Court of Appeal File No. COA-23-CV-1129
Court File No. CV-23-00703161-00CL

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, 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 (Respondent on Appeal)

- and -

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

Respondents (Appellants on Appeal)

CROSS MOTION FOR LEAVE TO APPEAL
(November 9, 2023)

November 6, 2023

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100A)
Tel: (416) 218-1161
Email: maya@chaitons.com

Darren Marr (LSO #79660G)
Tel: (416) 218-1136
Email: darren@chaitons.com

Lawyers for Appellants

TO: SERVICE LIST

SERVICE LIST

CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9 **Maya Poliak** (LSO #54100A) Tel: (416) 218-1161 maya@chaitons.com Darren Marr (LSO #79660G) Tel: (416) 218-1136 dmarr@chaitons.com Lawyers for the Respondents	**BLANEY McMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5 **Eric Golden** (LSO #38239M) Tel: (416) 593-3927 egolden@blaney.com **Chad Kopach** (LSO #48084G) Tel: (416) 593-2985 ckopach@blaney.com Lawyers for the Proposed Receiver, Ernst & Young
ERNST & YOUNG INC. EY Tower 100 Adelaide Street West, PO Box 1 Toronto, ON M5H 0B3 **Jeff Kerbel** Tel: 416-943-3545 jeffrey.d.kerbel@parthenon.ey.com Proposed Receiver	**SUSMAN, LEONARD, LL.B PROFESSIONAL CORPORATION** 608-1000 Finch Avenue West Toronto, Ontario M3J 2V5 **LEONARD SUSMAN** Tel: 416-222-6000 leonardsusman@bellnet.ca Lawyers for Amber Mortgage Investment Corp.
DICKINSON WRIGHT 199 Bay Street, Suite 2200 Toronto, ON M5L 1G4 **DAVID PREGER** Tel: (416) 777-0101 DPreger@dickinson-wright.com **LISA CORNE** Tel: (416) 646-4608 lcorne@dickinsonwright.com Lawyers for the Applicant	**BORDEN LADNER GERVAIS LLP** 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 **ROGER JAIPARGAS** Tel: (416) 367-6266 RJaipargas@blg.com Lawyers for Amber Mortgage Investment Corp.

JUSTIN T. CHANG P.C. 390 Bay Street, Suite 300 Toronto, ON M5H 2Y2 **JUSTIN CHAN** Tel: (416) 867-2565 jchan@jtcprofcorp.com Lawyers for DX Strategies Inc.	**KEYSER MASON BALL LLP** 4 Robert Speck Parkway Mississauga, ON L4Z 1S1 **BOTA MCNAMARA** Tel: (905) 276-0424 bmcnamara@kmblaw.com **AMANDEEP SIDHU** Tel: (905) 276-0401 asidhu@kmblaw.com **HARJAAP SAHOTA** Tel: (905) 766-5015 hsahota@kmblaw.com Lawyers for Sow Capital Inc.
LIPMAN ZENER & WAXMAN 100 Sheppard Avenue East, Suite 850 Toronto, ON M2N 6N5 **MARK KLAIMAN** Tel: (416) 789-0650 mklaiman@lzwlaw.com **IAN KLAIMAN** Tel: (416) 789-0658 iklaiman@lzwlaw.com Lawyers for 2816513 Ontario Inc.	**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP** 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1 **KEN ROSENBERG** Tel: (416) 646-4304 ken.rosenberg@paliareroland.com **MAX STARNINO** Tel: (416) 646-7431 max.starnino@paliareroland.com Lawyers for The Times Group
FOGLER RUBINOFF 77 King Street West, suite 3000 Toronto, ON M5K 1G8 **VERN DARE** Tel: (416) 941-8842 vdare@foglers.com Lawyers for 2149602 Ontario Inc., Frank Pa and Stephen Tung	**UBS AG** 9 Penang Road Singapore karen-zb.lim@ubs.com c/o **STIKEMAN ELLIOT LLP** 5300 Commerce Court West 199 Bay Street Toronto ON M5L 1B9 **JUSTIN PARAPPALLY** Tel: 416-869-5235 JParappally@stikeman.com

THE CORPORATION OF THE CITY OF MARKHAM Legal Services Department 101 Town Centre Boulevard Markham ON L3R 9W3 Email: customerservice@markham.ca	**CANADA REVENUE AGENCY** c/o Department of Justice Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite 3400 Toronto ON M5X 1K6 **ED PARK** AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; edward.park@justice.gc.ca
MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 33 King Street West, 6th Floor Oshawa ON L1H 8H5 insolvency.unit@ontario.ca	

EMAIL SERVICE LIST

egolden@blaney.com; ckopach@blaney.com; jeffrey.d.kerbel@parthenon.ey.com; leonardsusman@bellnet.ca; DPreger@dickinson-wright.com; lcorne@dickinsonwright.com; RJaipargas@blg.com; jchan@jtcprofcorp.com; bmcnamara@kmblaw.com; asidhu@kmblaw.com; hsahota@kmblaw.com; mklaiman@lzwlaw.com; iklaiman@lzwlaw.com ken.rosenberg@paliareroland.com; vdare@foglers.com; JParappally@stikeman.com; karen-zb.lim@ubs.com; customerservice@markham.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; edward.park@justice.gc.ca; insolvency.unit@ontario.ca; maya@chaitons.com; max.starnino@paliareroland.com

Court of Appeal File No. COA-23-CV-1129
Court File No. CV-23-00703161-00CL

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, 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 (Respondent on Appeal)

- and -

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

Respondents (Appellants on Appeal)

INDEX

TAB 1

Court File No. CV-23-00703161-00CL
Court of Appeal File No. COA-23-CV-1129

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, 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 (Respondent on Appeal)

\- and -

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

Respondents (Appellants on Appeal)

NOTICE OF CROSS-MOTION FOR LEAVE TO APPEAL

Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership (collectively, the "**Appellants**") will make a cross- motion to a single Judge of the Court of Appeal, on an urgent basis, on Thursday, the 9th day of November 2023 at 10:00 a.m., or as soon as after that time as the motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an Order abridging the time for service of the Appellants' Motion Record, validating service of the Motion Record, and dispensing with further service thereof;

2. an Order declaring that the Appellants have the right to appeal the orders of the Honourable Mr. Justice Osborne (the "**Hearing Judge**") dated October 19, 2023: (i) appointing Ernst & Young Inc. as receiver (the "**Receiver**") over the property, assets and undertakings of the Appellants (the "**Appointment Order**"); and (ii) approving the sale transaction (the "**Times Transaction**") contemplated by the agreement of purchase and sale between Romspen Investment Inc. ("**Romspen**") and Times 1010 Inc. ("**Times**") dated September 15, 2023, as amended (the "**Times Agreement**") for the acquisition of the Appellants' property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Real Property**") and vesting title in and to the Real Property in Times free and clear of all claims and encumbrances (the "**Approval and Vesting Order**") as of right and that the Appointment Order and the Approval and Vesting Orders are stayed pending the hearing of the appeal;

3. an Order dismissing the Receiver's motion for an order declaring that the Appellants require leave to appeal the Appointment Order and the Approval and Vesting Order (collectively, the "**Orders**");

4. in the alternative, granting leave to the Appellants to appeal the Orders and staying the Orders pending the resolution of the appeal;

5. an Order dismissing the Receiver's Motion for an order cancelling the automatic stay of the Orders;

6. costs of this motion on substantial indemnity basis; and

7. such further and/or other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Appellants are the owners of the Real Property. The Real Property consists of three separate legally described parcels totalling approximately 66.29 acres of developable vacant land in Markham, Ontario. The Appellants were in the process of developing the Real Property as a mixed used development comprised of film studios, offices, a hotel and retail.

2. There are five mortgages and one lien claim registered on title to the Real Property. The Appellants dispute the validity of one of the mortgages and the lien. The Appellants also dispute the amounts claimed as owing under the mortgages and the lien.

3. In September 2022, the Appellants defaulted on their loan with Romspen, which holds the first mortgage. Notices of Sale were served by Romspen in October 2022 and in April 2023 Romspen began marketing the Real Property for sale under power of sale.

4. The Appellants provided Romspen with an appraisal that showed that the appraised value of the Real Property was approximately $60 million higher than the listed price. The Appellants challenged Romspen's sale process and put Romspen on notice that if the real Property were to be sold for the price listed for sale by Romspen, they would pursue Romspen for damages for improvident sale.

Romspen's Receivership Application

5. In July 2023, Romspen concluded that a power of sale proceeding for the Real Property was not likely to generate the highest price for the Real Property and brought a receivership application to appoint a receiver for the express purpose of facilitating "a fair and transparent marketing and sale process for achieving a definitive disposition of the [Real] Property". In its application, Romspen led evidence that a marketing process by a court appointed receiver would generate a better price than a private power of sale process. The Appellants agreed with Romspen's application and the need for a receiver to conduct an open and transparent sale of the Real Property.

The Scheduling Conference

6. A scheduling conference for Romspen's receivership application took place on August 28, 2023 (the "**Scheduling Conference**") before the Honourable Mr. Justice Osborne (the "**Application Judge**"). The receivership application was scheduled to be heard on October 6, 2023 (the "**Hearing Date**").

7. At the Scheduling Conference, Sow Capital Ontario Limited ("**Sow**"), which holds a fifth mortgage against the Real Property, advised the Court and counsel in attendance that: (i) it commenced its own power of sale process for the Real Property; and (ii) that it entered into an agreement of purchase and sale for the Real Property (the "**Sow Agreement**") with 281653 Ontario Inc. ("**281**") on or around July 18, 2023 at a sale price of $66 million. Shortly thereafter, counsel for Sow wrote to all stakeholders to advise, *inter alia* that the Sow Agreement was now firm and

that a $3 million deposit was received. The Appellants put Sow on notice that if it completed this sale transaction, the Appellants will bring a claim for damages for improvident realization.

The Appellants Appraisals

8. On September 27, 2023, the Appellants obtained an updated appraisal from Cushman & Wakefield which demonstrated that the current “as is” appraised value of the Real Property is between $130 million and $141.9 million (the “**Appellants’ Appraisal**”). The Appellants’ Appraisal was consistent with an earlier appraisal obtained by the Appellants in 2019 which valued the Real Property at $140 million, subject to certain assumptions which have now been completed.

Romspen’s Conduct Prior to the Hearing Date

9. Less than one week before the Hearing Date, Romspen served motion materials wherein it, for the first time, advised the parties that: (i) on September 15, 2023, it had exercised its power of sale rights and entered into the Times Agreement; and (ii) it intended to seek the Approval and Vesting Order on October 6, 2023.

10. The net sale price under the Times Agreement is only marginally better than the net sale price under the Sow Agreement once commissions are taken into account. Any upside offered by the Times Agreement is further eroded by the professional fees of the Receiver and its counsel.

11. The Times Agreement expressly contemplates that the Times Transaction can be completed by Romspen under its private power of sale remedy or by the Receiver, if appointed, pursuant to an Approval and Vesting Order.

12. Times' and Romspen’s request for a vesting order is nothing more than a contrivance designed to protect Romspen from an improvident sale claim and is an abuse of process. No explanation was provided or evidence led at the hearing as to why an approval and vesting order was necessary or appropriate when Romspen had the ability to transfer clear title to Times under its power of sale.

The Pre-Filing Report of the Proposed Receiver

13. At 2:00 pm on October 4, 2023, counsel to the proposed receiver advised that they will be delivering a pre-filing report, which was subsequently delivered at 3:41 pm on the same date. The Appellants had no prior indication that a pre-filing report would be delivered.

14. The pre-filing report contained a number of unsubstantiated assumptions about the amounts owing under the mortgages, the reasonableness of Romspen’s sale process and the value of the Real Property. The Receiver did not consult with either counsel for Sow or the Appellants before preparing this report despite being fully aware that both parties were the only fulcrum stakeholders in this proceeding and were represented by legal counsel. The Receiver also did not consider or opine on the Appellants’ Appraisal which valued the property at an amount approximately $60 million higher than the sale price under the Times Agreement.

The October 6 Hearing

15. The following positions were set out by counsel in attendance at the October 6 hearing:

a. Romspen sought the Orders and opposed any reservation of rights by the Appellants;

b. Sow and 281 requested that they be permitted to conclude the Sow Agreement. They did not oppose the appointment of a Receiver but requested that the appointment be delayed until after the completion of the transaction contemplated by the Sow Agreement. 281 was and remains prepared to take title to the Real Property without a vesting order relying on the protections available under the *Mortgages Act* and the *Land Titles Act* (as detailed herein); and

c. The Appellants did not oppose the appointment of a receiver for the purpose of marketing and selling the Real Property. The Appellants opposed the “quick flip” sale of the Real Property and the appointment of a Receiver for the sole purpose of closing the “quick flip” transaction. The Appellants’ position was that unless the Receiver was appointed to market and sell the Real Property, the Court should dismiss Romspen’s application and instruct Romspen and Sow to complete their power of sale transactions without judicial interference. The Appellants also asked that any approval be without prejudice to their rights to attack the Times Sale (or the 281 Sale) as an improvident sale.

Decision of the Hearing Judge

16. The Hearing Judge: (i) approved the appointment of the Receiver; (ii) granted the approval and vesting order; and (iii) declined to allow the Appellants to preserve their right to advance their improvident sale claim in the future.

Errors of the Hearing Judge

17. The Appellants submit that the Hearing Judge incorrectly identified the issue at the hearing as “which Transaction ought to be approved”, the Times Transaction or the 281 Transaction. His Honour was not being asked by 281 or Sow to approve the Sow Transaction and neither Sow nor 281 brought a motion for an approval and vesting order.

18. The Appellants also submit that the Application Judge failed to properly consider the issue of whether the appointment of a receiver and an approval and vesting order were appropriate when Romspen could transfer clear title to the Real Property to Times under power of sale and the Times Agreement expressly permitted the exercise of this option.

19. The appointment of a receiver for the sole purpose of completing the Times Transaction entered into under Romspen’s power of sale proceeding was not just and convenient. There was no evidence before the Court that Romspen could not complete the Times Transaction under its power of sale proceeding and transfer clear title to Times. The necessity for the appointment of the receiver was further negated by the fact that another purchaser was ready and willing to purchase the Real Property under power of sale pursuant to a binding agreement of purchase and sale which included payment of a $3 million deposit.

20. Furthermore, the Appellant submit Hearing Judge erred in denying the Appellants the ability to preserve their rights to advance a claim for an improvident sale against Romspen in the future. The Hearing Judge’s reasons for depriving the Appellants of their right to advance a claim for improvident sale are focused solely on the purchaser’s ability to acquire the Real Property free and clear of claims.

21. The Appellants' reservation of rights to sue Romspen does not impact the clear title transferred to Times pursuant to either a power of sale or a vesting order. The Appellants' claim for improvident realization is limited to a claim against Romspen only and has no impact on the purchaser.

22. In addition, the Appellants respectfully submit that the Hearing Judge made several additional material errors:

a. failing to consider whether it was appropriate to grant the requested relief on short notice without adequate time for the Appellants (or other opposed parties) to adequately respond to the Receiver's report;

b. finding that the sale process followed by Romspen was fair and reasonable despite Romspen having filed uncontradicted evidence that "a court-supervised marketing and sale process is likely to be a better approach to achieving a definitive sale than a power of sale process";

c. failing to consider or give any or adequate weight to the Appellants' appraisals or comment on the Receiver's failure to consider them;

d. misapplying the test relating to "quick flip" sale transactions and failing to consider whether there were any additional requirements beyond the *Soundair* Principals;

e. finding that there was prejudice to the first four mortgagees if the "quick flip" is not approved when it was clear that either Sow or the Appellants were the fulcrum stakeholders;

f. finding that the test for a "quick flip" transaction was met because "there may well be erosion of realization by further delay, with the professional costs and the very significant interest that continues to accrue on all of the mortgages.";

g. concluding that a vesting order was appropriate in the circumstances where: (i) Romspen had been marketing the Property for sale through a real estate agent under power of sale; (ii) Romspen had served an Application Record in August 2023 returnable October 10, 2023 for the appointment of a receiver on the basis that a court-supervised sale process was a better approach for marketing and selling the Property; (iii) while the application was pending, Romspen entered into the Sale Agreement under power of sale with Times; (iv) Romspen had the ability under the *Mortgages Act* (Ontario) to transfer title to the Property free and clear of all claims; and (v) Times' request for a vesting order was nothing more than a contrivance designed to protect Romspen from an improvident sale claim and was an abuse of process; and

h. failing to allow the Appellants to reserve and preserve their claim for an improvident sale;

Leave is not Required for this Appeal

23. Leave is not required for the commencement of this appeal as there is an appeal as of right from the Hearing Judge’s Orders pursuant to Sections 193 (a) and (c) of the *Bankruptcy and Insolvency Act* as:

a. matters raised in the within appeal involve the Appellants' future rights, specifically Appellants' right to commence an action against Romspen and/or Sow for improvident sale as such right would only arise after the Times Agreement or the Sow Agreement were completed under power of sale; and

b. the value of the Real Property that is the subject of the Orders exceeded ten thousand dollars and the Hearing Judge's Orders were (i) not procedural; (ii) brought into play the value of the debtor's property; and (iii) resulted in a loss to the Appellants.

Alternatively, Leave to Appeal Should be Granted

24. In the alternative, if the Court finds that leave is required, the proposed appeal meets the test for leave to appeal under the BIA, in that:

(a) the proposed appeal raises issues of general importance to the practice in bankruptcy/insolvency matters and to the administration of justice as a whole. Specifically, the appeal raises important questions concerning the appropriate circumstances and considerations for approving "quick-flip" transactions and the use of the Court's discretion under the *BIA* to interfere with existing power of sales proceedings brought pursuant to the *Mortgages Act*;

(b) the proposed appeal is of significance to this proceeding;

(c) the proposed appeal is *prima facie* meritorious and not frivolous; and

(d) the proposed appeal will not hinder the progress of the proceeding.

The Stay Should Not be Cancelled

25. If the appeal is as of right or to leave to appeal granted, the Orders are automatically stayed;

26. The Receiver's motion to cancel the stay should be denied. The Appeal has significant merit and the balance of convenience favours the Appellants.

27. In terms of prejudice to both sides, the difference is very significant. If the stay is cancelled, the Times Agreement will be completed at an improvident price and the Appellants will lose their right to commence an improvident sale action concerning a sales process they believe is grossly deficient and will cost them millions of dollars.

28. By contrast, Romspen will be fully paid out even if the Times Agreement ultimately does not proceed. There is no risk to its security.

Other Grounds

29. Rule 61.03.1 of the *Rules of Civil Procedure*.

30. Sections 193 and 195 of the *Bankruptcy and Insolvency Act*;

31. Such further and other grounds as counsel may advise.

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

1. The Endorsement of Justice Osborne dated October 19, 2023

2. The evidence filed by the parties at the hearing; and

3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 6, 2023

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100A)
Email: maya@chaitons.com

Darren Marr (LSO #79660G)
Email: darren@chaitons.com

Tel: (416) 222-8888
Fax: (416) 218-1841

TO: SERVICE LIST

SERVICE LIST

CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9 **Maya Poliak** (LSO #54100A) Tel: (416) 218-1161 maya@chaitons.com Darren Marr (LSO #79660G) Tel: (416) 218-1136 dmarr@chaitons.com Lawyers for the Respondents	**BLANEY McMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5 **Eric Golden** (LSO #38239M) Tel: (416) 593-3927 egolden@blaney.com **Chad Kopach** (LSO #48084G) Tel: (416) 593-2985 ckopach@blaney.com Lawyers for the Proposed Receiver, Ernst & Young
ERNST & YOUNG INC. EY Tower 100 Adelaide Street West, PO Box 1 Toronto, ON M5H 0B3 **Jeff Kerbel** Tel: 416-943-3545 jeffrey.d.kerbel@parthenon.ey.com Proposed Receiver	**SUSMAN, LEONARD, LL.B PROFESSIONAL CORPORATION** 608-1000 Finch Avenue West Toronto, Ontario M3J 2V5 **LEONARD SUSMAN** Tel: 416-222-6000 leonardsusman@bellnet.ca Lawyers for Amber Mortgage Investment Corp.
DICKINSON WRIGHT 199 Bay Street, Suite 2200 Toronto, ON M5L 1G4 **DAVID PREGER** Tel: (416) 777-0101 DPreger@dickinson-wright.com **LISA CORNE** Tel: (416) 646-4608 lcorne@dickinsonwright.com Lawyers for the Applicant	**BORDEN LADNER GERVAIS LLP** 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 **ROGER JAIPARGAS** Tel: (416) 367-6266 RJaipargas@blg.com Lawyers for Amber Mortgage Investment Corp.

