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

MOTION RECORD OF THE RECEIVER, ERNST & YOUNG INC.
(Returnable December 5, 2023)

December 4, 2023

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 Ernst & Young Inc., in its capacity as Court-appointed Receiver

TO: **SERVICE LIST**

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

INDEX

TAB 1

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

NOTICE OF MOTION
(Further Interim Distribution)

Ernst & Young Inc. in its capacity as receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of the Respondents, will make a motion to a Judge of the Commercial List on Tuesday, the 5th day of December, 2023 at 9:45 am, or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom co-ordinates to be established by the Court prior to the motion date.

THE MOTION IS FOR an Order**:**

1. abridging the time for service of the Receiver's Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;

2. approving of the activities and proposed activities described in the Receiver's first report dated October 31, 2023 (the "**First Report**"), and the Receiver's second report dated December 4, 2023 (the "**Second Report**");

3. authorizing and directing the Receiver to make a further interim distribution in the total amount of $15,000,000 of the proceeds from the sale of the property known municipally as 3143 19^{th} Avenue, Markham, Ontario (the "**Real Property**") to the third-ranking mortgagee, 2149602 Ontario Inc. ("**214 Ontario**") and to the fifth-ranking mortgagee, SOW Capital Ontario Limited ("**SOW**") and Miltom Services Limited ("**Miltom**"), as follows:

    a. $7,000,000 to 214 Ontario, and

    b. $8,000,000 to SOW and Miltom; and

4. such further and other relief as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

1. further to an application issued by the Applicant Romspen Investment Inc. ("**Romspen**") on July 21, 2023, and by way of the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"), Ernst & Young Inc. was appointed Receiver over the assets, undertakings and properties of the Respondents, including the Real Property;

2. the Real 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;

Sale Approval, Appeal, and Closing

3. at the return of the receivership application on October 19, 2023, Justice Osborne was asked to decide between two competing motions to approve agreements of purchase and sale;

4. Justice Osborne approved the sale transaction (the "**Times Transaction**") by the Receiver contemplated in an agreement of purchase and sale between the 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, which was scheduled to close on November 15, 2023 (the "**Approval and Vesting Order**", or "**AVO**");

5. on October 27, 2023, 2816513 Ontario Inc. ("**281 Ontario**"), the unsuccessful purchaser in the competing transaction, served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and for leave to hear its appeal on an expedited basis;

6. on October 30, 2023, the Respondents filed a Notice of Appeal seeking, among other things, to set aside the Appointment Order and the AVO. As alterative relief, the Respondents sought, if necessary, leave to appeal the Appointment Order and the AVO, and staying the Orders pending Appeal;

7. because the Times Transaction was scheduled to close on November 15, 2023, on October 31, 2023, the Receiver's counsel delivered the First Report in support of a motion for advice and directions before a single judge of the Court of Appeal, regarding the issue of whether the Receivership Order and AVO could be appealed as of right, whether leave to appeal was required, and if leave was required, whether it should be granted.

8. the Receiver's motion was heard on November 10, 2023, before Justice Trotter who, on the same day, issued his decision, which among other things, held that (i) 281 Ontario had no standing to appeal the Appointment Order and the AVO, (ii) and that leave to appeal the Appointed Order and the AVO was required. Justice Trotter also dismissed the Respondents' motion for leave to appeal;

9. on November 15, 2023, upon the Receiver filing the required Receiver's certificate, the Times Transaction closed;

Payout of Romspen and Amber

10. there were five mortgages (the "**Five Mortgages**") and one lien claim registered on title to the Real Property as of the closing date of the Times Transaction, summarized below:

Ranking Priority	Creditor	Approx. Amount Owing
First	Romspen	$33.989 million
Second	Amber Mortgage Investment Corporation	$10.182 million
Third	214 Ontario	$12.479 million
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	SOW and Miltom	$13.001 million
Lien Claim	DX Strategies Inc.	$4,653,028

11. the purchase price under the Times Transaction in the amount of $68,001,312.05 was paid to the Receiver, and the following distributions were subsequently made to Romspen and to the second mortgagee Amber Mortgage Invesment Corporation ("**Amber**") in accordance with the AVO, and a subsequent consent order of Justice Conway dated November 30, 2023:

   a. $33,787,897.39 to Romspen on November 16, 2023;

   b. $9,087,542.27 to Amber on November 16, 2023;

   c. $268,410.50 to Romspen on November 30, 2023;

   d. $984,797.75 to Amber on November 30, 2023;

12. Romspen's and Amber's mortgages have been paid out in full as a result of the above distributions;

Surplus Funds Motion

13. the Receiver is currently holding approximately $22,181,000;

14. the Second Report includes, among other things, security opinions in respect of the mortgages of the remaining three mortgagees, being the third mortgagee 214 Ontario, the fourth mortgagee Frank Pa and Steven Tung ("**Pa and Tung**"), and the fifth mortgagee SOW and Miltom (collectively, the "**Remaining Mortgagees**");

15. the Second Report also includes an analysis of the information and documentation received from the lien claimant DX Strategies Inc. ("**DX**") in support of the validity and quantum of its lien claim, and the basis upon which DX seeks priority over the mortgages that were registered over the Real Property;

