Sale) **Contact After Exp:** N
Possession Remarks: Immediate/Tba
PIN#: **ARN#:**

Total Area:	80 Acres	**Survey:**		**Soil Test:**	
Ofc/Apt Area:		**Lot/Bldg/Unit/Dim:**	0 x 0 Acres	**Out Storage:**	
Indust Area:		**Lot Irreg:**	Land Is Irregular Per Survey	**Rail:**	
Retail Area:		Attached		**Crane:**	
Apx Age:		**Bay Size:**		**Basement:**	
Volts:		**%Bldg:**		**Elevator:**	
Amps:		**Washrooms:**		**UFFI:**	
Zoning:	Business Park	**Water:**	None	**Assessment:**	
Truck Level:		**Water Supply:**		**Chattels:**	
Grade Level:		**Sewers:**	None	**LLBO:**	
Drive-In:		**A/C:**		**Days Open:**	
Double Man:		**Utilities:**	N	**Hours Open:**	
Clear Height:		**Garage Type:**		**Employees:**	
Sprinklers:		**Park Spaces:**	**#Trl Spc:**	**Seats:**	
Heat:		**Energy Cert:**		**Area Infl:**	Major Highway
Phys Hdcp-Eqp:		**Cert Level:**			
		GreenPIS:			

Bus/Bldg Name: **For Year:** **Financial Stmt:**
Actual/Estimated:

Taxes:		**Heat:**		**Gross Inc/Sales:**		**EstValueInv At Cost:**	
Insur:		**Hydro:**		**-Vacancy Allow:**		**Com Area Upcharge:**	
Mgmt:		**Water:**		**-Operating Exp:**		**% Rent:**	
Maint:		**Other:**		**=NetIncB4Debt:**			

Client Remks: *Rare* Prime Land In Markham, Strategically Located Employment Land,With Broad Zoning.Original Parent Parcel Approximately +/- 99 Acres Under Power Of Sale, Subject To A Development Agreement With The Municipality Dated January 19, 2022, Which Conveys A Portion Of The Original Tract (Part 3 Of Plan) To The Municipality, Leaving Approximately +/- 80 Acres,Less Green Space,Waterways,Etc, Resulting In Usable Area Of Approximately +/- 66 Acres.Property Is Well Situated Being Approximately 1Km East Of 404.A Minister's Zoning Order (Mzo) Was Issued In 2021 Which Re-Zoned The Property As Developable Area To Business Park Zone, Allowing For A Wide Range Of Permitted Uses.Property Is Comprised Of 2 Non-Contiguous Parcels Of Land Separated By A Forested Area + Portions Of Berczy Creek Along 19th Ave. The Western Parcel Occupies A Corner Position With Frontage On 19th Avenue + Woodbine Avenue While The Eastern Parcel Occupies A Mid-Block Position.
Extras: York Region Official Plan Adopted 2022, Designates The Property As Being Within The "Urban Area"+Further Identifies The Property As Employment Area.Property Is Designated In Both Regional+Local Official Plan For Employment Uses.
Inclusions: La/Brokerage+Seller Make No Representation Or Warranty Of Anykind.Buyer & Buyer Agent To Conduct Their Due Diligence & Verify All Lot Measurements,Information&Taxes.Subject Property Land Is Being Sold In 'As Is,Where Is' Condition.No Services To Land
Exclusions:
Rental Items: Potential Severance Of Parcels, Subject To A Development Agreement & Site Plan Approval.
Brkage Remks: As Per Seller's Instructions,All Offers To Be Submitted To La By End Of Day Thursday April 27th With 72 Hour Min.Irrevocable.Attach Schedules B,C,+D To Offer.*Note 3 Pins On Schedule 'C' Providing Updated Legal Descriptions.*Tax Info Amount Stated On Mls Is Not Complete*
Mortgage Comments: Email: Lauracormaggi@Royallepage.Ca To Receive Non Disclosure Agreement(Nda) Prior To Relevant Documents Being Shared.

ROYAL LEPAGE YOUR COMMUNITY REALTY, BROKERAGE **Ph:** 905-731-2000 **Fax:** 905-886-7556
8854 Yonge Street Richmond Hill L4C0T4
LAURA CORMAGGI, CLHMS, ASA, Salesperson 905-731-2000
FRANK CORMAGGI, Salesperson 905-731-2000

Contract Date: 4/04/2023 **Condition:** **Ad:** N
Expiry Date: 1/04/2024 **Cond Expiry:** **Escape:**