JUSTIN T. CHANG P.C. 390 Bay Street, Suite 300 Toronto, ON M5H 2Y2 **JUSTIN CHAN** Tel: (416) 867-2565 jchan@jtcprofcorp.com Lawyers for DX Strategies Inc.	**KEYSER MASON BALL LLP** 4 Robert Speck Parkway Mississauga, ON L4Z 1S1 **BOTA MCNAMARA** Tel: (905) 276-0424 bmcnamara@kmblaw.com **AMANDEEP SIDHU** Tel: (905) 276-0401 asidhu@kmblaw.com **HARJAAP SAHOTA** Tel: (905) 766-5015 hsahota@kmblaw.com Lawyers for Sow Capital Inc.
LIPMAN ZENER & WAXMAN 100 Sheppard Avenue East, Suite 850 Toronto, ON M2N 6N5 **MARK KLAIMAN** Tel: (416) 789-0650 mklaiman@lzwlaw.com **IAN KLAIMAN** Tel: (416) 789-0658 iklaiman@lzwlaw.com Lawyers for 2816513 Ontario Inc.	**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP** 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1 **KEN ROSENBERG** Tel: (416) 646-4304 ken.rosenberg@paliareroland.com **MAX STARNINO** Tel: (416) 646-7431 max.starnino@paliareroland.com Lawyers for The Times Group
FOGLER RUBINOFF 77 King Street West, suite 3000 Toronto, ON M5K 1G8 **VERN DARE** Tel: (416) 941-8842 vdare@foglers.com Lawyers for 2149602 Ontario Inc., Frank Pa and Stephen Tung	**UBS AG** 9 Penang Road Singapore Karen Lim karen-zb.lim@ubs.com c/o **STIKEMAN ELLIOT LLP** 5300 Commerce Court West 199 Bay Street Toronto ON M5L 1B9 **JUSTIN PARAPPALLY** Tel: 416-869-5235 JParappally@stikeman.com

THE CORPORATION OF THE CITY OF MARKHAM Legal Services Department 101 Town Centre Boulevard Markham ON L3R 9W3 Email: customerservice@markham.ca	**CANADA REVENUE AGENCY** c/o Department of Justice Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite 3400 Toronto ON M5X 1K6 **ED PARK** AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; edward.park@justice.gc.ca
MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 33 King Street West, 6th Floor Oshawa ON L1H 8H5 insolvency.unit@ontario.ca	

EMAIL SERVICE LIST

egolden@blaney.com; ckopach@blaney.com; jeffrey.d.kerbel@parthenon.ey.com; leonardsusman@bellnet.ca; DPreger@dickinson-wright.com; lcorne@dickinsonwright.com; RJaipargas@blg.com; jchan@jtcprofcorp.com; bmcnamara@kmblaw.com; asidhu@kmblaw.com; hsahota@kmblaw.com; mklaiman@lzwlaw.com; iklaiman@lzwlaw.com; ken.rosenberg@paliareroland.com; vdare@foglers.com; JParappally@stikeman.com; karen-zb.lim@ubs.com; customerservice@markham.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; edward.park@justice.gc.ca; insolvency.unit@ontario.ca; maya@chaitons.com; max.starnino@paliareroland.com

ROMSPEN INVESTMENT CORPORATION -and- **TUNG KEE INVESTMENT CANADA LTD. et. al.**
Applicant (Respondent) Respondents (Appellants)

Court of Appeal File No. COA-23-CV-1129
Court File No. CV-23-00703161-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF CROSS-MOTION FOR LEAVE TO APPEAL
(November 9 2023)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak LSO#: 54100A
Tel: (416) 218-1161
Email: maya@chaitons.com

Darren Marr LSO #79660G
Tel: (416) 218-1136
Email: dmarr@chaitons.com

Lawyers for the Appellants

TAB 2

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00703161-00CL **DATE:** August 28, 2023
REGISTRAR: L. Lewis

NO. ON LIST: 1

TITLE OF PROCEEDING: **Romspen Investment Corporation v Tung Kee Investment Canada Ltd**
BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
David Preger	Romspen Investment Corporation	dpreger@dickinsonwright.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Tung Kee Investment Canada Ltd.	maya@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Justin Chan	DX Strategies Inc	jchan@jtcprofcorp.com
Vern DaRe	149602 Ontario Inc., Frank Pa and Stephen Tung, Tel	vdare@foglers.com
Amandeep Sidhu	Counsel for Sow Capital Ontario Limited	asidhu@kmblaw.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. This scheduling case conference took place today.

2. The Applicant wishes to schedule the hearing of this Application for the appointment of a receiver. The Respondents may or may not oppose the appointment of a receiver, or there may be issues as to scope and power of any receivership.

3. The principal asset of the Debtors is a vacant property of some 66 acres. The fifth mortgagee, Sow Capital, issued a Notice of Sale and indeed apparently has a potential buyer and a pending agreement of purchase and sale. It may be that the parties can come to an agreement with respect to a sale to this potential purchaser. Mr. Sidhu will provide purchaser information and transaction details to the other parties forthwith.

4. On the consent of all parties, the receivership application is scheduled to be heard on **October 29, 2023 commencing at 10 AM**. All counsel are available on that date and have confirmed that if the matter proceeds, it will be ripe for a determination on the merits and all materials and facta will have been filed.

5. In the event that that hearing date is not required in the matter resolved on consent, counsel will advise the Commercial List Office immediately in order that the date can be vacated and made available for other matters.

6. If counsel require a consent order to deal with the mechanics of sale, they may schedule a brief appointment before me through the Commercial List Office. All parties are in agreement as to two things:

    a. if the pending sale does not close, and the deposit of the proposed purchaser is forfeited, it will not automatically enure to the benefit of the fifth mortgagee and indeed will be held in trust by Mr. Sidhu pending agreement of all parties or further order of the Court; and

    b. if the pending sale does close, the proceeds of sale will be held in the same manner.

Osborne, J.

TAB 3

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00703161-00CL **DATE:** **19 October 2023**

NO. ON LIST: **1**

TITLE OF PROCEEDING: **ROMSPEN INVESTMENT CORPORATION v. TUNG KEE INVESTMENT CANADA LTD. et al**

BEFORE JUSTICE: **Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Davis Preger, Lisa Corne and David Seifer	Romspen Investment Corp.	dpreger@dickinsonwright.com lcorne@dickinsonwright.com dseifer@dickinsonwright.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Respondents	maya@chaitons.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
Roger Jaipargas	Amber Mortgage Inv. Corp.	rjaipargas@blg.com
Vern DaRe	2149602 Ontario Inc., Frank Pa and Stephen Tung	vdare@foglers.com
Bota McNamara and Amandeep Sidhu	Sow Capital Ontario Limited	bmcnamara@kmblaw.com asidhu@kmblaw.com
Justin Chan	DX Strategies	jchan@jtcprofcorp.com
Ian Klaiman	2816513 Ontario Inc.	iklaiman@lzwlaw.com

Ken Rosenberg	Times Group	ken.rosenberg@paliareroland.com
Chad Kopach	Proposed Receiver - EY	ckopach@blaney.com

ENDORSEMENT OF JUSTICE OSBORNE:

The Receivership Application, the Two Sale Approval Motions and the Positions of the Parties

1. The Applicant, Romspen Investment Corporation ("Romspen"), seeks an order allowing the Application and appointing Ernst & Young Inc. as receiver and manager (the "Receiver") over the assets and property of the Respondents / Debtors Tung Kee Investment Canada Ltd. (TKIC") and Tung Kee Investment Limited Partnership ("TKIL") including the property at 3143 19th Ave., Markham, Ontario (the "Property").

2. The Property consists of three separate legally described parcels which collectively comprise an area of approximately 66.29 acres of developable vacant land. The Debtors had planned a mixed-use development including a film studio, offices a hotel and retail, although that did not proceed.

3. Within the Application, Romspen moves for an order approving an agreement of purchase and sale between Romspen and Times 1010 Inc. ("Times") dated September 15, 2023, as amended (the "Times Transaction"), and authorizing the Receiver to complete the Times Transaction and vest title to the Property in Times. The Times Transaction is scheduled to close on November 15, 2023. Romspen has first position mortgage security registered against title to the Property.

4. Romspen also seeks as corollary relief a sealing order in respect of Confidential Exhibits 1 through 3 to the Supplementary Affidavit of Wesley Roitman sworn September 29, 2023, and the Confidential Appendices to the First Report of the Proposed Receiver.

5. Sow Capital Ontario Limited ("Sow") moves by way of its own motion for an order authorizing and permitting the completion of the sale of the Property, under power of sale, to 2816513 Ontario Inc. (the "281 Transaction"). Sow does not oppose the appointment of the Receiver, but seeks in its motion an order that the Receivership Order, if granted, be suspended until after November 30, 2023, the scheduled closing date for the 281 Transaction.

6. The appointment of a receiver is not opposed by any party appearing today, and indeed is supported by the Respondents / Debtors as well as subsequent ranking mortgagees and the holder of a lien registered against title to the Property. As stated, Sow however seeks an order that no receivership powers be executed or acted upon until after the 281 Transaction closes.

7. Approval of either sale transaction is, obviously, contested.

8. Approval of the Times Transaction sought by Romspen is supported by Amber Mortgage Investment Corporation ("Amber") as second mortgagee, 2149602 Ontario Inc. ("214") as third mortgagee, and DX Strategies Inc. ("DX") as lienholder.

9. I pause to observe that DX takes the position that it should be entitled to a priority over all five mortgages although all parties agree that priority and distribution issues are for another day and need not be determined to dispose of the competing motions today.

10. The third mortgagees, Frank Pa and Steven Tung, were represented in Court but did not take a position on either sale.

11. The Respondents / Debtors oppose the approval of either transaction and submit that only an auction conducted by the Receiver can generate the highest price for the Property. They further request that if either transaction is approved, this Court grant an order specifically reserving their rights to bring an action for improvident sale, as their counsel advised they intend to do.

12. By way of related relief, the Respondents / Debtors seek an order that the proceeds of sale be held in trust and not be distributed to any mortgagees until their improvident sale action has been determined.

13. The proposed Receiver, in its First Report dated October 4, 2023, supports and recommends approval of the Times Transaction and recommends that no auction process be undertaken, as the proposed Receiver does not believe that further marketing of the Property would yield any higher or better offers. It submits that the terms of the proposed approval and vesting order are reasonable.

14. Many of the background facts and the chronology are not in dispute.

15. Romspen advanced a secured loan to the Debtors, which are Ontario corporations. The loan has been in default since September 1, 2022. As of July 6, 2023, the amount owing under the Romspen loan was $32,628,671.54. Interest accrues at a *per diem* rate of $8359.84.

16. Romspen's security includes a first ranking mortgage over the Property and security interest over all of the personal property of the Debtors. The mortgage and the security documents contain contractual agreements to the appointment of a receiver upon default.

17. There are five mortgages registered on title to the Property including the Romspen mortgage and the Sow mortgage:

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 (Cdn) and $26,279,223.54 (HK)
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	Sow Capital Ontario Limited	$20 million

18. In addition to the mortgages, a construction lien and certificate of action are also registered against title to the Property. They reflect that the Respondent TKIC is indebted to DX Strategies Inc. in the amount of $4,653,028.11 in respect of the supply of project management and architectural services.

19. Efforts on the part of the Debtors to refinance and sell the Property have not borne fruit.

20. On October 7, 2022, Romspen made formal demand for payment of its loan and issued a Notice of Intention to Enforce Security under section 244 (1) of the *Bankruptcy and Insolvency Act* ("BIA"). The cure period has long expired. The loan has not been repaid.

21. On October 25, 2022, Romspen issued a notice of sale under its mortgage, and on May 1, 2023, it accepted an offer to purchase the Property although the buyer terminated that agreement prior to the expiry of the condition period. The Property has been subsequently listed for sale by Romspen since April 4, 2023 with Royal LePage as broker.

22. Romspen has lost faith in the ability of the Debtors and their management to resolve the situation, with the result that it seeks the appointment of a receiver pursuant to both section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act* ("*CJA*").

23. The Appointment Order, if granted, authorizes the Receiver to sell the Property.

24. The Property has been marketed extensively since being listed with Royal LePage in April, and has been listed for sale on MLS for over 160 days. In addition, the Respondents and Sow have been attempting to sell and/or refinance the Property since at least 2021.

25. Romspen therefore seeks the approval of the Times Transaction and an order authorizing the Receiver to complete the Transaction and, upon delivery of a Receiver's certificate, an order vesting title to the Property, free and clear of all Encumbrances other than Permitted Encumbrances as defined in the Times Transaction, in Times.

26. The Times Transaction reflects a purchase price that is higher than the fair market value of the Property as reflected in appraisals commissioned by each of Romspen and Sow. It is unconditional save for the issuance of an approval and vesting order.

27. For its part, Sow, as fifth ranking mortgagee, served its own Notice of Sale on May 17, 2023 and entered into the 281 Transaction on July 18, 2023. That agreement therefore predates the agreement for the Times Transaction. The 281 Transaction is now unconditional. Sow therefore seeks an order permitting it to complete its power of sale to 281 pursuant to section 23 of the *Mortgages Act*.

The Proposed Receivership

28. The first issue is whether a receiver should be appointed.

29. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?

30. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.

31. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.,* 2013 ONSC 6866 ("*Elleway*") at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

32. The Courts have considered numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and which I have considered in this case:

a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

c. the nature of the property;

d. the apprehended or actual waste of the debtor's assets;

e. the preservation and protection of the property pending judicial resolution;

f. the balance of convenience to the parties;

g. the fact that the creditor has a right to appointment under the loan documentation;

h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

i. the principle that the appointment of a receiver should be granted cautiously;

j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

k. the effect of the order upon the parties;

l. the conduct of the parties;

m. the length of time that a receiver may be in place;

n. the cost to the parties;

o. the likelihood of maximizing return to the parties; and

p. the goal of facilitating the duties of the receiver.

See: *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, and *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999).

33. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54.

34. Accordingly, is it just or convenient to appoint a receiver in the present case. In my view, it is.

35. While certainly not determinative of the issue, the fact that the appointment of a receiver is not opposed by any party, and the somewhat unusual fact that the appointment of the receiver is in fact consented to and indeed supported by the Respondents / Debtors themselves, is very telling.

36. Romspen has a contractual entitlement to the appointment of a receiver in the event of a default, which has clearly occurred here, as is acknowledged by the Respondents. But even more substantively, I am satisfied that a Court-appointed receiver is appropriate here to bring order and transparency to the chaos that has been the hallmark of dealings with the Property for a considerable period of time prior to the bringing of this Application, and continue to date. This chaos is clearly evidenced by the competing

motions for sale approval and the strongly held views and acrimony between and among many of the key stakeholders even today.

37. Chaos is usually antithetical to the achievement of the overarching objective of maximizing recovery for stakeholders. I am satisfied that this objective can be achieved, and indeed in the present circumstances can only be achieved, under the supervision of a Court-appointed Receiver. I recognize, naturally, that if either Transaction is approved, the role of the Receiver will necessarily be materially impacted accordingly.

38. The factors relevant to the appointment of a receiver are easily satisfied here. The Romspen loan has been in default for over a year and has not been repaid notwithstanding demands, the section 244 *BIA* notice, and the Romspen notice of sale. The loan matured according to its terms on January 1, 2023. As is evident from the summary above, the Property is highly leveraged with numerous mortgages. Romspen has lost faith in the ability of the Debtors and their management to address the situation, and none of the efforts of the Debtors to refinance the loan or sell the Property have yielded any results.

39. A Court-appointed receiver will ensure that the interests of all of the stakeholders of the Debtors are considered.

40. The proposed Receiver is an appropriate candidate to fulfil this role and is extremely qualified to do so. It has consented to the appointment.

41. EY is appointed Receiver.

42. In my view, there is no basis or justification here to appoint the Receiver, but suspend or hold in abeyance its ability to exercise its receivership powers. Romspen and the supporting subordinate mortgagees all oppose any such suspension, and so do the Respondents who want the Receiver to immediately commence a sales and auction process.

43. The only party who submits that a suspension would be appropriate is Sow. It advances no adequate basis for what is, effectively, an adjournment of the appointment of the Receiver since for all practical purposes the appointment of the Receiver albeit with the suspension of its powers, amounts to the same thing.

44. Sow makes this request openly and transparently so that the Receiver cannot and will not interfere with the closing of the 281 Transaction. I am satisfied that there is no basis upon which the appointment of the Receiver, which I have found to be both just and convenient now, should be impaired and held in abeyance for approximately two months.

45. In certain circumstances, and particularly with the consent of the parties where there is a pending transaction that is scheduled to be completed imminently, it may well be appropriate to appoint a receiver but suspend for a brief period of time all or some of the powers granted to it under the receivership order. However, I would think it would be the relatively rare case where, on a contested basis, it is on the one hand just or convenient to appoint a receiver at a given point in time, and yet on the other hand also just and equitable that receivership powers not be exercised for a period of time.

<u>Should Either Transaction be Approved?</u>

46. The next issue is whether any (either) Transaction should be approved now, or whether a further sales process ought to be undertaken by the Receiver.

47. The factors to be considered by the Court in determining whether a sale transaction in a receivership should be approved are well settled:

    a. whether the party seeking sale approval has made a sufficient effort to obtain the best price and to not act improvidently;

    b. the interests of all parties;

    c. the efficacy and integrity of the process by which the party obtained offers; and

    d. whether the working out of the process was unfair.

    See: *Royal Bank of Canada v. Soundair Corp*., [1991] 46 OAC 321 1991, CanLII 2727 (ONCA) at para. 16.

48. Courts have approved immediate sales of property (colloquially referred to as "quick flip sales") in circumstances where a marketing process was conducted by a party other than a receiver, if the process was nonetheless fair and reasonable and where the court was of the view that no purpose would be served by a further marketing process: see *Textron Financial Canada Limited v. Beta Limitee/Beta Brands Limited*, 2007 CanLII 297 (ONSC); *Fund 321 Limited Partnership v. Samsys Technologies Inc*., 2006 CanLII 13572 (ONSC); *Tool-Plas Systems Inc., Re*, 2008 CanLII 54791 (ONSC) at para. 15; and *Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc*., 2013 ONSC 6905 ("*Montrose*").

49. In such circumstances, the *Soundair* Principles still apply, but courts will scrutinize with special care the adequacy and the fairness of the sales and marketing process. D. M. Brown, J., as he then was, expressed it this way in *Montrose* at para. 10:

> "Quick flip" or "pre-pack" transactions are becoming more common in the Ontario distress marketplace. In certain circumstances, a "quick flip" involving the appointment of a receiver and then immediately seeking court approval of a "pre-packaged" sale transaction may well represent the best, or only, commercial alternative to a liquidation. In such situations the court still will assess the need for a receiver and the reasonableness of the proposed sale against the standard criteria set out in decisions such as *Bank of Nova Scotia v. Freure Village on Clair Creek* and *Royal Bank v. Soundair Corp*., respectively. However, courts will scrutinize with especial care the adequacy and the fairness of the sales and marketing process in "quick flip" transactions:
>
>> Part of the duty of a receiver is to place before the court sufficient evidence to enable the court to understand the implications for all parties of any proposed sale and, in the case of a sale to a related party, the overall fairness of the proposed related-party transaction. As stated by Morawetz J. in the *Tool-Plas* case:
>>
>>> [T]he Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the quick flip transaction would realistically be any different if an extended sales process were followed.
>
> The need for such a robust and transparent record is heightened even more where the proposed purchase involves a credit bid by one of the debtor's secured creditors, the practical effect of which usually is to foreclose on all subordinate creditors.

50. I am satisfied that it is not appropriate in the circumstances of this case to direct the Receiver to conduct a further sales and marketing process, with the result that one or other of the two Transactions should be approved now.

51. The availability of the Property, and the opportunity to purchase it if such was desired, has not caught the market by surprise. On the contrary, it has been openly available for approximately two years.

52. I am satisfied that the potential reward to be realized with a further sales process is outweighed by the risk of lower recovery for stakeholders. The Respondents themselves have attempted to sell or refinance the Property since January 2022 and have failed.

53. The process undertaken by or at the direction of Romspen, which is discussed further below, has been robust. Royal LePage was engaged to list the Property for sale on MLS in April, 2023 at a listing price of $69.5 million. Two offers were received by the initial bid deadline, and Romspen accepted the higher offer although it was subject to a due diligence condition. Regrettably, the buyer terminated the agreement and a few months later, on July 15, 2023, the same buyer submitted an unconditional offer with a purchase price equivalent to 75% of the price originally offered. Romspen did not accept that offer.

54. On July 12, 2023, the listing price of the Property was reduced by $5 million to $64.5 million.

55. Royal LePage conducted a process that I am satisfied was thorough and extensive. The Property was listed for sale on MLS for 162 days and exposed to a wide audience of land developers and commercial brokers. The process was multifactorial and included, among other things:

    a. physical signs at the Property;

    b. advertising on the realtors' business websites and through marketing brochures, as well as advertising on over 100 other websites. Statistics from realtor.ca, the largest online search engine in Canada, reflect that the Property was viewed 6309 times on 32 sites;

    c. proactive email announcements by Royal LePage to subscribers that included over 1000 cooperating and regional brokers and 201 land developers in Ontario. Of those recipients, 540 brokers and 70 land developers opened the email; and

    d. advertising specifically to the Mandarin speaking and Asian market in Canada.

56. The Receiver recommends approval of the Times Transaction and states that it does not believe that further marketing of the Property will result in superior offers.

57. In its First Report, the (then proposed) Receiver concludes that Romspen sales process was conducted in a manner that:

    a. was fair to all who participated in it and consider 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 audiences, including land developers and commercial brokers;

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

    e. resulted in an offer for the Property that provides certainty as to closing, is higher than all other offers, and is also higher than the three appraisals commissioned for the Property (one by Romspen, and two by Sow).

58. All of these factors lead the Receiver to the conclusion that a further marketing campaign of the Property would not yield higher or better offers.

59. Even Sow submits that appointing a receiver, or at least appointing a receiver with the power to act immediately and not suspending those powers, would increase costs and likely would not realize a more favourable sale price with the result that creditors would be prejudiced (see Wong Affidavit, para. 30).

60. As against this, given the very significant encumbrances against the Property, interest is accruing at a rate of approximately $709,000 per month. Those costs, combined with the additional professional fees reasonably expected to be incurred to conduct a sales and marketing process, weigh heavily in favour of a realization of proceeds as soon as possible.

61. Finally, I observe that in its responding materials filed on these motions, Sow did not redact confidential information in connection with the 281 Transaction specifically including the purchase price or the results of the appraisals that it had commissioned. That information is reproduced again in its factum, also openly filed. Even at the hearing of these motions, no sealing order was sought by Sow.

62. While this may not be fatal to the success of a further sales and marketing process if one were ordered, I agree with the conclusion of the Receiver that the 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 now publicly disclosed by Sow. At best, it is unhelpful to a new sales process.

63. For all of these reasons, I am satisfied that a further sales process is neither necessary nor appropriate here.

<u>Which Transaction Should be Approved?</u>

64. The next question, then, is which Transaction ought to be approved: the Times Transaction or the 281 Transaction.

65. In my view, the Times Transaction should be approved.

66. While both Transactions are unconditional and the scheduled closing date for each of them is not sufficiently different to be a material factor (they are only two weeks apart, although given the dollar values at play in the present case even that short period of time represents an interest cost savings of approximately $334,000 in favour of the Times Transaction), the Times Transaction represents the better outcome for all stakeholders.

67. The purchase price payable under the Times Transaction is higher than:

    a. the purchase price payable under the 281 Transaction;

    b. the values reflected in the appraisal reports of the appraisers commissioned by each of Romspen (who commissioned one appraisal report from Altus), and Sow (who commissioned two appraisal reports, one each from Avison Young and Wagner Andrews Kovacs respectively); and

    c. the purchase price payable under the purchase agreement entered into in April, 2023 by the Debtors and the proposed purchaser Lee Li international Inc., by a delta of $4 million.

68. The proposed purchaser in the Times Transaction, Times 1010, is a well-known developer in the greater Toronto area with a good track record. It has carried on business in Ontario for over 35 years and has completed numerous commercial and residential developments. It has provided Romspen with a letter from its bank confirming that it has the financial resources to close the transaction.

69. On the other hand, the 281 Transaction was entered into on July 18, 2023 with an initial closing date of October 16, 2023. That was subsequently extended to November 30, 2023 although no explanation has

been offered as to why that extension was required or granted. This extension was also sought and granted after the deal had become firm and conditions waived or satisfied, with the result that the unexplained extension of closing is further perplexing.

70. The process leading to the 281 Transaction did not include many of the hallmarks of the typical power of sale process with attendant marketing and sale features. On the contrary, the affidavit evidence of Mr. Philip Wong on which Sow relies, is non-specific. He states that Sow engaged various "investment consultants" to market the Property to "potential investors" and that its investment consultant was actively speaking with the potential buyer but that buyer was "outbid". There is no explanation for what any of this actually means, and raises more questions than it provides answers. I note that I have specifically reviewed and considered the evidence of Mr. Wong as set out in his affidavit at paragraphs 26 – 35. The Property was not listed on MLS nor widely advertised to the open market.

71. Moreover, Mr. Wong is a director of both the fifth mortgagee, Sow, which endorses and supports the 281 Transaction, and also of the Respondent TKIC. He was involved, at least for a period of time, and the pursuit of zoning and other municipal approvals in respect of the Property and the potential development thereof.

72. The evidence of the Respondents is to the effect that Mr. Wong, the principal of Sow, was a "business partner" of the Respondents, who was involved in both assisting them with their municipal zoning applications and communicating with potential purchasers. They say that Mr. Wong was "well apprised of all of the municipal approvals obtained". However, they submit, "on or around June, 2023, the Respondents and Mr. Wong had a falling out. The Respondents have not had any business or personal dealings with Mr. Wong or Sow since then."

73. The Respondents and Sow rely on this "falling out on or around June, 2023", without further context or explanation, to support their argument that there has been no acting in concert between the Respondents and Sow.

74. There is no evidence of a non-arm's-length relationship at the relevant time. However, in my view, the unexplained extension of the closing date reflects a greater execution risk with the 281 Transaction, and a sales process undertaken by Sow leading to that agreement that was at best more opaque, and was less transparent and clear, than was the process undertaken by Romspen.

75. Separate entirely from the involvement of Mr. Wong, the Respondents themselves submit, and the evidence of Pui Ling Lai on which they rely states, that the process undertaken by Sow "has not demonstrated that it has sufficiently exposed the Real Property to market" and that "the Real Property was marketed by Sow to a close small group of Sow's private clients only. Sow did not retain industry recognized commercial realtors and did not demonstrate that it has the necessary commercial real estate experience to market this property for sale."

76. Another factor is the fact that the affidavit filed by the proposed purchaser and the 281 Transaction (the relevance and appropriateness of which is discussed below) is from Hunter Lam, who is the Vice President of Business Development and Planning of Lee Li Holdings Inc., which he describes as a related and associated company of the proposed purchaser, 281. Lee Li was the purchaser in the earlier agreement of purchase and sale referred to above that ultimately did not close. The position of these parties is that they have no relationship with Sow, the fifth mortgagee who endorses and supports the closing of the 281 Transaction.

77. What remains unexplained is why Sow, who supported the earlier agreement at a purchase price some $4 million lower than the purchase price reflected in the Times Transaction, now does not support approval of the latter.

78. Having considered all of the relevant factors, I find that the balance favours the process leading to the Times Transaction.

79. Moreover, and in any event, and as stated above, the purchase price payable under the 281 Transaction is less than the proceeds that will be generated under the Times Transaction net of the real estate commission payable to Royal LePage.

80. This itself is a significant factor. That significance is magnified, in my view, when one considers the lack of any explanation from Sow, as fifth mortgagee, to explain its support for the 281 Transaction and its opposition to the Times Transaction, since the risk that it will suffer a greater shortfall is greater with the 281 Transaction.

81. The Respondents rely on the Affidavit of Pui Ling Lai sworn October 5, 2023 in support of their position that neither Transaction should be approved and that the Receiver should undertake a sales and marketing process. They submit that neither Transaction represents the best and highest price for the Property and, as stated above, such can be realized only through a further sales process undertaken by the Receiver.

82. In my view, however, none of those submissions, which are advanced vigourously, can overcome the practical reality that the Property has been exposed to the market as described above for a very significant period of time, and to an audience that includes both any potential purchasers with access to realtor.ca, and specific, targeted marketing to known commercial real estate brokers and land developers. Yet, none stepped forward with a higher price or otherwise more favourable offer.

83. Finally, the Respondents submit that they are really the only fulcrum stakeholders affected by the result here, since Romspen in first position, and maybe also Sow in fifth position, will be paid out in full. They therefore submit that there is no prejudice to any of the mortgagees, specifically including Romspen and Sow, to permit the Receiver time to market and sell the property.

84. I cannot accept that there is no prejudice to the mortgagees. The market is uncertain as evidenced by, among other things, the lack of a large number of offers generally and by the fact that the purchaser under the April, 2023 transaction who initially walked away, subsequently submitted an unconditional offer but only at 75% of its originally proposed purchase price.

85. I cannot accept the bald assertion by the Respondents that this case is distinguishable from the facts in *Elleway*, since the facts here clearly demonstrate that there will be no erosion of realization on security by the mortgagees caused by additional delay. There may very well be erosion of realization by further delay, with the professional costs and the very significant interest that continues to accrue on all of the mortgages.

86. In short, I am satisfied that it is in the best interests of the stakeholders that, as recommended by the Receiver, the Times Transaction, representing an unconditional commitment to purchase the Property in a very short period of time, be approved, and that another sales process is unlikely to yield a higher or otherwise better offer for the Property.

87. It follows that I decline to impose the term urged by the Respondents to the effect that this approval is without prejudice to their right to still attack the transaction as an improvident sale. I accept the submission of Romspen that such a condition or term is antithetical to the basis upon which the sale transaction is approved in the first place. The purchaser in the Times Transaction wants, and in my view is entitled to, a vesting order confirming that title is free and clear. The other stakeholders equally desire this, in order that purchasers are properly incentivized to offer maximum value and favourable terms.

88. Finally, I observe that 281, the proposed purchaser in the 281 Transaction, submitted a Responding Motion Record containing the affidavit of a senior officer of 281 and related entities, submitted a factum, and had counsel who appeared on the motion.

89. As a preliminary matter, I accept the general proposition urged by counsel for Times 1010, that unsuccessful bidders have no standing to challenge a receiver's motion to approve the sale to another candidate. As stated by Farley, J. in *Skyepharma PLC and Hyal Pharmaceutical Corporation*, 1999 CarswellOnt 3641, [1999] O.J. No. 4300, [2000] B.P.I.R. 531, 12 C.B.R. (4th) 87, 92 A.C.W.S. (3d) 455, 96 O.T.C. 172 at para. 8:

> Unsuccessful bidders have no standing to challenge a receiver's motion to approve the sale to another candidate. They have no legal or proprietary right as technically they are not affected by the order. They have no interest in the fundamental question of whether the court's approval is in the best interest of the parties directly involved. See *Crown Trust Co. v. Rosenberg* at pp. 114-119 and *British Columbia Development Corp. v. Spun Cast Industries Ltd.* (1977), 26 C.B.R. (N.S.) 28 (B.C. S.C.) at pp. 30-31. The corollary of this is that no weight should be given to the support offered by a creditor *qua* creditor as to its offer to purchase the assets.

90. 281 argues here that the prohibition expressed in *Skyepharma* does not apply here since 281 does not come to Court as an unsuccessful purchaser, but rather as a successful purchaser under a power of sale proceeding who is entitled at law to have its agreement approved.

91. In the circumstances, and without granting standing, I agreed to hear brief submissions from 281, and, in fairness, therefore from Times 1010. I remain of the view that unsuccessful bidder has no standing to challenge a sale approval motion in respect of that sale to another purchaser. In in my view, the fact that in this case the sale agreement was entered into before the Receiver was appointed, does not change that analysis.

92. 281 is still only a proposed purchaser pursuant to one of two transactions before the Court. Its views can and should be accorded little if any weight in a consideration of the appropriate factors affecting the determination of whether a "quick flip" transaction should be approved as set out in *Soundair* and *Montrose*.

93. Even if I am in error with respect to the weight to be given to any submissions from 281, they do not in any event change my conclusion as to the result here.

94. 281 argues that this Court cannot approve the Times Transaction since, as soon the 281 Transaction agreement of purchase and sale was entered into, a constructive trust arose resulting in an equitable conversion that transferred beneficial ownership in the Property to the purchaser under that agreement: in this case, 281.

95. It relies on the decision of the Court of Appeal for Ontario in *Simcoe Vacant Land Condominium Corp. No. 272 v. Blue Shores Developments Ltd.*, 2015 ONCA 378 at paras. 47 and 48.

96. I do not read that decision as supporting the relief sought by 281 in the present circumstances. In *Blue Shores*, the Court of Appeal stated that the common law has long recognized that a valid contract for the purchase and sale of land gives rise to a trust relationship, with the purchaser acquiring a beneficial interest, and that this principle applies to condominiums.

97. However, in *Blue Shores*, there was no insolvency of the debtor (or mortgagor), no competing power of sale proceedings, and no Court-appointed receivership. In my view, that case does not stand for the proposition for which it is advanced here, which is that, effectively and for all practical purposes, a mortgagee who holds a mortgage of an insolvent mortgagor/debtor who has defaulted on that mortgagee's mortgage as well as other mortgages registered on title to the same property, can circumvent completely a process already underway and somehow "trump" that process or the rights of any purchaser that derived therefrom, and force the completion of its own power of sale.

98. That would thwart a fair, open and transparent sales process intended to maximize the outcome for all stakeholders which is the outcome sought to be achieved by the application of the factors as set out in cases like *Soundair* and *Montrose*.

99. To be clear, it is certainly not the case that a mortgagee who holds a mortgage that is in default is not entitled to institute power of sale proceedings, or that a purchaser under that power of sale is not entitled to insist upon the completion of the transaction just because the mortgagor may be in default of its obligations under other mortgages registered against title to the same Property.

100. However, in circumstances such as those present here, where the power of sale proceeding instituted by Romspen was already underway, a subsequent ranking mortgagee ought not to be able to "jump the line" and, off on its own and without the knowledge or involvement of any other parties, enter into an agreement with the purchaser, and then take the position that such an agreement is beyond challenge because the purchaser enjoys an equitable conversion of the beneficial interest in the property through a constructive trust that arises upon execution of the agreement of purchase and sale.

101. The 281 Transaction resulted from the power of sale proceeding initiated by Sow, whose mortgage ranks fifth in priority. Separate and apart from the insolvency context referred to above, the position of Sow is that, as fifth mortgagee, it has the legal right to foreclose any rights of redemption held by prior ranking mortgagees, without paying out the amounts owing under those prior ranking mortgages, and circumvent a sales and marketing process already underway by the first ranking mortgagee. I do not accept that, in the particular circumstances of this case.

<u>Sealing Order</u>

102. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.42, provides for the Court's authority to grant a sealing order. It provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record.

103. The Supreme Court of Canada in *Sherman Estate v Donovan,* 2021 SCC 25, at para. 38, recast the test from *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 (CanLII):

> The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core principles that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking the court to exercise discretion in a way that limits the open court presumption must establish that:
>
> a) court openness poses a serious risk to an important public interest;
>
> b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

> Only where all of these prerequisites have been met can a discretionary limit on openness - for example, a sealing order, a publication ban, an order excluding the public from the hearing, or a redaction order - properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments: *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at paras. 7 and 22.

104. Under the first branch of the three-part test, an "important commercial interest" is one that can be expressed in terms of the public interest in confidentiality. Here, as in *Sierra Club*, the moving party submits that the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information as well as maintaining the sanctity of contract.

105. As noted above, there is no opposition to the sealing order requested here. In my view, the test is easily met. The material sought to be sealed represents sensitive commercial information that could reasonably expected to negatively affect any sales and marketing process in the event that the Times Transaction does not close and the Property must be marketed again.

106. Such a result would negatively affect the interests of all stakeholders and the process generally. The order sought is proportionate and time-limited, with effect only until the Transaction is completed.

107. The sealing order is appropriate and is granted.

<u>Result and Disposition</u>

108. The Receiver is appointed and the receivership is effective immediately. The form of receivership order is consistent with the Model Order with the Commercial List modified as appropriate to reflect the circumstances of this proceeding. The terms and scope of the receivership are appropriate.

109. The Times Transaction is approved and the Purchaser is entitled to an approval and vesting order.

110. The sealing order is granted.

111. Orders to go to reflect these Reasons. The draft orders submitted require modest changes to reflect the parties present, the materials reviewed, and the result. Counsel for Romspen may submit revised draft orders for signature through my judicial assistant, Ms. Mary Sibenik at mary.sibenik@ontario.ca.

Osborne, J.

TAB 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY THE 19TH
	)	
JUSTICE OSBORNE	)	DAY OF OCTOBER, 2023

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

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant Romspen Investment Corporation (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Ernst & Young Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of the Respondents (collectively, the "Debtors"), acquired for, or used in relation to a business carried on by the Debtors, was heard on October 6, 2023 by Zoom videoconference.

ON READING the Affidavit of Wesley Roitman sworn July 19, 2023, and the Exhibits thereto, including Confidential Appendices A through G, the Affidavit of Wesley Roitman sworn September 29, 2023 and the exhibits thereto, including Confidential Exhibits 1 through 3, the

Affidavit of Philip Wong sworn September 26, 2023, and the exhibits thereto, the pre-filing report of Ernst & Young Inc., as proposed receiver of the Respondents, dated October 4, 2023, and the Appendices thereto, including Confidential Appendix A, the Affidavit of Hunter Lam sworn October 4, 2023, and the Exhibits thereto, the Affidavit of Pui Ling Lai sworn October 5, 2023, and the Exhibits thereto, and the Affidavit of Dan Teh sworn October 5, 2023, and the Exhibits thereto, and on hearing the submissions of counsel for Romspen, counsel for Amber Mortgage Investment Corp., counsel for 2149602 Ontario Inc., Frank Pa and Stephen Tung, counsel for SOW Capital Ontario Limited, counsel for the Respondents, counsel for the Receiver, counsel for DX Strategies Inc., counsel for 2816513 Ontario Inc., and counsel for Times 1010 Inc., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Janet Nairne sworn August 23, 2023, and October 2, 2023, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ernst & Young Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of 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 lands and premises described in Schedule “A” hereto, and all proceeds thereof (collectively, the “Property”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to the Debtors;

(h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof, whether directly, or through such real estate broker(s) as the Receiver may in its discretion engage, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business subject to the approval of the Court;

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's

possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

12. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and

limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

The charges granted in this paragraph 21 as security for the payment of monies borrowed by the Receiver are hereinafter referred to as to the "Receiver's Borrowing Charge".

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/tungkee.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the

records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

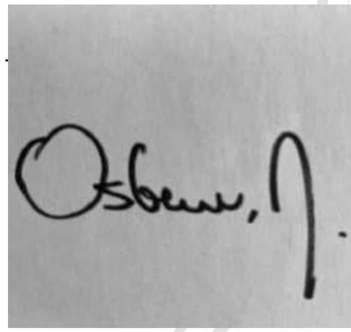
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



2023.10.26 07:58:25 -04'00'

SCHEDULE "A"

Municipal Address: 3143 19th Avenue, Markham, Ontario

PIN: 03055-0377 (LT) in LRO #65

Legal Description: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $_____________________

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 19th day of October, 2023 (the "Order") made in an action having Court file number CV-23-00703161-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of Bank of _________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of ______________, 2023.

ERNST & YOUNG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: ____________________________________

Name:

Title:

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

TUNG KEE INVESTMENT CANADA LTD. et al.
Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER APPOINTING A RECEIVER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

DAVID PREGER (36870L)
Email: dpreger@dickinsonwright.com
Tel: 416-646-4606

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: 416-646-4608

DAVID Z. SEIFER (77474F)
Email: DSeifer@dickinson-wright.com
Tel: 416-646-6867

Lawyers for the Applicant

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 19TH
	)	
JUSTICE OSBORNE	)	DAY OF OCTOBER, 2023

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant, Romspen Investment Corporation ("**Romspen**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between Romspen and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 between Romspen, Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (such agreement of purchase and sale, as so amended, the "**Sale Agreement**") and attached to the Supplementary Affidavit of Wesley Roitman sworn September 29, 2023, authorizing and directing Ernst & Young Inc., in its capacity as Court-appointed receiver and manager of the Respondents (in such capacities, the "**Receiver**"), to complete the Transaction as vendor and vesting in 3143 Holdings Inc. all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the property municipally known as 3143 19th Avenue, Markham, Ontario and legally described in Schedule "B" hereto (the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Affidavit of Wesley Roitman sworn July 19, 2023, and the Exhibits thereto, including Confidential Appendices A through G, the Affidavit of Wesley Roitman sworn September 29, 2023 and the exhibits thereto, including Confidential Exhibits 1 through 3, the Affidavit of Philip Wong sworn September 26, 2023, and the exhibits thereto, the pre-filing report of Ernst & Young Inc., as proposed receiver of the Respondents, dated October 4, 2023, and the Appendices thereto, including Confidential Appendix A, the Affidavit of Hunter Lam sworn October 4, 2023, and the Exhibits thereto, the Affidavit of Pui Ling Lai sworn October 5, 2023, and the Exhibits thereto, and the Affidavit of Dan Teh sworn October 5, 2023, and the Exhibits thereto, and on hearing the submissions of counsel for Romspen, counsel for Amber Mortgage Investment Corp. ("**Amber**"), counsel for 2149602 Ontario Inc., Frank Pa and Stephen Tung, counsel for SOW Capital Ontario Limited, counsel for the Respondents, counsel for the Receiver, counsel for DX Strategies Inc., counsel for 2816513 Ontario Inc., and counsel for Times 1010 Inc., 3143 Holdings Inc. and Times 3143 Limited Partnership, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Janet Nairne sworn August 23, 2023, and October 2, 2023, filed:

1. THIS COURT ORDERS that the time for service of Romspen's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today, and all further service thereof is hereby dispensed with.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the Receiver is hereby authorized and directed to complete the Transaction as vendor, in accordance with the Sale Agreement, with such minor amendments as the Receiver may deem necessary, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Property to 3143 Holdings Inc.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to 3143 Holdings Inc., substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the Property shall vest absolutely in 3143 Holdings Inc., free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated October 19, 2023 appointing Ernst & Young Inc. as Receiver; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C1", Schedule "C2" and Schedule "C3" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of York Region LRO No. 65 of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter 3143 Holdings Inc. as the registered owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule “C1”, Schedule “C2” and Schedule “C3” hereto.

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

6. THIS COURT ORDERS that, subject to the Receiver obtaining an opinion from its counsel that the respective security held by Romspen and Amber over the Property is valid and enforceable, subject to the usual assumptions and qualifications, the Receiver is authorized and directed to make distributions to Romspen and Amber in respect of all of the secured obligations owing to each of Romspen and Amber, in accordance with payout statements to be delivered by each of Romspen and Amber to the Receiver, from the proceeds derived from the Transaction, which distributions will be made forthwith after the closing of the Transaction.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

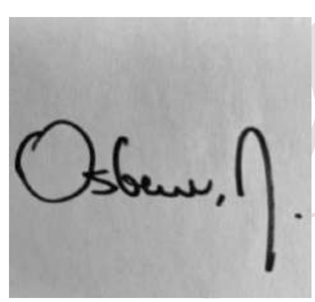
(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Respondents and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Respondents;

the vesting of the Property in 3143 Holdings Inc., pursuant to this Order shall be binding on any Trustee in bankruptcy that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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



2023.10.26 15:40:17 -04'00'

Schedule "A" - Form of Receiver's Certificate

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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated October 19, 2023, Ernst & Young Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated October 19, 2023, the Court approved the agreement of purchase and sale between Romspen and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 between Romspen, Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (such agreement of purchase and sale, as so amended, the "**Sale Agreement**") and authorized the

Receiver to complete the Transaction as vendor and provided for the vesting in 3143 Holdings Inc. all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Property**"), which vesting is to be effective with respect to the Property upon the delivery by the Receiver to 3143 Holdings Inc. of a certificate confirming (i) the payment by Times 3143 Limited Partnership of the Purchase Price for the Property; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and Times 3143 Limited Partnership; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. Times 3143 Limited Partnership has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and Times 3143 Limited Partnership; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at ________ [TIME] on ________________2023.

Ernst & Young Inc., in its capacity as Receiver of the undertaking, property and assets of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership and not in its personal capacity

Per: ______________________________________

Name:
Title:

Schedule "B" - Property

Municipal Address: 3143 19th Avenue, Markham, Ontario

PIN: 03055-0377 (LT) in LRO #65

Legal Description: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

Schedule "C1"

Claims to be deleted and expunged from PIN 03055-0377 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR1618190	2011/03/07	TRANS PARTNERSHIP		TUNG KEE INVESTMENT LIMITED PARTNERSHIP	TUNG KEE INVESTMENT CANADA LTD.
YR3083072	2020/03/26	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED JIAYI INTERNATIONAL INVESTMENTS LTD.
YR3083073	2020/03/26	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED JIAYI INTERNATIONAL INVESTMENTS LTD.
YR3247257	2021/05/07	TRANSFER OF CHARGE		JIAYI INTERNATIONAL INVESTMENTS LTD.	SOW CAPITAL ONTARIO LIMITED
YR3247258	2021/05/07	NO ASSGN RENT GEN		JIAYI INTERNATIONAL INVESTMENTS LTD.	SOW CAPITAL ONTARIO LIMITED
YR3300382	2021/08/18	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	F A CREDIT SOLUTIONS CANADA INC. SOW CAPITAL ONTARIO LIMITED
YR3373212	2022/01/27	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3373213	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3373214	2022/01/27	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3373215	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3373216	2022/01/27	CHARGE	$8,000,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3373217	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3373218	2022/01/27	TRANSFER OF CHARGE		F A CREDIT SOLUTIONS CANADA INC.	SOW CAPITAL ONTARIO LIMITED
YR3373219	2022/01/27	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3373403	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	ROMSPEN INVESTMENT CORPORATION
YR3373404	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	AMBER MORTGAGE INVESTMENT CORP.
YR3373405	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3385745	2022/02/24	NOTICE	$8,000,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3397627	2022/03/22	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	THE CORPORATION OF THE CITY OF MARKHAM
YR3397628	2022/03/22	POSTPONEMENT		ROMSPEN INVESTMENT CORPORATION	THE CORPORATION OF THE CITY OF MARKHAM

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3397629	2022/03/22	POSTPONEMENT		AMBER MORTGAGE INVESTMENT CORP.	THE CORPORATION OF THE CITY OF MARKHAM
YR3397630	2022/03/22	POSTPONEMENT		2149602 ONTARIO INC.	THE CORPORATION OF THE CITY OF MARKHAM
YR3397631	2022/03/22	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	THE CORPORATION OF THE CITY OF MARKHAM
YR3440956	2022/06/17	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3440959	2022/06/17	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	PA, FRANK TUNG, STEPHEN
YR3441040	2022/06/17	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3447697	2022/07/04	NOTICE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3454771	2022/07/20	POSTPONEMENT		2149602 ONTARIO INC.	ALECTRA UTILITIES CORPORATION
YR3454772	2022/07/20	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	ALECTRA UTILITIES CORPORATION
YR3454773	2022/07/20	POSTPONEMENT		ROMSPEN INVESTMENT CORPORATION	ALECTRA UTILITIES CORPORATION
YR3454774	2022/07/20	POSTPONEMENT		AMBER MORTGAGE INVESTMENT CORP.	ALECTRA UTILITIES CORPORATION
YR3454775	2022/07/20	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	ALECTRA UTILITIES CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3505530	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505547	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505567	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513700	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538686	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541425	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

Schedule "C2"

Claims to be deleted and expunged from PIN 03055-0379 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3412266	2022/04/21	TRANSFER		TUNG KEE INVESTMENT CANADA LTD.	TUNG KEE INVESTMENT CANADA LTD.
YR3470724	2022/08/30	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470725	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470728	2022/08/30	CHARGE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470729	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470730	2022/08/30	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3470731	2022/08/30	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3470732	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3505533	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505555	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505559	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513701	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538687	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541426	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

Schedule "C3"

Claims to be deleted and expunged from PIN 03055-0380 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3412266	2022/04/21	TRANSFER		TUNG KEE INVESTMENT CANADA LTD.	TUNG KEE INVESTMENT CANADA LTD.
YR3470724	2022/08/30	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470725	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470728	2022/08/30	CHARGE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470729	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470730	2022/08/30	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3470731	2022/08/30	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3470732	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3505533	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505555	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505559	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513701	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538687	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541426	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

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

(Unaffected by the Vesting Order)

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. As of the date hereof, any registered easements or rights of way in favour of any governmental authority or public utility provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Any unregistered hydro easements provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property
5. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
6. Any registered agreements, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property and same are in good standing;
7. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
8. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders;
9. Any breaches of any applicable laws, including work orders, if any;
10. Any registered subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction provided that same are in good standing;
11. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used as of the date hereof;
12. The following instruments registered on title against the Property:

Permitted Instruments on PIN 03055-0377 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF	

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
				CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

Permitted Instruments on PIN 03055-0379 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
65R39948	2022/07/12	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

Permitted Instruments on PIN 03055-0380 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

ROMSPEN INVESTMENT CORPORATION -and- TUNG KEE INVESTMENT CANADA LTD. et al.
Applicant Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

DAVID PREGER (36870L)
Email: dpreger@dickinsonwright.com
Tel: 416-646-4606

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: 416-646-4608

DAVID Z. SEIFER (77474F)
Email: DSeifer@dickinson-wright.com
Tel: 416-646-6867

Lawyers for the Applicant

TAB 6

Court File No.

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:

(Court Seal)

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

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

Respondents

AFFIDAVIT OF WESLEY ROITMAN

(Sworn July 19, 2023)

I, WESLEY ROITMAN, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

I.INTRODUCTION

1. I am the Managing General Partner of the Applicant Romspen Investment Corporation ("**Romspen**") and have knowledge of the matters to which I hereinafter depose.

2. I am swearing this Affidavit in support of an application to appoint Ernst & Young Inc. as receiver and manager of all of the assets, undertakings and properties of the Respondents Tung

Kee Investment Canada Ltd. ("**TKIC**") and Tung Kee Investment Limited Partnership ("**TKIL**" and together with TKIC, collectively, the "**Debtors**").

3. Romspen is a non-bank commercial/industrial mortgage lender.

4. The Debtors are indebted to Romspen in connection with a secured loan (the "**Loan**") which has been in financial default since September 1, 2022. On October 7, 2022, Romspen, through its counsel, made demand for payment on the Debtors of the amount then owing of $30,570,589.19 and issued a notice of intention to enforce its security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**").

5. Notwithstanding the demand and the expiry of the statutory ten day notice period under the BIA, the Debtors have failed to repay the Loan. As of July 6, 2023, the amount owing under the Loan was $32,628,671.54.

II.LOAN AND SECURITY

6. Romspen extended the Loan to the Debtors pursuant to a commitment letter dated October 18, 2021. The commitment letter was amended by an amendment dated December 14, 2021, two further amendments dated January 7, 2022 and January 23, 2022, and a Mortgage Loan Modification and Extension Agreement dated May 1, 2022. The commitment letter, as amended, is hereinafter referred to, collectively as, the "**Loan Agreement**"). A copy of the Loan Agreement is attached as **Exhibit 1**. Pursuant to the Loan Agreement, the Lender agreed to lend the Debtors up to a maximum principal amount of $30 million, with interest at the rate of 9.4% *per annum*, calculated and compounded monthly, in arrears, for a term expiring on January 1, 2023.

7. TKIC is an Ontario corporation. A copy of a profile report in respect of TKIC is attached as **Exhibit 2**.

8. TKIL is an Ontario limited partnership. A copy of a profile report in respect of TKIL is attached as **Exhibit 3**.

9. TKIC is the registered owner of property municipally known as 3143 19th Avenue, in Markham, Ontario (the "**Property**").

10. TKIL is the beneficial owner of the Property. A copy of the Beneficial Owner Agreement, Direction and Acknowledgement delivered by the Debtors in favour of Romspen is attach as **Exhibit 4**.

11. 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, approximately one kilometre east of Highway 404, in the City of Markham (the "**City**"). The area surrounding the Property is predominantly rural, with urban residential and commercial uses in close proximity. The Debtors planned to develop the Property as a mixed use development comprised of film studios, offices, a hotel and retail.

12. As security for the Loan, Romspen holds, among other security:

(a) a Promissory Note dated January 24, 2022 in the principal amount of $30 million (the "**Note**");

(b) a first-ranking mortgage/charge registered on title to the Property (the "**Mortgage**") on January 27, 2022; and

(c) a security agreement over the personal property of each of the Debtors dated January 24, 2022 (the "**Security Agreement**").

Copies of the Note, the Mortgage and the Security Agreement are attached, respectively, as **Exhibits 5, 6, and 7**.

13. Both the Mortgage and the Security Agreement contain contractual rights on the part of Romspen to appoint a receiver on default.

14. The Property was originally identified in parcel identification number ("**PIN**") 03055-002 but was subsequently split into four PINS, namely 03055-0377, 03055-0378, 03055-0379 and 03055-0380.

15. The Debtors transferred PIN 03055-0378 to the City on August 8, 2022. To facilitate the transfer, Romspen and the other mortgagees registered on title to the Property granted partial discharges of their mortgages against PIN 03055-0378. Inadvertently, however, discharges were also registered against PINs 03055-0379 and 03055-0380. To cure the error, all of the mortgages that were discharged, including the Mortgage, were registered on title to the affected parcels on August 30, 2022 and the priority of Romspen's security over the Property was unaffected. A copy of the Mortgage registered on title to PINS 03055-0379 and 03055-0380 is attached as **Exhibit 8**.

16. Copies of the current parcel registers in respect of the three PINS that comprise the Property are attached, collectively, as **Exhibit 9**.

17. The existing financial encumbrances registered on title to the Property are summarized in the table below. Copies are attached as **Exhibits 10 through 47** as set out in the far right column of the table.

Financial Encumbrances Registered Against Property							
Order of Reg.	**Instrument Number**	**Date Registered**	**Nature of Encumb.**	**Registered Holder**	**Face Amount**	**Notes**	**Exhibit**
1.	YR3083072	2020/03/26	Mortgage	Sow Capital Ontario Limited JIAYI International Investments Ltd.	$5,000,000		**10**
2.	YR3247257	2021/05/07	Transfer/Charge	Sow Capital Ontario Limited		From JIAYI International Investments Ltd.	**11**
3.	YR3300382	2021/08/18	Transfer of Charge	FA Credit Solutions Canada Inc. Sow Capital Ontario Limited		From Sow Capital Ontario Limited	**12**
4.	YR3373212	2022/01/27	Charge	Romspen	$30,000,000		**6**
5.	YR3373214	2022/01/27	Charge	Amber Mortgage Investment Corp.	$8,500,000		**13**
6.	YR3373216	2022/01/27	Charge	2149602 Ontario Inc.	$8,000,000		**14**
7.	YR3373218	2022/01/27	Transfer/Charge	Sow Capital Ontario Limited		From FA Credit Solutions Canada Inc.	**15**

Financial Encumbrances Registered Against Property							
Order of Reg.	**Instrument Number**	**Date Registered**	**Nature of Encumb.**	**Registered Holder**	**Face Amount**	**Notes**	**Exhibit**
8.	YR3373219	2022/01/27	Charge	Pa, Frank Tung, Stephen	$3,540,000		**16**
9.	YR3373403	2022/01/28	Postponement	Romspen		From Sow Capital Ontario Limited	**17**
10.	YR3373404	2022/01/28	Postponement	Amber Mortgage Investment Corp.		From Sow Capital Ontario Limited	**18**
11.	YR7337340 5	2022/01/28	Postponement	2149602 Ontario Inc.		From Sow Capital Ontario Limited	**19**
12.	YR3385745	2022/02/24	Notice	2149602 Ontario Inc.	$8,000,000		**20**
13.	YR3397626	2022/03/22	Notice	Tung Kee Investment Canada Ltd.			**21**
14.	YR3397627	2022/03/22	Postponement	The City		From Sow Capital Ontario Limited	**22**
15.	YR3397628	2022/03/22	Postponement	The City		From Romspen	**23**
16.	YR3397629	2022/03/22	Postponement	The City		From Amber Mortgage Investment Corp.	**24**
17.	YR3397630	2022/03/22	Postponement	The City		From 2149602 Ontario Inc.	**25**
18.	YR3397631	2022/03/22	Postponement	The City		PA, Frank	**26**

Financial Encumbrances Registered Against Property							
Order of Reg.	**Instrument Number**	**Date Registered**	**Nature of Encumb.**	**Registered Holder**	**Face Amount**	**Notes**	**Exhibit**
						Tung, Stephen	
19.	YR3440956	2022/06/17	Notice	2149602 Ontario Inc.	$9,500,000		**27**
20.	YR3440959	2022/06/17	Postponement	Pa, Frank Tung, Stephen		From Sow Capital Ontario Limited	**28**
21.	YR3441040	2022/06/17	Postponement	2149602 Ontario Inc.		From Sow Capital Ontario Limited	**29**
22.	YR3447697	2022/07/04	Notice	Amber Mortgage Investment Corp.	$8,500,000		**30**
23.	YR3470724	2022/08/30	Charge	Romspen	$30,000,000	Not registered on PIN 03055-0377 (LT)	**8**
24.	YR3470726	2022/08/30	Charge	Amber Mortgage Investment Corp.	$8,500,000		**31**
25.	YR3470728	2022/08/30	Charge	2149602 Ontario Inc.	$9,500,000	Not registered on PIN 03055-0377 (LT)	**32**
26.	YR3470730	2022/08/30	Charge	Pa, Frank Tung, Stephen	$3,540,000	Not registered on PIN 03055-0377 (LT)	**33**
27.	YR3470731	2022/08/30	Charge	Sow Capital Ontario Limited	$5,000,000	Not registered on PIN 03055-0377 (LT)	**34**

Financial Encumbrances Registered Against Property							
Order of Reg.	**Instrument Number**	**Date Registered**	**Nature of Encumb.**	**Registered Holder**	**Face Amount**	**Notes**	**Exhibit**
28.	YR3505530	2022/12/06	Notice	2149602 Ontario Inc.	$9,500,000		**35**
29.	YR3505533	2022/12/06	Notice	2149602 Ontario Inc.	$9,500,000	Not registered on PIN 03055-0377 (LT)	**36**
30.	YR3505547	2022/12/06	Postponement	2149602 Ontario Inc.			**37**
31.	YR3505555	2022/12/06	Postponement	2149602 Ontario Inc.		From Pa, Frank Tung, Stephen Not registered on PIN 03055-0377 (LT)	**38**
32.	YR3505567	2022/12/06	Postponement	2149602 Ontario Inc.		From Sow Capital Ontario Limited	**39**
33.	YR3505559	2022/12/06	Postponement	2149602 Ontario Inc		From Sow Capital Ontario Limited. Not registered on PIN 03055-0377 (LT)	**40**
34.	YR3513700	2023/01/09	Transfer/Charge	Miltom Services Limited Sow Capital Ontario Limited			**41**

Financial Encumbrances Registered Against Property							
Order of Reg.	**Instrument Number**	**Date Registered**	**Nature of Encumb.**	**Registered Holder**	**Face Amount**	**Notes**	**Exhibit**
35.	YR3513701	2023/01/09	Transfer of Charge	Miltom Services Limited Sow Capital Ontario Limited		From Sow Capital Ontario Limited Not registered on PIN 03055-0377 (LT)	**42**
36.	YR3538686	2023/04/05	Notice	Sow Capital Ontario Limited	$2		**43**
37.	YR3538687	2023/04/05	Notice	Sow Capital Ontario Limited		Not registered on PIN 03055-0377 (LT)	**44**
38.	YR3541410	2023/04/14	Construction Lien	DX Strategies Inc.	$4,653,028		**45**
39.	YR3563830	2023/06/16	Certificate	DX Strategies Inc.			**46**

18. Pursuant to Subordination and Postponement Agreements dated January 2022 between Romspen and each of Amber Mortgage Investment Corporation ("**Amber**"), Sow Capital Ontario Limited ("**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. Copies of the Subordination and Postponement Agreement are attached, collectively, as **Exhibit 47**.

19. By virtue of the postponements and transfers registered on title, the mortgages registered on title to the Property are held by the following creditors, rank in the following order of priority and secure the following principal face amounts:

Ranking Priority	**Creditor**	**Principal Face Amount**
First	Romspen	$30 million
Second	Amber	$8.5 million
Third	214	$3,744,759.41 (Cdn) and $26,279,223.54 (HK)
Fourth	Pa and Tung	$3.54 million
Fifth	Sow Capital	$20 million

20. Notice of Romspen's security interest in the Debtors' personal property is registered under the *Personal Property Security Act* (the "**PPSA**"). Copies of PPSA Enquiry Response Certificates in respect of the Debtors current to July 5, 2023 together with summaries are attached, collectively, as **Exhibit 48**.

21. The PPSA summaries, disclose that Romspen's registration is prior in time to the registration by UBS AG. All other registered secured parties have postponed and subordinated their security in favour of Romspen pursuant to the Subordination and Postponement Agreement (copy attached as Exhibit 48).

III. DEFAULT AND DEMAND FOR PAYMENT

22. On September 1, 2022, the Debtors defaulted in payment of interest due under the Loan. By letter dated October 7, 2022, Romspen made formal written demand for payment of the indebtedness under the Loan and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. Copies of the demand letter and Notice of Intention to Enforce Security are attached, collectively, as **Exhibit 49**.

23. Despite the demand and the expiry of the ten day statutory notice under the BIA, the Debtors have failed to repay the Loan

IV. POWER OF SALE

24. On October 25, 2022, Romspen, by its lawyers, issued a notice of sale under the Mortgage. A copy of the notice of sale, together with the registered mail receipts, are attached, collectively, as **Exhibit 50**.

25. After the redemption period under the notice of sale expired, Romspen commissioned an appraisal of the Property. Thereafter, in early April of 2023, Romspen engaged Royal LePage Your Community Realty brokerage ("**Royal LePage**") to list the Property for sale under power of sale for a listing price of $69.5 million on MLS. Offers were requested for submission by end of day on April 28, 2023.

26. Two offers were received. Both were from credible buyers. One was for a significantly higher purchase price than the other.

27. On May 1, 2023, Romspen accepted the higher offer. An unredacted copy of the agreement of purchase and sale (the “**APS**”) is attached as **Confidential Appendix A**. A redacted copy is attached as **Exhibit 51**. The APS was subject to a broad due diligence condition in favour of the buyer. Additionally, the APS precluded Romspen from accepting the redemption of its Loan and terminating the APS without liability.

28. On May 5, 2023, Romspen’s counsel, David Preger of Dickinson Wright LLP, notified the Debtors’ counsel, Miller Thomson LLP and Teplitsky Colson LLP, that Romspen had entered into the APS. A copy of the email notification is attached as **Exhibit 52.**

29. Unfortunately, prior to the expiry of the conditional period, the buyer terminated the APS.

30. On July 15, 2023, the same buyer submitted an unconditional offer to Romspen purchase the Property for a purchase price equivalent to 75% of the price originally payable under the APS. Romspen was not prepared to accept that offer. An unredacted copy of the offer is attached as **Confidential Appendix B**. A redacted copy is attached as **Exhibit 53**.

31. On July 12, 2023, Romspen reduced the listing price of the Property to $64.5 million.

32. Although the Property continues to be listed for sale by Romspen under power of sale, given the current economic climate of high interest rates and real estate market illiquidity, I believe that a Court-supervised marketing and sale process is likely to be a better approach to achieving a definitive sale than a power of sale process in which buyers may be inclined to try to and leverage price reductions before waiving conditions.

V.THE DEBTORS' CHALLENGES

33. Since May of 2022, the Debtors were promoting a sale of the easterly parcel of the Property identified in PIN 03055-0379 to Element Media Group, Inc. ("**Element**"), who purportedly planned to develop a studio thereon. An unredacted copy of the agreement of purchase and sale between TKIC and Element, as amended, is attached as **Confidential Appendix C**. A redacted copy is attached as **Exhibit 54**.

34. Copies of unredacted communications exchanged between the Debtors' counsel and Romspen's counsel, Friedman Law Professional Corporation and Dickinson Wright LLP, between November 4, 2022 and February 24, 2023 are attached, collectively, as **Confidential Appendix D**. Redacted copies of the communications are attached as **Exhibit 55**.

35. As appears from the communications:

- the deposit money payable under the Element transaction that was promised from overseas never materialized;
- other efforts on the part of the Debtors to refinance and sell the Property also never materialized;
- the Debtors were unable or unwilling to put the Loan into financial good standing, which was consistently expressed to be the basis upon which Romspen would agree to forbear from continuing with enforcement of its security; and

- the Debtors unilaterally attempted to impose a forbearance arrangement by wiring $80,000 to Romspen, which Romspen refused to accept and the Debtors have refused to cooperate with Romspen's efforts to return the funds.

36. On April 27, 2023, Mr. Preger received a letter from the Debtors' counsel, Ali Baniasadi of Miller Thomson LLP advising that TKIC had been negotiating a sale of the Property and was contemplating finalizing a purchase agreement. An unredacted copy of the letter is attached as **Confidential Appendix E**. A copy of the letter, with the commercial terms and identity of the buyer redacted, is attached as **Exhibit 56**. Bizarrely, in the letter, Romspen was asked to confirm within 24 hours that TKIC should not enter into the purchase agreement, failing which TKIC would finalize and execute the purchase agreement.

37. On April 28, 2023, Mr. Preger responded by email that he was at a loss to understand why TKIC was asking Romspen to approve anything, as TKIC was free to do whatever it wished. A copy of the email is attached as **Exhibit 57**.

38. No purchase agreement was subsequently produced by TKIC to Romspen.

39. On June 7, 2023, Mr. Preger received a letter from the Debtors' counsel, Jonathan Kulathungam of Teplitsky Colson LLP, taking issue with Romspen's power of sale efforts. An unredacted copy of the letter is attached as **Confidential Appendix F**. A redacted copy of the letter is attached as **Exhibit 58**. Curiously, notwithstanding Mr. Kulathungam's criticisms (none of which were valid), the purchase price payable under the transaction referred to in Mr.

Baniasadi's letter of April 27, 2023 was lower than the price that would have been payable under the power of sale transaction contemplated in the APS, had Romspen's buyer waived conditions.

40. On June 20, 2023, Mr. Preger emailed Mr. Kulathungam advising that Romspen's buyer under the APS did not waive conditions and that his instructions were to apply to Court for the appointment of a receiver to market and sell the Property. Mr. Preger further confirmed that it remained open to the Debtors to exercise their right to redeem Romspen. A copy of the email is attached as **Exhibit 59**.

VI.COMMUNICATIONS WITH SOW CAPITAL

41. Copies unredacted communications exchanged between Sow Capital's counsel and Dickinson Wright LLP and Royal LePage, between May 8, 2023 and July 19, 2023 are attached, collectively, as **Confidential Appendix G**. Redacted copies of the communications are attached as **Exhibit 60**.

42. Romspen has not been provided a copy of the agreement of purchase and sale purportedly entered into by Sow Capital under power of sale and is unaware of the terms of such agreement, including whether the transaction is subject to due diligence conditions and the buyer is credible. Given the time that has passed, Romspen is also not comfortable with Sow Capital, as the most junior-ranking mortgagee, controlling the sale of the Property, particularly in view of its refusal to facilitate the offer being made to Royal LePage.

VII.JUST AND CONVENIENT TO APPLYING TO RECEIVER

43. As of July 6, 2023, the amount owing under the Loan was $32,628,671.54 and interest was accruing and continues to accrue thereon at the *per diem* rate of $8,359.84. A copy of Romspen's statement summary is attached as **Exhibit 61**.

44. The appointment of the proposed receiver over the assets, undertakings, and property of the Debtors is just and convenient in the circumstances of this case for the following reasons:

(a) notwithstanding the issuance of demand, the section 244 BIA notice and the notice of sale, the Debtors have failed to repay the Loan;

(b) the statutory notice periods under the BIA and the *Mortgages Act* have long expired;

(c) the Loan matured on January 1, 2023;

(d) the Mortgage and Romspen's security agreements contain contractual entitlements to appoint a receiver upon default;

(e) the Property is deeply leveraged with numerous subordinate-ranking mortgages;

(f) Romspen has lost faith in the ability of the Debtors' management to turn the situation around. None of their efforts to refinance the Loan or sell the Property have yielded any tangible results and they are now purporting to shift blame on Romspen for their inability to refinance or sell; and

(g) a Court-appointed receiver will ensure that the interests of all of the Debtors' stakeholders are considered and facilitate a fair and transparent marketing and sale process for achieving a definitive disposition of the Property.

SWORN BEFORE ME by videoconference, at the City of Toronto, in the Province of Ontario, on this 19th day of July, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

DAVID PREGER

WESLEY ROITMAN

ROMSPEN INVESTMENT CORPORATION -and- **TUNG KEE INVESTMENT CANADA LTD. et al.**

Applicant Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF WESLEY ROITMAN

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

DAVID P. PREGER (36870L)
Email: dpreger@dickinsonwright.com
Tel: 416.646.4606

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: 416.646.4608

Lawyers for the Applicant

TAB 7

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:

(Court Seal)

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

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

Respondents

AFFIDAVIT OF WESLEY ROITMAN
(Sworn September 29, 2023)

I, WESLEY ROITMAN, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

I. INTRODUCTION

1. I am the Managing General Partner of the Applicant Romspen Investment Corporation ("**Romspen**") and have knowledge of the matters to which I hereinafter depose. Where my knowledge is based on information and belief, I have stated the source of my information and believe it to be true.

2. This Affidavit supplements my Affidavit sworn on July 19, 2023 ("**First Affidavit**") and replies to the affidavit of Philip Wong sworn September 26, 2023 (the "**Wong Affidavit**") on behalf of SOW Capital. Capitalized terms not otherwise defined herein have the same meanings given to them in my First Affidavit.

3. I am swearing this Affidavit in support of a motion for an order approving the transaction (the "**Transaction**") contemplated in an agreement of purchase and sale received by Romspen (as trustee under power of sale) from Times 1010 Inc. ("**Times**") dated September 15, 2023 (the "**Times APS**").

4. The Times APS was provided to Romspen in the context of Romspen's pending application to appoint Ernst & Young Inc. as receiver and manager of all of the assets, undertakings and properties of the Debtors.

5. Times' obligation to complete the Transaction is subject only to the issuance by this Court of: (i) an Order appointing Ernst & Young Inc. as receiver and manager of the Debtors; and (ii) an Order vesting in Times or to whomever it may direct, all of the right, title and interest of the respondent, TKIC, in the Property, free and clear of all Encumbrances except for the Permitted Encumbrances (as those terms are defined in the Times APS).

II. MARKETING AND SALE PROCESS

6. In early April of 2023, Romspen engaged Frank Cormaggi and Laura Cormaggi ("**Cormaggi**") of Royal LePage to list the Property for sale under power of sale. Marketing commenced on April 4, 2023. On that date, the Property was listed on MLS for a price of $69.5 million.

7. In addition, according to the Wong Affidavit, the Debtors, with Philip Wong's assistance, and SOW Capital, have been trying to sell the Property or refinance it since January of 2022.

8. I am informed by Cormaggi that she and Royal LePage marketed the Property extensively through the following means:

- A 6 x 8 for sale sign was erected at the intersection of the Property. The sign was highly visible and generated numerous calls and inquiries to Cormaggi. A photograph of the 'for sale' sign is attached as **Exhibit A**;

- An advertisement was placed on Cormaggi's business website, cormaggigroup.com, commencing April 4, 2023;

- Marketing brochures were prepared, copies of which are attached, collectively, as **Exhibit B**;

- An email announcement was sent by Royal LePage to its subscribers of all new listings, including the Property. One email announcement was made when the listing went live on April 4, 2023. A second email announcement was made when the price was reduced to $64.5 million on July 12, 2023;

- An email blast was sent by Royal LePage's commercial department ("**Royal LePage Commercial**") on June 29, 2023 to: (ii) 1026 recipients who are cooperating brokers and regional broker owners, and (ii) 201 land developers in Ontario. Of the recipients, 540 brokers and 70 land developers opened the email;

- Royal LePage's mandarin speaking agent advertised the Property to Asians in Canada through advertising the Property on Real Master (i.e. a search engine) and Redbook App. The advertisement was viewed 126 times, shared seven times, and saved one time;

- The Property was advertised on four social media sites: Facebook, Instagram, LinkedIn and the Royal LePage Commercial website;

- Royal LePage’s broker and owner, Vivian Risi, sent three personal emails to three prominent land developers;

- Cormaggi emailed Property information and non-disclosure agreements to her personal database of 16 professionals, land investors and builders, resulting in two signed non-disclosure agreements;

- Cormaggi emailed the Property information, MLS listing, and NDA to 40 recipients who are prominent land developers in Canada. This resulted in two offers received, one of which was accepted, being the Times APS;

- The Property was advertised on over 100 websites, including LoopNet Commercial Company/Co-Star Group, showcase.com, squareyards.ca, and Zolo. As of July 2023, Co-Star had 5,472 views. As of September 18, 2023, Co-Star had 9,118 views; and

- Statistics from realtor.ca, the largest online search engine for real estate in Canada, reflect that the Property was viewed 6,309 times on 32 sites.

9. In connection with the above-noted marketing efforts, I am informed by Cormaggi that 40 NDAs were signed. Six offers (the “**Offers**”), including the two offers described in my First Affidavit, and one letter of intention were received. All of the offers which were from prominent and reputable land developers in Canada. I am informed by Cormaggi that she maintained ongoing communications with prospective buyers and kept them apprised of all developments.

10. The Offers and letter of intention are attached, collectively, as **Exhibit C.** Unredacted copies of the Offers and letter of intention are attached, collectively, as **Confidential Exhibit 1**. To avoid duplication, the Offers attached as Exhibit C and Confidential Exhibit 1 do not include the Times APS, which is attached below, the agreement that Romspen accepted on May 1, 2023 which the buyer terminated, which is attached in redacted form as Exhibit 51 and in unredacted

form as Confidential Appendix A to my First Affidavit, and the subsequent lower offer from that same buyer, which is attached in redacted form as Exhibit 53 and in unredacted form as Confidential Exhibit B to my First Affidavit.

III. THE TIMES APS

11. The Times APS represents the highest and best offer received through Romspen's marketing and sale process. A redacted copy of the Times APS is attached as **Exhibit D.** An unredacted copy of the Times APS is attached as **Confidential Exhibit 2A**.

12. Times is a land developer carrying on business in Ontario. It has carried on business for over thirty five years, with numerous commercial and residential developments completed and/or underway throughout the Greater Toronto Area. A copy of Times' portfolio retrieved from its website is attached as **Exhibit E**.

13. Times has provided Romspen with a letter from its bank confirming that Times has the financial wherewithal to close the Transaction. A copy of the letter dated September 28, 2023, received by Romspen from Scotiabank is attached as **Exhibit F**.

14. The Times APS provides for a closing date of November 15, 2023. On September 29, 2023, Times waived the due diligence conditions, and the Times APS went firm, 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. A redacted copy of the amendment to the Times APS dated September 29, 2023, pursuant to which, among other things, Times waived the due diligence condition, is attached as **Exhibit G**. An unredacted copy is attached as **Confidential Exhibit 2B**.

IV. SOW CAPITAL'S OPPOSITION

15. Philip Wong, a director of SOW Capital, swore the Wong Affidavit in support of SOW Capital's motion for an Order permitting it to complete a sale of the Property to 2816513 Ontario Inc. ("**281**") pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**SOW APS**"). Although not included in his affidavit, the SOW APS was amended by amendment dated August 17, 2023 (the "**SOW Amendment**"), a copy of which is attached as **Exhibit H**.

16. Wong deposes at paragraph 22 of the Wong Affidavit that "save and except for completing the sale of the Property pursuant to the SOW APS and realizing on its investment/mortgage, Sow has no interest in the Property after the closing." It is unclear to me what he means in reference to "investment."

V. CONCERNS OVER THE SOW APS

a. Relationship among the Debtors, Wong and SOW Capital

17. Based on the documents discussed below, there appears to be a relationship (beyond mortgagee-mortgagor) between Wong, SOW Capital, and the Debtors.

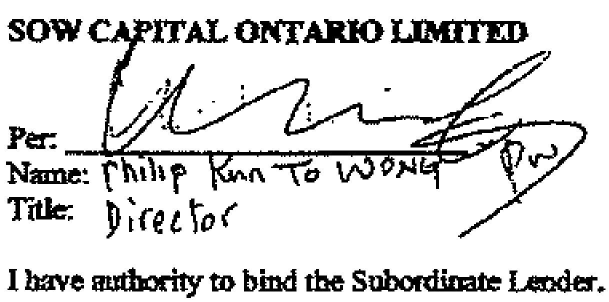
i. Wong is a Director of SOW Capital and TKIC

18. Wong appears to be a director of both SOW Capital and TKIC.

19. As appears from a corporate profile report in respect of TKIC, an individual named Philip Kun To Wong ("**Kun To Wong**") is recorded as a director of TKIC, with a beginning date of August 30, 2019, and a residential address in Hong Kong. A copy of TKIC's corporate profile report is attached as Exhibit 2 to my First Affidavit.

20. As appears from a corporate profile report in respect of SOW Capital (the fifth mortgagee), Philip Wong is recorded as a director and the President of SOW Capital, with a beginning date of December 24, 2019, and a residential address in Hong Kong. Philip Wong's recorded address on the SOW Capital corporate profile report is different than the address recorded for Kun To Wong on the TKIC corporate profile report. A copy of SOW Capital's corporate profile report is attached as **Exhibit I**.

21. Notwithstanding the different names and addresses recorded on TKIC's and SOW Capital's corporate profile reports, I believe the individuals are the same person because SOW Capital's signatory on the subordination agreement between it and Romspen is "Philip Kun To Wong". The subordination agreement is attached as Exhibit 47 to my First Affidavit, and the signature is reproduced below:



SOW CAPITAL ONTARIO LIMITED

Per: ____________________

Name: Philip Kun To WONG

Title: Director

I have authority to bind the Subordinate Lender.

ii. Wong and SOW Capital Have Pursued Development Approvals for the Property

22. A copy of a report to the Development Services Committee of Markham dated July 8, 2021 (the "**DSC Report**") is attached as **Exhibit J**. The purpose of this report is stated as follows:

> The purpose of this report is to provide comments to the Ministry of Municipal Affairs and Housing on a Minister's Zoning Order application submitted by Tung Kee Investment Limited Partnership representing SOW Capital Limited, on the property known as 3143 19th Avenue (the subject property).
>
> The applicant is proposing to advance zoning permissions through the MZO process to secure a production studio (film studio) and other employment uses, along with limited ancillary uses on the subject property. The lands in question are located within a Future Employment Area, as outlined in Markham's 2014 Official Plan, and the applicant is seeking land use permissions in advance of the Secondary Plan process143 19th Avenue (the subject property).

23. A copy of a slide deck with the words "DSC Presentation Thursday, July 8th, 2021" ("**SOW Capital's Slide Deck**") written on the first page, with SOW Capital Ltd. at the bottom of the page, is attached as **Exhibit K**.

24. This link provides access to a recording of a Zoom meeting of the Development Services Committee of Markham held on July 8, 2021. An individual named Philip Wong appears in the recording. At approximately 36 minutes and 30 seconds, Philip Wong begins presenting ("**Wong's DSC Presentation**"), although no audio begins until approximately 37:32 seconds. The slide deck (attached to this affidavit as Exhibit K) is shared on the screen. Philip Wong describes his experience with leading land development projects. He describes the proposed development for the Property and why he believes it is appropriate for the Markham community.

iii. Wong's Management Role Regarding the Property

25. In a letter dated November 23, 2022 from Jonathan Kulathungam ("**Kulathungam**"), then counsel to the Debtors, to David Preger ("**Preger**"), counsel to Romspen, Kulathungam provided Preger with an update on the Debtors' sale of the Property to Element. In the letter, Kulathungam enclosed an email from philip.wong@sowcapital.com.hk to Kulathungam and David Tang, both counsel to the Debtors. As appears from this email, Wong was involved in

negotiating the Debtors' sale of part of the Property to Element. A copy of the letter, and the enclosure, is attached as Exhibit 55 to my First Affidavit at pages 669 to 675 of the Application Record.

26. By email dated January 13, 2023, from Kulathungam to Preger and others, in relation to the purported sale of the Property, Kulathungam wrote: "**Phil Wong who as you may be aware, has been managing the entire project for the past several years, would be happy to be on the Zoom call or phone call to provide an update**." A copy of this email is attached as Exhibit 55 to my Fist Affidavit at page 708 of the Application Record.

27. By letter dated February 24, 2023, from Kulathungam to Preger, Kulathungam delivered what he called a "**summary prepared by Philip Wong of Tung Kee Investments Canada Ltd.**" A copy of this letter is attached as Exhibit 55 to my Fist Affidavit at pages 711 to 713 of the Application Record.

iv. The Nature of Their Relationship

28. Based on Wong's role as director of TKIC and SOW Capital, his presentations and pursuit of zoning approvals for the Property, I believe that he and SOW Capital are financially incentivized to have the Debtors develop the Property. It would belie common sense for SOW Capital to pursue development and zoning approvals with no financial incentive to do so.

b. The *Bona Fides* of the SOW APS

29. 281 is the buyer under the SOW APS. At paragraphs 22 to 25 of his affidavit, Wong deposes that 281 is closely related to Lee Li Holdings in Mississauga. He attaches corporate

profile reports of 281 and Lee Li International Inc. ("**Lee Li**") to demonstrate that the two entities share a common director, Lee Q Shim, and the same registered office.

30. As stated in my First Affidavit, on April 27, 2023, Preger received a letter from the Debtors' counsel, Ali Baniasadi of Miller Thomson LLP advising that TKIC had been negotiating a sale of the Property and was contemplating finalizing a purchase agreement. An unredacted copy of the letter is attached as Confidential Appendix E to my First Affidavit. Baniasadi identified the buyer as being Lee Li.

31. No purchase agreement was subsequently produced by TKIC to Romspen. No explanation was provided for why an agreement was never produced. Under three months later, SOW Capital, rather than TKIC, entered into the SOW APS to sell the Property to 281, rather than Lee Li, for a slightly higher purchase price.

32. Whereas the Debtors complained that Romspen's listing of the Property in June of 2023 (see paragraph 39 of my First Affidavit) was improvident, there has been no suggestion that the Debtors object to SOW Capital's sale of Property at a price that is lower than Romspen's listing price, and the purchase price under the Times APS. It belies common sense for the Debtors to object to Romspen's listing of the Property, but remain silent in regards to SOW Capital's proposed sale for a lower purchase price.

33. Overall, I have concerns about the *bona fides* of the SOW APS given: (a) the bizarre sequence of events regarding the overtures of an imminent agreement of purchase and sale between TKIC and Lee Li that was never produced, followed by the execution of the SOW APS under three months later with effectively the same buyer, (b) the Debtors' lack of objection to

SOW Capital's sale, and (c) the apparent joint interests of the Debtors and SOW Capital (as described above).

34. My concerns are amplified by the following:

- Notwithstanding requests by Romspen's counsel for evidence of 281's financial wherewithal to close the transaction contemplated by the SOW APS, no such evidence has been produced. Copies of emails exchanged between counsel to Romspen, Lisa Corne (Romspen's counsel), and counsel to SOW Capital, Amandeep Sidhu, dated from September 20 to 21, 2023, are attached collectively, as **Exhibit L.**

- At paragraph 16 of his affidavit, Wong deposes that the SOW APS "has become firm and/or unconditional with a closing date of November 30, 2023". However, under section 4.01 of the SOW APS, 281's obligation to close is conditional on SOW Capital's representations and warranties being true in all material respects on the date of closing. In section 5.01, SOW Capital represents and warrants that it is an Ontario limited partnership. SOW Capital is a corporation, so this representation cannot be true. I have concerns that this would permit 281 to terminate the SOW APS and seek a return of its deposit.

VI. THE TIMES APS IS THE HIGHEST AND BEST OFFER

35. In all of the circumstances, I believe that the Times APS represents the highest and best offer:

- I do not believe, particularly in the current interest rate climate, that a further marketing campaign would yield higher or better offers. As of September 15, 2023, when the Times APS was signed, the Property had been listed for sale on MLS for 162 days. It was marketed to a wide, but focused, audience of land developers and commercial brokers. The Debtors and SOW Capital have also sought a sale of the Property since January 2022.

- The Times APS is unconditional, with a scheduled closing of November 15, 2023. The SOW APS is apparently scheduled to close on November 30, 2023, but the closing date has been extended once already by the SOW Amendment, and TKIC purported to be on the cusp of signing an agreement of purchase and sale with Lee Li in April, 2023, but that agreement, without any explanation, never materialized.

- The purchase price under the Times APS is higher than the purchase price under the SOW Capital APS, the appraisals commissioned by SOW Capital, and the appraisal commissioned by Romspen in January 2023, an unredacted copy of which is attached as **Confidential Exhibit 3**.

- Although the SOW APS does not appear to be subject to payment of a commission to a broker, I am advised by Cormaggi, and verily believe, that Hunter Lam ("**Lam**"), whose signature is affixed to the SOW Amendment on behalf of 281, had also approached Cormaggi about buying the Property. After exchanging text messages with Cormaggi, and notwithstanding Cormaggi's texts following up on the inquiries, Lam went silent. Instead, Lam appears to have circumvented the listing, and negotiated with SOW Capital directly, with a view to avoiding payment of the commission. Copies of these text messages are attached as **Exhibit M**.

SWORN BEFORE ME by videoconference, at the City of Toronto, in the Province of Ontario, on this 29th day of September, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

DAVID SEIFER

WESLEY ROITMAN

This is Exhibit "D" referred to in the Affidavit of Wesley Roitman sworn by Wesley Roitman at the City of Toronto, in the Province of Ontario, before me on September 29, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

This is Exhibit "D" referred to in the Affidavit of Wesley Roitman sworn by Wesley Roitman at the City of Toronto, in the Province of Ontario, before me on September 29, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

OREA Ontario Real Estate Association

Agreement of Purchase and Sale
Commercial

Form 500
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 15th day of September, 20 23

BUYER: TIMES 1010 INC., agrees to purchase from
(Full legal names of all Buyers)

SELLER: ROMSPEN INVESTMENT CORPORATION (AS TRUSTEE UNDER POWER OF SALE), the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address 3143 19th Avenue, Markham, ONTARIO L6C 1L8

fronting on the .... side of ....

in the City of Markham

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

and legally described as
as per Schedule "A"
(Legal description of land including easements not described elsewhere) (the "property")

PURCHASE PRICE: Dollars (CDN$) [redacted]

[redacted] Dollars

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

MG HG .... Dollars (CDN$) ....

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

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

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

1. **IRREVOCABILITY:** This offer shall be irrevocable by HG MG SELLER ~~Buyer~~ until 5:00 ~~a.m.~~/p.m. on
(Seller/Buyer) (a.m./p.m.)

the 18th day of September, 20 23, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the .... day of .... Per Schedule A, 20........ Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): HG **INITIALS OF SELLERS(S):** MG

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

FAX No.: See Schedule A (For delivery of Documents to Seller)
FAX No.: .... (For delivery of Documents to Buyer)

Email Address: .... (For delivery of Documents to Seller)
Email Address: .... (For delivery of Documents to Buyer)

4. **CHATTELS INCLUDED:**

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

5. **FIXTURES EXCLUDED:**

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

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

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

INITIALS OF BUYER(S): DS HG **INITIALS OF SELLERS(S):** DS MG

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

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

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

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

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

DS HG

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

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

INITIALS OF BUYER(S): DS HG **INITIALS OF SELLERS(S):** DS MG

15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.

16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.

17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.

18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.

19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.

21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

DS HG DS MG

~~22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.~~

DS MG DS HG

~~23. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.~~

24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.

25. **CONSUMER REPORTS: The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**

26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.

27. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

28. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S): DS HG **INITIALS OF SELLERS(S):** DS MG

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

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

TIMES 1010 INC.

DocuSigned by: Hashem Ghadaki

(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date) 9/15/2023

(Witness) (Buyer/Authorized Signing Officer) (Seal) (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

ROMSPEN INVESTMENT CORPORATION (as trustee under power of sale)

DocuSigned by: Mary Gianfriddo

(Witness) (Seller/Authorized Signing Officer) (Seal) (Date) 9/15/2023 | 16:17 EDT

(Witness) (Seller/Authorized Signing Officer) (Seal) (Date)

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

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

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at .... (a.m./p.m.) this .... day of ...., 20...... 9/18/2023

Hashem Ghadaki

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)

Listing Brokerage Royal LePage Your Community Realty Brokerage (Tel.No.) 905-731-2000

8854 YONGE STREET RICHMOND HILL, ON L4C 0T4

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage .... (Tel.No.)

(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

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

(Seller) Romspen Investment Corporation (as trustee under power of sale) (Date)

(Seller) (Date)

Address for Service

(Tel. No.)

Seller's Lawyer Dickinson Wright LLP - David Preger, Lisa Corne, & Paul Muchnik

Address

Email DPreger@dickinson-wright.com PMuchnik@dickinson-wright.com LCorne@dickinson-wright.com

416-646-4606 (Tel. No.) (Fax. No.)

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

Hashem Ghadaki

(Buyer) Times 1010 Inc. (Date) 9/15/2023

(Buyer) (Date)

Address for Service

(Tel. No.)

Buyer's Lawyer Owens Wright LLP - Ali Daneshvar

Address 300, 20 Holly Street, Toronto, ON M4S 3B1

Email adaneshvar@owenswright.com

416 484 8674 (Tel. No.) 416 486 3309 (Fax. No.)

FOR OFFICE USE ONLY

COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:

Laura Cormaggi

(Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

OREA Ontario Real Estate Association

Schedule A
Agreement of Purchase and Sale – Commercial

Form 500
for use in the Province of Ontario

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

BUYER: TIMES 1010 INC., and

SELLER: ROMSPEN INVESTMENT CORPORATION (AS TRUSTEE UNDER POWER OF SALE)

for the purchase and sale of 3143 19th Avenue, Markham, ONTARIC L6C 1L8 Markham

dated the 15th day of September, 2023

Buyer agrees to pay the balance as follows:

See Schedule "A".

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

INITIALS OF BUYER(S): HG **INITIALS OF SELLERS(S):** MG

Schedule "A" to the agreement of purchase and sale regarding 3143 19th Avenue, Markham, Ontario between TIMES 1010 INC., as Buyer, and ROMSPEN INVESTMENT CORPORATION (AS TRUSTEE UNDER POWER OF SALE), as Seller.

1. The following terms shall have, for all purposes of the Agreement, the following meanings:

   a. "**Agreement**" means collectively, the OREA Form, all schedules and exhibits attached thereto;
   b. "**Approval and Vesting Order**" means an order or orders made by the Court approving this Agreement and the herein contemplated transaction and vesting in the Buyer or to whomever it may direct all the right, title and interest of TUNG KEE INVESTMENT CANADA LTD. in the Property free and clear of all Encumbrances (except for the Permitted Encumbrances), in form and substance satisfactory to the Receiver and the Buyer, acting reasonably. For greater certainty, the vesting portion of the "Approval and Vesting Order" shall be substantially in the form of the model of approval and vesting order approved by the "Ontario Commercial List Users Committee";
   c. "**Assignee**" has the meaning ascribed thereto in Section 12 of this Schedule "A";
   d. "**Business Day**" means a day of the week other than a Saturday, Sunday, statutory or civic holiday, in the Province of Ontario;
   e. "**Buyer's Conditions**" has the meaning ascribed thereto in Section 7(a) of this Schedule "A";
   f. "**Buyer's Condition Date**" has the meaning ascribed thereto in Section 7(a) of this Schedule "A";
   g. "**Closing**", "**closing**", "**Closing Date**", "**closing date**", "**Completion**", "**completion**", "**Completion Date**" and "**completion date**" each mean the completion date set out in Section 4 of this Schedule "A";
   h. "**Court**" means the Ontario Superior Court of Justice (Commercial List);
   i. "**Deposit**" shall, collectively, mean the First Deposit and Second Deposit;
   j. "**Encumbrance**" means any mortgage, charge, pledge, hypothecation, lease, security interest, trust, deemed trust (statutory or otherwise) assignment, lien (statutory or otherwise), claim, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation;
   k. "**First Deposit**" has the meaning ascribed thereto in Section 3 (a) of this Schedule "A";
   l. "**H.S.T.**" means the Harmonized Sales Tax under the *Excise Tax Act* (Canada);
   m. "**Leases**" means all offers to lease, agreements to lease, leases, rental agreements, renewal or amendments thereto, and other rights or licences granted by or on behalf of the Seller or its predecessor in title to possess or occupy space within the Property, in each case as amended, renewed or otherwise varied, and guarantees, letters of credit and/or indemnities of the obligations thereunder; "**Lease**" means any one of the Leases;

Initials of Buyer: DS HG Initials of Seller: DS MG

n. "**Mortgage**" means, collectively, the charge registered against title to PINs 03055-0379 (LT) and 03055-0380 (LT) on August 30, 2022 in favour of the Seller as Instrument No. YR3470724, and the charge registered against title to PIN 03055-0377 (LT) on January 27, 2022 in favour of the Seller as Instrument No. YR3373212;
o. "**Permitted Encumbrances**" means those Encumbrances listed in Schedule "E" attached hereto;
p. "**Property**" means collectively, the lands and premises, together with all fixtures (excluding Seller trade fixtures), alterations, additions and appurtenances whatsoever and all chattels belonging to the Seller and included in the Purchase Price, legally described as firstly, PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS INYR3454770; CITY OF MARKHAM, being all of PIN 03055-0377 (LT), secondly, PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS INYR3455770; CITY OF MARKHAM, being all of PIN 03055-0379 (LT), and thirdly, PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM, being all of PIN 03055-0380 (LT);
q. "**Receiver**" means, if applicable, a court appointed receiver of the assets, undertakings and properties of TUNG KEE INVESTMENT CANADA LTD., including, but not limited to the Property, pursuant to a Court order to be registered on title to the Property;
r. "**Receiver's Certificate**" has the meaning ascribed thereto in Section 10 of this Schedule "A";
s. "**Requisition Date**" has the meaning ascribed thereto in Section 6 of this Schedule "A";
t. "**Romspen**" means Romspen Investment Corporation (As Trustee Under Power of Sale);
u. "**Second Deposit**" has the meaning ascribed thereto in Section 3 (b) of this Schedule "A"; and
v. "**OREA Form**" means the OREA standard form of Commercial Agreement of Purchase and Sale to which this Schedule "A" is attached.

2. All capitalized terms not otherwise defined in this Schedule "A" shall have the meanings ascribed to them elsewhere in the Agreement.

3. **Payment of the Purchase Price**

The Purchase Price shall be payable by the Buyer to the Seller, on Closing, subject to the usual adjustments, as follows:

a. as to the sum of ONE MILLION ($1,00,000.00) DOLLARS (the "**First Deposit**") by electronic wire transfer delivered to the Deposit Holder, in trust, within two (2) Business Days after the execution and delivery of this Agreement by both parties, pending the completion or other termination of this Agreement and to be credited to the Buyer on account of the Purchase Price on the Closing Date;

b. as to the sum of TWO MILLION ($2,000,000.00) DOLLARS (the "**Second Deposit**") by electronic wire transfer delivered to the Deposit Holder, in trust, within two (2) Business Days following waiver of satisfaction of the Buyer's Conditions, pending the completion or other termination of this Agreement and to be credited to the Buyer on account of the Purchase Price on the Closing Date; and

c. as to the balance of the Purchase Price, by same day wire transfer delivered to the Seller's solicitors pending completion of the within transaction and payable to the Seller, or as it may direct in writing, on the Closing Date.

4. **Closing Date**

The Closing Date of this Agreement shall be November 15th, 2023 (the "**Closing Date**"). In the event the Closing Date falls on a non-Business Day, the Closing Date shall be the following Business Day.

5. **Deposit**

The Deposit shall be paid to the Seller or as the Seller may direct in writing on account of the Purchase Price upon the completion of this transaction. Following any waiver of the Buyer's Condition, should this transaction fail to be completed for any reason other than the Buyer's sole default, then the Deposit and any interest earned thereon shall forthwith and without deduction, be returned to the Buyer.

6. **Requisition Date**

The title of the Seller to the Property on Closing shall be a good and marketable title in fee simple free from all encumbrances whatsoever, including, but not limited to any mortgages.

The Buyer shall be allowed up to the Buyer's Condition Date (the "**Requisition Date**") to examine the title to the Property at its own expense. If any objection to the Seller's title to the Property is made in writing to the Seller and/or the Seller's solicitor at any time up to and including the expiry of the Requisition Date which the Seller is unable to remove, remedy or satisfy and which the Buyer will not waive, then notwithstanding any intermediate acts or negotiations with respect to such objections this Agreement shall be terminated in which case the Deposit shall be repaid to the Buyer with interest and without deduction and the parties shall have no further obligations or liabilities hereunder save for those specified to survive termination. Except for any such objections so made prior to the expiry of the Requisition Date and except for any new matter arising thereafter or going to the root of the title or any objections made thereafter in respect of any new Encumbrance, the Buyer shall be conclusively deemed to have accepted Seller's title to the Property.

7. **Buyer's Conditions**

   a. This Agreement is conditional until September 30, 2023 (the "**Buyer's Condition Date**"), upon the Buyer being satisfied in their sole, absolute, arbitrary and subjective discretion with each of the following conditions or having waived each of the following conditions (collectively, the "**Buyer's Conditions**"), each of which is for the Buyer's exclusive benefit and may be waived by the Buyer, in whole or in part at its sole, absolute, arbitrary and subjective discretion, and any one or more of which, if not satisfied or waived, will relieve the Buyer of any obligation under this Agreement:

      i. the Buyer arranging at its own expense, arranging for a Phase 1 and/or Phase 2 environmental assessment of the Property, but not limited to Phase 1 and/or Phase 2 environmental assessment of the Property, and being satisfied in the Buyer's sole, absolute, arbitrary and subjective discretion with the state and condition of the Property; and

      ii. the Buyer shall be satisfied with its due diligence review of whatever searches and investigations the Buyer, in its sole, absolute, arbitrary and subjective discretion, deems advisable with respect to the Property including, without limitation, title to the Property, zoning and development approvals, and all encumbrances thereon, physical and engineering inspections of the Property to determine, among other things, the structural condition and state of repair of any improvements located on the Property, compliance with all laws and regulations (including environmental and zoning regulations and the official plan), any agreements or contracts with third parties affecting the Property, environmental audits, and any other matters of interest to the Buyer with respect to the Property (including the economic feasibility of the within transaction) and the Buyer is satisfied, in its sole, absolute, arbitrary and subjective discretion, with the results of all such searches, investigations and analyses.

   b. The Buyer shall have until 7:00 p.m. eastern standard time on the Buyer's Condition Date to advise the Seller or the Seller's solicitor in writing whether it is satisfied with the Buyer's Conditions. If the Buyer delivers to the Seller or the Seller's solicitors written notice that it has elected not to proceed with the purchase of the Property or in the event that the Buyer does not deliver to the Seller or the Seller's solicitors written notice of its satisfaction with or waiver of the Buyer's Conditions within the aforementioned time period, then this Agreement shall be automatically terminated and the First Deposit together with all interest accrued thereon, if any, shall be returned to the Buyer forthwith, and neither party hereto shall have any further obligation or liability to the other party.

Initials of Buyer: HG Initials of Seller: MG

8. **Operation of the Property**

   a. **INTENTIONALLY DELETED.**

   b. Prior to Closing, the Seller shall not enter into any contract or agreement affecting the Property or agree to amend, modify, vary, terminate, surrender or cancel any existing agreement affecting the Property without the prior written approval of the Buyer.

9. **Closing Deliveries of Romspen**

In the event the Seller remains Romspen on Closing, Romspen shall deliver to the Buyer the following (with all documentation to be in a form satisfactory to the Buyer's solicitor):

   a. Transfer/Deed by Power of Sale for the Property in registrable form, engrossed as directed by the Buyer, with the prescribed solicitor's statements completed;

   b. an undertaking by Romspen to readjust any errors, omissions or changes in the Statement of Adjustments, provided that any post-Closing adjustments will only be made if brought to Romspen's attention, by written notice, within 30 days of the Closing, otherwise there will be no adjustments whatsoever following the Closing.

   c. a direction re: funds;

   d. a Court order providing for the following instruments to be vacated and/or deleted from title to the Property on Closing:

      i. Construction Lien registered on April 14, 2023 as Instrument No. YR3541410; and

      ii. Certificate registered on June 16, 2023 in favour of DX STRATEGIES INC. as Instrument No. YR3563830.

   e. the Transfer/Deed by Power of Sale shall provide for the following instruments to be, at the discretion of the Land Registry Office, discharged from title to the Property on Closing or validly cut out from title to the Property pursuant to the power of sale proceedings completed herein in accordance with Part III of the Mortgages Act (Ontario):

      i. Charge registered on March 26, 2020 in favour SOW CAPITAL ONTARIO LIMITED and JIAYI INTERNATIONAL INVESTMENTS LTD. as Instrument No. YR3083072;

ii. Notice of Assignment of Rents registered on March 26, 2020 in favour SOW CAPITAL ONTARIO LIMITED and JIAYI INTERNATIONAL INVESTMENTS LTD. as Instrument No. YR3083073;

iii. Transfer of Charge registered on May 7, 2021 in favour SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3247257;

iv. Notice of Assignment of Rents registered on May 7, 2021 in favour SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3247258;

v. Transfer of Charge registered on May 7, 2021 in favour F A CREDIT SOLUTIONS CANADA INC. and SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3300382;

vi. Notice of Assignment of Rents registered on January 27, 2022 in favour of ROMSPEN INVESTMENT CORPORATION as Instrument No. YR3373213;

vii. Charge registered on January 27, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP. as Instrument No. YR3373214;

viii. Notice of Assignment of Rents registered on January 27, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP. as Instrument No. YR3373215;

ix. Charge registered on January 27, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3373216;

x. Notice of Assignment of Rents registered on January 27, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3373217;

xi. Transfer of Charge registered on January 27, 2022 in favour of SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3373218;

xii. Charge registered on January 27, 2022 in favour of PA, FRANK and TUNG, STEPHEN as Instrument No. YR3373219;

xiii. Postponement registered on January 28, 2022 in favour of ROMSPEN INVESTMENT CORPORATION as Instrument No. YR3373403;

xiv. Postponement registered on January 28, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP as Instrument No. YR3373404;

xv. Postponement registered on January 28, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3373405;

xvi. Notice registered on February 24, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3385745;

xvii. Postponement registered on March 22, 2022 in favour of THE CORPORATION OF THE CITY OF MARKHAM as Instrument No. YR3397627;

xviii. Postponement registered on March 22, 2022 in favour of THE CORPORATION OF THE CITY OF MARKHAM as Instrument No. YR3397628;

xix. Postponement registered on March 22, 2022 in favour of THE CORPORATION OF THE CITY OF MARKHAM as Instrument No. YR3397629;

xx. Postponement registered on March 22, 2022 in favour of THE CORPORATION OF THE CITY OF MARKHAM as Instrument No. YR3397630;

xxi. Postponement registered on March 22, 2022 in favour of THE CORPORATION OF THE CITY OF MARKHAM as Instrument No. YR3397631;

xxii. Notice registered on June 17, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3440956;

xxiii. Postponement registered on June 17, 2022 in favour of PA, FRANK and TUNG, STEPHEN as Instrument No. YR3440959;

xxiv. Postponement registered on June 17, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3441040;

xxv. Notice registered on July 4, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP. as Instrument No. YR3447697;

xxvi. Postponement registered on July 20, 2022 in favour of ALECTRA UTILITIES CORPORATION as Instrument No. YR3454771;

xxvii. Postponement registered on July 20, 2022 in favour of ALECTRA UTILITIES CORPORATION as Instrument No. YR3454772;

xxviii. Postponement registered on July 20, 2022 in favour of ALECTRA UTILITIES CORPORATION as Instrument No. YR3454773;

xxix. Postponement registered on July 20, 2022 in favour of ALECTRA UTILITIES CORPORATION as Instrument No. YR3453774;

xxx. Postponement registered on July 20, 2022 in favour of ALECTRA UTILITIES CORPORATION as Instrument No. YR3454775;

xxxi. Notice of Assignment of Rents registered on August 30, 2022 in favour of ROMSPEN INVESTMENT CORPORATION as Instrument No. YR3470725;

xxxii. Charge registered on August 30, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP. as Instrument No. YR3470726;

xxxiii. Notice of Assignment of Rents registered on August 30, 2022 in favour of AMBER MORTGAGE INVESTMENT CORP. as Instrument No. YR3470727;

xxxiv. Charge registered on August 30, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3470728.

xxxv. Notice of Assignment of Rents Registered on August 30, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3470729;

xxxvi. Charge registered on August 30, 2022 in favour of PA, FRANK and TUNG, STEPHEN as Instrument No. YR3470730;

xxxvii. Charge registered on August 30, 2022 in favour of SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3470731;

xxxviii. Notice of Assignment of Rents registered August 30, 2022 in favour of SOW CAPITAL INVESTMENTS LIMITED as Instrument No. YR3470732;

xxxix. Notice registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505530;

xl. Notice registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505533;

Initials of Buyer: HG Initials of Seller: MG

xli. Postponement registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505547;

xlii. Postponement registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505555;

xliii. Postponement registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505559;

xliv. Postponement registered on December 6, 2022 in favour of 2149602 ONTARIO INC. as Instrument No. YR3505567;

xlv. Transfer of Charge registered on January 9, 2023 in favour of MILTOM SERVICES LIMITED and SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3513700;

xlvi. Transfer of Charge registered on January 9, 2023 in favour of MILTOM SERVICES LIMITED and SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3513701;

xlvii. Notice registered on April 5, 2023 in favour of SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3538686;

xlviii. Notice registered on April 5, 2023 in favour of SOW CAPITAL ONTARIO LIMITED as Instrument No. YR3538687;

xlix. Notice of Change of Address registered on April 17, 2023 as Instrument No. YR3541425; and

l. Notice of Change of Address registered on April 17, 2023 as Instrument No. YR3541426.

On Closing, the Buyer shall deliver to the Seller the following:

a. the balance due on closing, payable to the Seller's solicitor or as it may direct in writing;

b. a certificate and indemnity of the Buyer for H.S.T. as contemplated in Section 13 of this Schedule "A";

c. an undertaking by the Buyer to readjust any errors, omissions or changes in the Statement of Adjustments, provided that any post-Closing adjustments will only be made if brought to the Buyer's attention, by written notice, within 30 days of the Closing, otherwise there will be no adjustments whatsoever following the Closing.;

d. a written title direction if title is to be granted to a party other than the Buyer; and

e. such further and other closing documents as contemplated by this Agreement or as otherwise may be required by the Seller's solicitor, acting reasonably.

10. **Closing Deliveries of Receiver**

In the event the Seller is the Receiver on Closing, the Receiver shall deliver to the Buyer the following (with all documentation to be in a form satisfactory to the Buyer's solicitor):

a. an undertaking by the Receiver to readjust any errors, omissions or changes in the Statement of Adjustments, provided that any post-Closing adjustments will only be made if brought to the Receiver's attention, by written notice, within 30 days of the Closing, otherwise there will be no adjustments whatsoever following the Closing;

b. a bring down certificate of the Receiver confirming the accuracy as of Closing of all warranties and representations of the Receiver contained in Section 12 of this Schedule "A";

c. the Approval and Vesting Order;

d. such further and other closing documents as contemplated by this Agreement or as otherwise may be required by the Buyer's solicitor, acting reasonably.

Forthwith following Closing and no later than twenty-four (24) hours following Closing, the Receiver shall immediately deliver to the Buyer the executed receiver certificate in the form contemplated by the Approval and Vesting Order (the "**Receiver's Certificate**") confirming that the herein contemplated transaction has been completed and title to the Property shall vest in the Buyer effective immediately upon receipt of the Receiver's Certificate. The Seller shall file the Receiver's Certificate with the Court within a reasonable time following Closing and shall deliver to the Buyer a copy of same.

11. **Covenants of Romspen Investment Corporation (As Trustee Under Power of Sale)**

Romspen covenants and agrees to make commercially reasonable efforts, prior to the Closing Date, to satisfy the Buyer that TUNG KEE INVESTMENT CANADA LTD. is not a non-resident within the meaning of Section 116 of the Income Tax Act (Canada).

12. **Covenants, Representations and Warranties of the Receiver**

If applicable, upon the assignment and assumption of this Agreement from Romspen to the Receiver, the Receiver represents and warrants to and in favour of the Buyer that, as of the date of the aforementioned assignment and assumption of this Agreement and on the Closing Date:

a) the Receiver has been duly appointed as the receiver of the Property pursuant to a appointment order from the Court and has full right, power and authority, subject to obtaining the Approval and Vesting Order prior to Closing, to sell the Property, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order; and

b) the Receiver is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

All of the representations and warranties contained in this Section 11 of Schedule "A" shall survive the Closing Date and shall continue in full force and effect for the benefit of the Buyer thereafter

13. **H.S.T.**

No H.S.T shall be paid by the Buyer to the Seller with respect to the purchase by the Buyer of the Property provided that the Buyer provides to the Seller on or prior to the Closing Date a certificate of the Buyer containing the Buyer's registration number for the purposes of such tax imposed under the Excise Tax Act (Canada) and containing the undertaking of the Buyer to self assess for H.S.T. and indemnify the Seller from any H.S.T. payable in this transaction. In the event the aforementioned certificate is not provided to the Seller on or prior to the Closing, the Buyer shall pay to the Seller the applicable H.S.T. on Closing.

14. **Assignment**

The Buyer shall have the right to assign this Agreement to any person or persons, partnerships, corporation or corporations as may be designated by the Buyer in its discretion, or to cause title to the Property to be taken in a name other than the Buyer herein (any party so designated by the Buyer being hereinafter referred to as the "**Assignee**"), provided that the Buyer shall deliver to the Seller, a written covenant of such Assignee to be bound by the provisions of this Agreement. Upon such assignment the originally named Buyer shall be relieved of all obligation and liability whatsoever pursuant to the provisions of this Agreement and the Assignee shall be deemed to be the party hereinbefore originally named as the Buyer.

In the event a Receiver is appointed for the Property, the Buyer and Romspen acknowledge and agree that Romspen shall have the right to assign this Agreement to the Receiver.

15. **Notice**

Notwithstanding any other provision of this Agreement, including Section 3 of the OREA FORM, any notice to be given or document to be delivered to the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally, by facsimile transmission, digital, electronic scan or email, or sent by prepaid registered mail to the Seller's solicitor or Buyer's solicitor. Any written notice or delivery of documents given in this matter will be deemed to have been given and received on the day of delivery if delivered personally or by facsimile transmission, digital, electronic scan or email. Facsimile signatures or electronically or digitally scanned signatures (pdf or similar format) shall be deemed to be original signatures and any notice to be given or document to be delivered may be executed in counterpart.

16. **Access**

Upon acceptance of this Agreement and after the First Deposit is submitted, the Buyer and/or Buyer's inspector and/or Buyer's authorized agents shall be permitted access to the Property and the Seller shall cooperate in providing such access for purposes of conducting any testing, surveying and/or inspections as provided for herein. The Buyer shall at the Buyer's sole expense forthwith repair any damage done to the Property resulting from such inspections, and indemnify the Seller with respect to any and all damages or claims arising from the Buyer's access and activities on the Property. Provided further, the Buyer shall each time separately, notify the Seller, Seller's agent or solicitor not less than 24 hours in advance of the requested access and that the visits shall occur at each times, that are mutually agreed upon by the parties.

17. **Obligation to Complete**

i. The Buyer's obligation to carry out the transaction contemplated by this Agreement, is subject to each of the following conditions until on or before the Closing Date or such other date as may be specified, which conditions are for the sole benefit of the Buyer and which may be waived by the Buyer in its sole, absolute, unfettered and arbitrary discretion:

   a. Representations and Warranties - That all of the covenants, representations and warranties of the Receiver set out in this Agreement shall be materially true and accurate with the same effect as if made on and as of the Closing Date; and;

   b. Performance of Terms, Covenants and Conditions - All of the terms, covenants and conditions of this Agreement to be materially complied with or performed by Romspen and/or the Receiver, as applicable, on or before the Closing Date shall have been complied with or performed.

   In the event that any of the above conditions, contained in Section 17 (i) (a) and Section 17 (i) (b) of this Schedule "A", are not materially complied with within any time period prescribed therefor and the Buyer is unwilling to waive the same, then the Buyer shall be entitled to terminate this Agreement, whereupon the Buyer shall have no further liability to the Seller under this Agreement and the Buyer shall be entitled to an immediate return of the Deposit with interest and without deduction.

ii. The Buyer's obligation to carry out the transaction contemplated by this Agreement, is further subject to the following condition, which condition is for the sole benefit of the Buyer and which may be waived by the Buyer in its sole, absolute, unfettered and arbitrary discretion (in the event of such waiver Section 17 (iii) (a) shall apply):

   a. Appointment of Receiver and Approval and Vesting Order – On or before October 16th, 2023 the Seller shall have obtained a court order appointing a Receiver for the Property and the Receiver shall have been authorized by the Court to complete the herein contemplated transaction with the Buyer pursuant to an Approval and Vesting Order.

iii. Notwithstanding any other term or condition contained in this Agreement or elsewhere, in the event that the above condition, contained in Section 17 (ii) (a) of this Schedule "A", is not materially complied with within the time period prescribed therefor, then the Buyer will have five (5) Business Days to elect one of the following options, in its sole, absolute, unfettered and arbitrary discretion:

   a. completing the herein contemplated transaction with Romspen under power of sale and pursuant to the Mortgage and Part III of the Mortgages Act (Ontario) and in accordance with the power of sale provisions of the herein agreement, on the Closing Date; or

   b. terminate this Agreement, whereupon the Buyer shall have no further liability to the Seller under this Agreement and the Buyer shall be entitled to an immediate return of the Deposit with interest and without deduction.

   The Buyer's option to complete or terminate, as aforesaid under this Section 17 (ii) (a) of this Schedule "A" shall be exercised by the Buyer by notice in writing to the Seller or Seller's solicitor, within five (5) Business Days following October 16th, 2023, failing which the Buyer shall be deemed to have elected to terminate the Agreement, whereupon the Buyer shall have no further liability to the Seller under this Agreement and the Buyer shall be entitled to an immediate return of the Deposit with interest and without deduction.

18. **Tender**

Any notice, approval, waiver, agreement, instrument or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Buyer's solicitors on behalf of the Buyer and by the Seller's solicitors on behalf of the Seller and any tender of closing documents and the balance of the Purchase Price may be made upon the Seller's Solicitors and the Buyer's Solicitors, as the case may be. The Seller and Buyer acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed under power of sale and any other closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

19. **Buyer Covenant**

On or prior to the Buyer's Condition Date, the Buyer shall provide to the Seller satisfactory evidence that it has sufficient financial resources or has arranged sufficient financing to complete the transaction contemplated herein. In the event the aforementioned condition is not satisfied on or prior to the Buyer's Condition Date, then this Agreement shall be automatically terminated and the First Deposit together with all interest accrued thereon, if any, shall be returned to the Buyer forthwith, and neither party hereto shall have any further obligation or liability to the other party.

20. **Execution**

This Agreement may be executed in counterpart and transmitted by facsimile or other form of electronic transmission, and when so executed shall be deemed an original and when taken together shall constitute one and the same instrument.

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

For 3143 19th Avenue Markham, Ontario L6C 1L8 (Address for the "Property") ROMSPEN INVESTMENT CORPORATION (AS TRUSTEE UNDER POWER OF SALE(Seller)

Sale to TIMES 1010 INC. (Buyer[s])

The following terms replace, modify or add to other terms of the Agreement of Purchase and Sale to which it is appended. The terms in this Schedule override any other term or condition of the agreement. Any matter provided for in this Schedule as well as any other part of the Agreement shall be settled by a broad construction of the applicable term in this Schedule. Notwithstanding the foregoing, this Schedule "B" shall only apply in the event the Buyer elects to complete this transaction, pursuant to Section 17 (iii) (a) of Schedule "A".

MG

~~1. The description of the Property is believed by the Seller to be correct but if any statement, misstatement, error or omission shall be found in the particulars thereof, the same shall not annul or terminate the sale nor entitle the Buyer to be relieved of any obligation hereunder, nor shall any compensation or abatement in the Purchase Price be allowed to either the Seller or the Buyer in respect thereof.~~

HG

2. The Buyer acknowledges that the Seller is selling the lands and premises to the Buyer in exercise of the Power of Sale provisions contained in a mortgage (the "Mortgage") the Seller holds on the Property. The Buyer agrees to accept title pursuant to the rights of the Seller under its mortgage and in accordance with the terms of the Mortgage and Part III of the Mortgages Act (Ontario), as same may be amended from time to time.

3. The Seller represents herein that there is a default under the terms of its mortgage as of the date hereof which default entitles the Seller to exercise its rights of Power of Sale. The Transfer/Deed shall exclude the implied covenants in Subsection 5(1) (i) (ii) and (iii) of the Land Registration Reform Act (Ontario). The Transfer/Deed shall contain the appropriate law statements, in Teraview, as determined by the solicitor for the Seller **and Buyer, both acting reasonably, that the sale herein complies with the provisions of the Charge/Mortgage, the Mortgages Act of Ontario, and if applicable the Bankruptcy and Insolvency Act (Canada), the Condominium Act, the Construction Lien Act and the Farm Debt Mediation Act (Canada). The Seller covenants and agrees to provide a true and complete copy of the Notice of Sale in the form prescribed by Part III of the Mortgages Act (Ontario), that was served upon all parties entitled thereto in connection with the sale of the Property pursuant to the rights of the Vendor under the Mortgage, to the Buyer and their solicitor within ten (10) days following the mutual execution of this Agreement.**

4. The Buyer shall purchase the Property as it exists at the present time without representation, warranty or condition with respect to the fitness, condition, zoning or lawful use of the Property. The Seller makes no representations or warranty with respect to any defects in workmanship, state of repair or location of structures, walls, retaining walls or fences (freestanding or otherwise). The Seller shall *have* no responsibility whatsoever to remedy any defect, comply with any work orders, or complete any unfinished work. The Buyer will accept the Property "as is" on the day of closing and acknowledges that it has relied entirely upon its own inspections and investigations with respect to the quantity, quality and value of the Property. The Seller shall not be required to discharge any mortgages, liens or other encumbrances registered subsequent to the Charge/Mortgage of Land under which the Power of Sale is being exercised, so long as same are extinguished on closing by operation of law, pursuant to the Part III provisions of the Mortgages Act (Ontario).

5. The Buyer agrees that the Seller may, in its absolute discretion accept, on or before the expiry of the Buyer's Condition Date, redemption of the Mortgage in whole or in part, by any party having an interest in the Property and, thereupon, the Seller may terminate this agreement witho ut liability of any kind to the Buyer **and the deposit shall be returned to the Buyer forthwith with interest and without deduction.**

6. The Buyer agrees to accept the Property regardless of any order affecting the Property regarding its condition or use (including deficiency or other notices, compliance requests, work and other orders) and subject to all judicial, municipal or any other governmental by- laws, agreements, restrictions (registered or unregistered), or orders as well as any registered restriction agreements or covenants which run with the land as of the acceptance date of this Agreement. Without limiting the generality of the foregoing, the Buyer agrees to accept title to the Property subject to any registered easements in favour of any utility and further agrees to accept any standard municipal subdivision agreements with the Municipality registered on the title to the Property as of the acceptance date of this Agreement, providing each has been complied with, or providing security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant Municipality. The Buyer further agrees to accept the Property subject to rights of way, easements, covenants that run with the land or minor encroachments by buildings or fences on the subject Property or adjoining properties or streets that exist as of the acceptance date of this Agreement, all municipal and other development and sewer levies, fees, imposts and charges and all amounts added to the tax roll (other than realty taxes imposed on the assessment of the Property and public utilities which are a lien prior to the Mortgage), in all cases regardless or whether there is compliance. If the Property is oil heated, the Buyer accepts the oil tank in its "as is" condition. Notwithstanding the foregoing, all unpaid realty taxes and local improvements charges shall be adjusted as of the day of closing.

7. In the event any issue is raised with respect to the exercise of the Power of Sale by the Seller which affects the Seller's ability to transfer title to the Property in accordance with this Agreement by requisition, notice, certificate of pending litigation or any other manner, or if vacant possession cannot be provided, the Seller may at its option extend the closing date for a period or periods of time not exceeding 50 days in total. If the Seller is unable to resolve any such issue by the expiry of the extension period or periods, the Seller at its sole option may terminate this Agreement without liability of any kind to the Buyer and the deposit shall be forthwith returned to the Buyer with interest and without deduction.

8. Notwithstanding any other clauses set out in this Agreement, the purchase price herein shall not include any chattels. The Seller agrees to sell only such interest as it may have in the fixtures and chattels as referred to in the Agreement of Purchase and Sale and/or located on the Property and does not guarantee title to the chattels nor does it warrant the condition or state of repair of the chattels. The Seller shall deliver possession of the said fixtures and chattels found on the Property "as is" on closing without bill of sale, warranty, security interest discharge, or title documentation and shall make no further adjustments or abatements in the purchase price with respect thereto. The Seller shall not be obligated to remove any chattels prior to closing.

9. The Seller covenants that it has done no act to encumber the Property as at the date hereof and the Seller covenants that it shall do no act to encumber the Property from the date of acceptance hereof to the date of closing. The Seller shall not sell or dispose of the Property between the date hereof and the date of closing. The Seller shall not be required to furnish or produce any abstract, deed, declaration or other document or evidence of the title except those in its possession.

MG

10. Where a Court of competent jurisdiction prevents the completion of the within sale by an interim, interlocutory, permanent injunction or other wise, then the Seller (Mortgagee) is not obligated to complete the said transaction and this Agreement is to be terminated as being null and void and the deposit shall be returned to the Buyer with interest and without deduction. In no event shall the Seller be responsible for any costs, expenses,

HG

loss or damages incurred or suffered by the Buyer in any way related to this Agreement.

11. The Buyer agrees to assume all existing short term farm tenancies affecting the Property that shall not have a term exceeding two years from the date of closing.

12. Notwithstanding any other clauses in this Agreement, the Seller makes no representation whatsoever as to whether the Property has been insulated with Urea Formaldehyde Foam Insulation or whether the Property contains any other substances that may be hazardous or toxic or toxic within the meaning of the Environmental Protection Act (Ontario).

13. If this transaction is subject to Harmonized Sales Tax (HST), then such HST shall be in addition to and not included in the purchase price. The Seller shall not supply any Warranty, Statutory Declaration or Certificate with respect to the subject Property's status as a used residential property or as to whether this transaction is an exempt supply in accordance with the provisions of the Excise Tax Act (Part VII) (HST). The Buyer further indemnifies and saves harmless the Vendor and its solicitors, from all claims that may be made in connection with any HST which may be applicable to this transaction. The Seller shall not be responsible to provide any certificates with respect to the applicability of HST to the transaction. Provided, however, that the Seller is solely responsible for the payment of HST on the amount of any real estate commission payable by the Seller hereunder. The Buyer shall bself-assess for HST, pursuant to Section 11 of Schedule "A" of this Agreement.

14. In the event, prior to Closing, title to the Property is transferred pursuant to a power of sale by a subsequent mortgagee or to another buyer pursuant to a Vesting Order, then this Agreement shall be automatically terminated and the Deposit, together with all interest accrued thereon, shall be returned to the Buyer forthwith, and neither party hereto shall have any further obligation or liability to the other party. In the event the Property is transferred to another buyer pursuant to the aforementioned, the Seller shall request, on behalf of the Buyer, the Court to reimburse the Buyer from the sale proceeds, in priority to all mortgagees, save and except Romspen , for all reasonable costs associated with the Buyer's due diligence and legal costs related to this Agreement.

15. Notwithstanding any statement to the contrary contained in the Agreement of Purchase and Sale, the Seller shall not be obligated to obtain or provide any survey of the subject Property save as may actually be in the possession of the Seller.

16. The Buyer herein represents and warrants that it has no association with, is not acting on behalf of, nor is it related to the Mortgagor/registered owner of the subject Property whose mortgage is in default and pursuant to which mortgage the Seller is selling the Property under Power of Sale. This representation and warranty shall survive the closing of the within transaction.

17. Post-closing adjustments will only be made if brought to the Seller's attention within 90 days of the date of closing, otherwise there will be no adjustments whatsoever after closing, including without limiting the foregoing, adjustments for realty taxes, business taxes, property assessments, sewer levies, water, hydro and utilities.

18. If the Property is a condominium, notwithstanding anything to the contrary in this Agreement, the Seller makes no representations and warranties about condominium matters, including current expenses, potential special assessments or legal actions pending against the condominium corporation, if any, and the Buyer shall not be entitled to terminate or to any abatement or damages relating to these matters. If any special assessments are levied and outstanding, the Seller is responsible for amounts payable on account thereof only for its period of possession until closing.

DS HG

DS MG

19. The Seller states and the Buyer acknowledges that the Seller is not and will not be at time of closing a non-resident of Canada as defined by the Income Tax Act; [redacted]

20. Where the provisions of this Schedule conflict with any terms in the Agreement of Purchase and Sale, the parties agree that the provisions of this Schedule shall govern and prevail.

21. Acceptance of this offer by either party and communication of same by facsimile transmission shall be binding upon each party as if such documents transmitted were original executed documents. Where available, title shall be conveyed electronically. Whether conveyed electronicall y or in the manner required by the Director of Titles, the Buyer shall accept the prescribed solicitor's statements attached to the transfer as conclu sive evidence of compliance with the Mortgages Act and other applicable legislation. The Seller will not provide any affidavit evidence in support of compliance, however, the Seller shall provide any of the Power of Sale documents required by the Buyer;s title insurer to obtain a title insurance policy on closing. At the Seller's option, the Buyer shall deliver all closing funds through the Teranet Closure System and all costs and fees of delivering the closing funds in such manner shall be paid for by the Buyer.

22. Upon termination of this Agreement by reason of **the sole default of** the Buyer, the deposit together with any interest herein shall be paid to the Seller by the Seller's Agent forthwith without any further direction or consent from the Buyer being required, and the Buyer shall not direct or cause or attempt to cause the Seller's Agent to do otherwise.

Per: DocuSigned by: *Mary Gianfriddo* B3CFAEB37344E4	9/15/2023 | 16:17 EDT
Seller	Date
Per: DocuSigned by: *Hashem Ghadaki* A0BB29985F63407	9/15/2023
Buyer	Date

DocuSign Envelope ID: BE2E8E9D-E11B-4492-86AB-ACC58E74A227

OREA Ontario Real Estate Association

Schedule C

Agreement of Purchase and Sale - Commercial

Form 505
for use in the Province of Ontario

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

BUYER: TIMES 1010 INC. MG HG, and

SELLER: ROMSPEN INVESTMENT CORPORATION (UNDER POWER OF SALE)

for the purchase and sale of 3143 19TH AVENUE MARKHAM ON L6C 1L8

dated the 15th day of September, 2023

LEGAL DESCRIPTIONS:

PIN: 03055-0377 (LT) LEGAL DESCRIPTION: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) LEGAL DESCRIPTION: PART LOT 30 CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) LEGAL DESCRIPTION: PART LOT 30 CONCESSION 4 PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

HG MG ~~The Buyer and Seller acknowledges and agrees that the deposit holder (Royal LePage Your Community Realty Brokerage) discloses that the depositor's funds are being held in a variable interest rate account "In Trust", as specified by the Real Estate Business Brokers Act 2002 section 27, at the current rate of prime less 2.15%. The Brokerage calculates and disburses all interest earned for the benefit of all Depositors (Buyers) unless otherwise directed in writing by the Depositor (Buyer) The interest earned on all deposits is subject to an administration fee of ninety five dollars ($95.00) plus HST per deposit or further deposits. In the event the interest earned does not exceed Ninety Five dollars ($95.00)such interest shall be retained by the Brokerage as full payment of the administration fee (no accounting statement will be provided). No interest shall be paid to the Buyer unless the Buyer provides the deposit holder with a Social Insurance Number and mailing address for use on the T5 forms prior to completion of this transaction. For all purposes of this notice, the terms "banking days" or "business days" shall mean any day other than a Saturday, Sunday or Statutory Holiday in the Province of Ontario.~~

The Seller and Buyer agree and acknowledge that all measurements and information provided by Royal LePage Your Community Realty on the MLS listing, Feature Sheets, and any other marketing materials for the subject property, have been supplied for reference purposes only and such Royal LePage Your Community Realty does not warrant their accuracy. The Buyer is advised to verify any measurements or information upon which he or she is relying.

In accordance with the Privacy Act (PIPEDA), the Buyers and the Sellers hereby agree to allow the Listing Brokerage and their Representatives to distribute information pertaining to the sale of the property in future marketing material upon this Agreement becoming firm and binding. Such information may include the price or sold price percentage in relation to asking price, picture, and address of the home, but shall not include the names or personal information about the Buyer or Seller.

Buyer Buyer agent to verify: Vacant Land Acres and Taxes.

(A) + (B) (A)- Subject to below, the Buyer represents and warrants that the Buyer is not and on completion will not be a non-Canadian as defined by the Prohibition on the Purchase of Residential Property by Non-Canadians Act (Canada) (the "Foreign Buyer Ban"), and therefore the Buyer is not prohibited from purchasing residential property in Canada.
(B)- Provided that if the Buyer is a non-Canadian as defined by the Foreign Buyer Ban, the Buyer represents and warrants that the Buyer qualifies for an exception under Section 4 of the Foreign Buyer Ban and is therefore not prohibited from purchasing residential property in Canada. These representations and warranties shall survive and shall not merge on closing. The Buyer hereby indemnifies the Seller against any costs, claims, or any other damages incurred by the Seller as a result of the Buyer being prohibited from purchasing residential property under the Foreign Buyer Ban.

The Buyer understands, acknowledges and agrees that the subject property vacant land is being sold 'As Is, Where Is.'
The Seller, Listing Agents and Listing Brokerage do not make any warranty or representation of any kind, including total developable Acres of Land and/or total Acres being sold.

MG HG The Buyer aknowledges having had the opportunity ~~to conduct due diligence and the opportunity~~ to seek independent Legal Counsel advice.

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

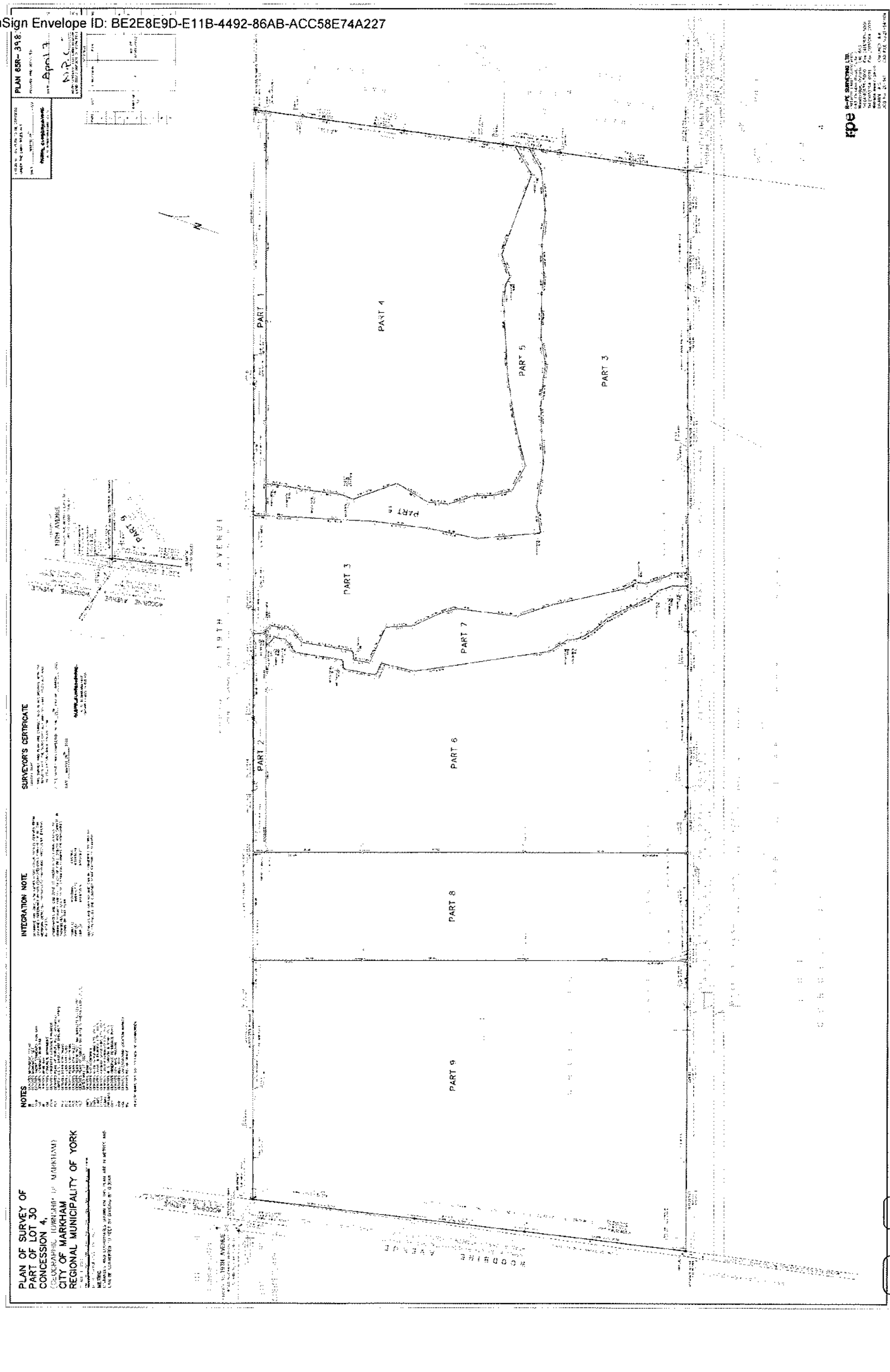
INITIALS OF BUYER(S): HG **INITIALS OF SELLER(S):** MG

SCHEDULE "D"

See attached.

DS
HG
DS
MG

DocuSign Envelope ID: BE2E8E9D-E11B-4492-86AB-ACC58E74A227



DS
MG
DS
HG

Schedule E

Permitted Encumbrances

"**Permitted Encumbrances**" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. As of the date of this Agreement, any registered easements or rights of way in favour of any governmental authority or public utility provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Any unregistered hydro easements provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property
5. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
6. Any registered agreements, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property and same are in good standing;
7. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
8. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, Work Orders;
9. Any breaches of any Applicable Laws, including Work Orders;
10. Any registered subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction provided that same are in good standing;
11. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
12. The following instruments registered on title against the Property:

Permitted Encumbrances related to the Property
(unaffected by the Vesting Order)

PIN 03055-0377 (LT)

Reg. Num.	Date	Instrument Type	Parties To
YR688928	2005/08/24	NOTICE	N/A

Initials of Buyer: HG Initials of Seller: MG

YR3397626	2022/03/22	NOTICE	THE CORPORATION OF THE CITY OF MARKHAM
65R39839	2022/04/07	PLAN REFERENCE	N/A
65R39880	2022/05/16	PLAN REFERENCE	N/A
YR3454770	2022/07/20	TRANSFER EASEMENT	ALECTRA UTILITIES CORPORATION

PIN 03055-0379 (LT)

Reg. Num.	Date	Instrument Type	Parties To
YR688928	2005/08/24	NOTICE	N/A
YR3397626	2022/03/22	NOTICE	THE CORPORATION OF THE CITY OF MARKHAM
65R39839	2022/04/07	PLAN REFERENCE	N/A
65R39880	2022/05/16	PLAN REFERENCE	N/A
65R39948	2022/07/12	PLAN REFERENCE	N/A
YR3454770	2022/07/20	TRANSFER EASEMENT	ALECTRA UTILITIES CORPORATION

PIN 03055-0380 (LT)

Reg. Num.	Date	Instrument Type	Parties To
YR688928	2005/08/24	NOTICE	N/A

Initials of Buyer: HG Initials of Seller: MG

YR3397626	2022/03/22	NOTICE	THE CORPORATION OF THE CITY OF MARKHAM
65R39839	2022/04/07	PLAN REFERENCE	N/A
65R39880	2022/05/16	PLAN REFERENCE	N/A
YR3454770	2022/07/20	TRANSFER EASEMENT	ALECTRA UTILITIES CORPORATION

ROMSPEN INVESTMENT CORPORATION -and- **TUNG KEE INVESTMENT CANADA LTD. et al.**
Applicant Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY AFFIDAVIT OF WESLEY ROITMAN

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

DAVID P. PREGER (36870L)
Email: dpreger@dickinsonwright.com
Tel: 416.646.4606

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: 416.646.4608

Lawyers for the Applicant

TAB 8

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

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

Respondents

AFFIDAVIT OF PUI LING LAI

I, **Pui Ling Lai**, of the Town of Aurora in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a director of Tung Kee Investment Canada Ltd. ("**Tung Kee**"), general partner of Tung Kee Investment Limited Partnership ("**Tung Kee LP**", and together with Tung Kee, the "**Respondents**"). The facts in this affidavit are based on my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others. When matters set out below are based upon information and advice from others, I have identified the sources of the information and advice and I believe it to be true.

2. This affidavit is sworn in response to:

   (a) the application to appoint Ernst & Young Inc. as receiver over the property, assets and undertakings of the Respondents (the “**Receiver**”), including, the real property owned by the Respondents municipally known as 3143 19th Avenue, Markham Ontario (the “**Real Property**”) by Romspen Investment Corporation (“**Romspen**”);

   (b) Romspen’s motion for an order approving the agreement of purchase and sale between Rompsen and Times 1010 Inc. dated September 15, 2023 (the “**Romspen APS**”); and

   (c) the motion by Sow Capital Ontario Limited (“**Sow**”) for an order permitting the completion of the sale of the Real Property by Sow under power of sale to 2816513 Ontario Inc. (the “**Sow APS**”).

3. For the reasons set out below, the Respondents oppose the proposed sale transactions put forward by Romspen and Sow. Both transactions are well below the appraised value of the Real Property and should not be allowed to proceed. In particular, the Respondents oppose Romspen’s request for an approval and vesting order in what is essentially a power of sale proceeding. Such relief is not appropriate in the circumstances and represents nothing more than Romspen’s attempt to restrict the Respondents’ from pursuing their claim for an improvident sale, a remedy that they are entitled to avail themselves of under a power of sale proceeding.

4. The Respondents do not oppose the appointment of the Receiver for the purpose of marketing the Real Property for sale in a court supervised process. The Respondents agree

with the following statements made by Wesley Roitman, Romspen's representative, in his Affidavit sworn on July 19, 2023 (the "**Receivership Affidavit**") in support of this receivership application: "a Court-appointed receiver will ensure that the interests of all of the Debtors' stakeholders are considered and facilitate a fair and transparent marketing and sale process for achieving a definitive disposition of the Property".

5. Both of the agreements of purchase and sale put forward by Sow and Romspen are for amounts that are in excess of the amounts owing to all of the parties with a registered mortgage against the Real Property. The only parties prejudiced by allowing one of these two transactions to proceed are the Respondents whose land is being sold off for a fraction of its value. Accordingly, there is no risk to the mortgagees, including Sow and Romspen in allowing a Court-appointed receiver to market and sell the Real Property in a court supervised process for the benefit of all stakeholders.

Romspen Power of Sale Proceedings

6. The Respondents are owners of the Real Property. The Respondents are in the process of developing approximately 4.5 million square feet of the property for mixed uses including hotel, a film studio, a convention and exhibition centre, office, retail and services apartments. In April 2022, the Real Property was subdivided into three parcels.

7. In January 2019, the Respondents retained Cushman & Wakefield to provide an appraisal of the Real Property. A copy of Cushman & Wakefield's 2019 appraisal is attached hereto as **Exhibit "A"**.

8. The 2019 appraisal valued the Real Property at $146 million subject to the following assumptions:

   (a) The subject proposed mixed-use development will obtain municipal approval and market conditions remain stable from the effective date of valuation to the approval date of the development.

   (b) The projected potential buildable gross floor area of approximately 4,500,000 square feet is achievable and will be developed in four stages over 15 years for the purpose of this appraisal.

   (c) The property will be physically and technically viable for the proposed development, and additional costs of site assessment and infrastructure provision will be required.

9. Assumptions one and two have now been satisfied and municipal approvals have been obtained. The development has the support of the Town of Markham which is currently working on infrastructure in the area where the Real Property is located. In 2021, the Respondents were successful in obtaining a Municipal Zoning Order from the City of Markham (the "**Zoning Order**").

10. The Respondents were diligently working to refinance the mortgages registered against the Real Property or to sell one or two of the parcels to pay out the lenders in full. When a sale of one of the parcels negotiated by the Respondents fell apart due to the purchaser's financing issues, Romspen, which holds the first mortgage against the Real Property, commenced power of sale proceedings.

11. The Respondents provided Romspen with a copy of their 2019 appraisal. Notwithstanding this, Romspen listed the Real Property for sale at a purchase price of $69,750,000, which is substantially below the market value of this property. As a consequence of Romspen's power of sale proceeding and the low listing price in particular, the Respondents have been unable to market or refinance the Real Property since the power of sale proceeding was commenced.

Sow Power of Sale Proceeding

12. Sow holds a fifth mortgage against the Real Property in the principal amount of $20 million.

13. Philip Wong, who is the principal of Sow, was a business partner of the Respondents. Mr. Wong was involved in both assisting the Respondents with their City of Markham applications, communicating with potential purchasers and Romspen. As part of Mr. Wong's involvement with the development of the Real Property he was well apprised of all of the municipal approvals obtained by the Respondents, including the Zoning Order.

14. On or around June 2023, the Respondents and Mr. Wong had a falling out. The Respondents have not had any business or personal dealings with Mr. Wong or Sow since then. Contrary to the bald allegations in Romspen's court materials, the Respondents and Sow are not related parties and are arm's length to each other.

15. On May 17, 2023, Sow served its Notice of Sale under its fifth mortgage. Sow then proceeded to market the Real Property for sale privately, without notice to the Respondents or Romspen.

16. On or around July 17, 2023, Sow entered into the Sow APS. Sow relies on two appraisals that it obtained in support of this transaction. I have reviewed these appraisals and note that the appraisals do not take into account the current status of the Real Property development, including the Zoning Order. Immediate private servicing solutions are available to accommodate immediate development of the Real Property in accordance with the Zoning Order, subject to site plan applications, which will shorten the estimated development time by 8 to 10 years. Furthermore, Sow's appraisals are improperly based on comparables to sales of unserviced lands and lands that have inferior street front exposure.

17. As a consequence, Sow's appraisals do not reflect the true value of the Real Property as at today's date. Mr. Wong knew or ought to have known that the appraisals obtained by Sow do not reflect the true value of the Real Property.

18. Sow has not demonstrated that it has sufficiently exposed the Real Property to market or that the Sow APS represents the best and highest value for the Real Property. I have reviewed Sow's motion materials and note that the Real Property was marketed by Sow to a close small group of Sow's private clients only. Sow did not retain industry recognized commercial realtors and did not demonstrate that it has the necessary commercial real estate experience to market this property for sale.

19. In response to Romspen's receivership application, Sow served and filed a copy of the Sow APS and its appraisals with the Court, thereby disclosing the purchase price to the marketplace. By its actions, Sow has now substantially impacted the ability of any of the mortgagees, and the Respondents, to market the Real Property for sale.

Romspen's APS

20. In the Receivership Affidavit, Mr. Roitman stated as follows: "although the Property continues to be listed for sale by Romspen, given the current economic climate of high interest rates and real estate market illiquidity, a Court supervised marketing and sale process is likely to be a better approach to achieving a definitive sale than a power of sale process, in which buyers may be inclined to try and leverage price reductions before waiving conditions."

21. The Romspen APS is not a reflection of a fulsome marketing process or a representation of the best and highest price of the Real Property. Rather, it is a poorly disguised rushed attempt by a potential purchaser to take advantage of and leverage Sow's disclosure at the expense of the Respondents' equity. The Respondents' position is further confirmed by the fact that the Romspen APS was received after Sow publicly disclosed the purchase price under the Sow APS.

22. In its report to the Court, the proposed Receiver opines that the Romspen APS will be sufficient to pay out the first four mortgagees in full but not sufficient to fully pay out Sow. This position is puzzling since Sow's counsel has advised that the purchase price under the Sow APS will be sufficient to pay out all creditors in full, including Sow and to leave money available for the equity holders. Since the proposed Receiver did not obtain payout statements from the mortagees, it is not clear where the Receiver is getting its information.

Current Property Appraisal

23. On September 27, 2023, the Respondents obtained an updated Appraisal for the Real Property, a copy of which is attached hereto as **Exhibit "B"**. As set out in greater detail in the updated appraisal, the current appraised value of the Real Property is between $130 million and $141.9 million. The appraisal further discloses that the sale of one or two of the land parcels (depending on the parcel selected) would be sufficient to pay out of all the mortgages registered against the Real Property in full.

24. As demonstrated by the purchase price in the agreements of purchase and sale entered into by Romspen and Sow in the last two months and the Respondents' appraisal:

(a) there is sufficient equity in the Real Property to pay out all of the mortgages registered against the Real Property in full; and

(b) there is sufficient demand for the Real Property at purchase prices that are sufficient to pay out the claims of all mortgagees in full.

25. The Respondents are the only fulcrum stakeholders in the Real Property Accordingly, there is no prejudice to any of the mortgagees, including Romspen and Sow, to allow the Receiver to properly market and sell the Real Property in a court supervised process.

26. There has been an increase in in market's interest in the Real Property as evidenced by the Sow APS and the Romspen APS. In addition, in the last month, the Respondents have been approached and have been working with three separate investor groups all of whom have expressed an interest in this property but a reluctance to move to the due diligence phase in the face of the Sow APS and the upcoming receivership hearing.

SWORN BEFORE ME over videoconference on this 5th day of October, 2023. The affiant was located in City of Richmond Hill, Province of Ontario and the Commissioner was located in the City of Toronto, Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.	
Commissioner for Taking Affidavits (or as may be)	**PUI LING LAI**

ROMSPEN INVESTMENT CORPORATION -and- **TUNG KEE INVESTMENT CANADA LTD., et al.**

Applicant | Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF PUI LING LAI

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Respondents

TAB 9

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

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

ROMSPEN INVESTMENT CORPORATION and **TUNG KEE INVESTMENT CANADA LTD. et al.**

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

RESPONDING APPLICATION RECORD OF THE PROPOSED RECEIVER

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
ckopach@blaney.com

Lawyers for the Proposed Receiver,
Ernst & Young Inc.

ROMSPEN INVESTMENT CORPORATION
Applicant (Respondent)

-and-

TUNG KEE INVESTMENT CANADA LTD. et. al.
Respondents (Appellants)

Court of Appeal File No. COA-23-CV-1129
Court File No. CV-23-00703161-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak LSO#: 54100A
Tel: (416) 218-1161
Email: maya@chaitons.com

Darren Marr LSO #79660G
Tel: (416) 218-1136
Email: dmarr@chaitons.com

Lawyers for the Appellants