16. the Remaining Mortgagees and DX have scheduled a full day hearing for the determination of the amounts owing to 214 Ontario, Pa and Tung and SOW, and the validity and quantum of DX's lien claim, returnable February 16, 2024 (the "**Surplus Funds Motion**");

17. in the interim, the Respondents, DX and the Remaining Mortgagees have agreed on an interim distribution Order to pay out a further $15,000,000 from the proceeds from the Times Transaction, being $7,000,000 to 241 Ontario (its most recent payout statement was for $12,479,345.38 as of November 15, 2023), and $8,000,000 to SOW and Miltom (payout amount was $13,000,572.88 as of October 31, 2023). The net effect of this interim distribution, if ordered, would be to leave the Receiver holding approximately $7,181,000;

Receipts and Disbursements

18. the Interim Statement of Receipts and Disbursements of the Receiver attached as Appendix "T" to the Second Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the Appointment Order herein. It sets out actual receipts over disbursements of approximately $22,181,000;

19. section 249 of the *Bankruptcy and Insolvency Act*,

20. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*; and,

21. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. the First Report and the appendices attached thereto;

2. the Second Report and the appendices attached thereto; and

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

December 4, 2023

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 Court-appointed Receiver,
Ernst & Young Inc.

TO: **SERVICE LIST**

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

NOTICE OF MOTION
(Further Interim Distribution)

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 Court-appointed Receiver,
Ernst & Young Inc.

TAB 2

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

SECOND REPORT OF THE RECEIVER AND MANAGER DATED DECEMBER 4, 2023

Table of Contents

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

SECOND REPORT OF THE RECEIVER AND MANAGER
DATED DECEMBER 4, 2023

INTRODUCTION

1. This second report of the Receiver and Manager (the "**Second Report**") is filed by Ernst & Young Inc. ("**EYI**" or the "**Receiver**") in its capacity as receiver and manager of all the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by them, pursuant to the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix** "**A**".

2. A pre-filing Report of the Proposed Receiver dated October 4, 2023 (the "**Pre-Receivership Report**") provided, among other things, background information regarding the Respondents and the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), a summary of the Sale Process that was undertaken by the Applicant prior to the Appointment Order being made, the Receiver's views on the issuance of an Approval and Vesting Order ("**AVO**") without the Receiver launching its

own marketing and sale process for the Real Property, and a request for a Sealing Order sealing certain terms of the Times APS (defined below), the competing offers, and appraisals for the Real Property. A copy of the Pre-Receivership-Report, without appendices, is attached hereto as **Appendix "B"**.

3. The Receivership Application proceeded as a "pre-packaged" receivership, with two competing transactions. The first transaction (the "**Times Transaction**") was contemplated in an agreement of purchase and sale between the Applicant and first-ranking mortgagee Romspen Investment Corporation ("**Romspen**") and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 (the "**Times APS")** between the Applicant and Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collective, the "**Times Group**"). The Times APS was conditional on the Appointment Order and the AVO being issued.

4. The second transaction (the "**281 Transaction**") was between SOW Capital Ontario Limited ("**SOW**", the majority holder of the fifth-ranking mortgage) and 2816513 Ontario Inc. ("**281 Ontario**") pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**281 APS**").

5. The Respondents, SOW and 281 Ontario opposed the AVO. SOW brought a separate motion to approve the sale of the Real Property to 281 Ontario.

6. On October 19, 2023, Justice Osborne released his Reasons for Decision, appointing the Receiver, and issuing the AVO approving the Times Transaction.

7. Justice Osborne also issued an Order (the "**Sealing Order**") sealing, among other things, confidential information attached to the Affidavit of Wesley Roitman sworn July 19, 2023, the Affidavit of Wesley Roitman sworn September 26, 2023, and the Pre-Receivership Report.

8. On October 27, 2023, 281 Ontario served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and leave to hear its appeal on an expedited basis.

9. On October 30, 2023, the Respondents filed a Notice of Appeal, also seeking, among other things, to set aside the Appointment Order and the AVO. As alterative relief, the Respondent sought, "if necessary", leave to appeal the Appointment Order and the AVO, and staying the Orders pending appeal.

10. As the Times Transaction was scheduled to close on November 15, 2023, on October 31, 2023, the Receiver delivered the First Report of the Receiver (the "**First Report**") in support of its motion for advice and directions before a single judge of the Court of Appeal, regarding the issue of whether the Appointment Order and AVO could be appealed as of right, whether leave to appeal was required, and if leave was required, whether it should be granted. A copy of the First Report, without appendices, is attached hereto as **Appendix "C"**.

11. On November 10, 2023, the parties attended before Justice Trotter who, on the same day, issued his decision which, among other things, held that 281 Ontario had no standing to appeal the Appointment Order and the AVO and that leave to appeal the Appointment Order and the AVO was required. Justice Trotter dismissed the Respondents' motion for leave to appeal. A copy of the Justice Trotter's decision is attached hereto as **Appendix** "**D**".

12. On November 15, 2023, upon the Receiver filing the required Receiver's certificate, the Times Transaction closed.

PURPOSE

13. The purpose of this Second Report is to:

a) report on the closing of the Times Transaction and the distributions made to date from the sale proceeds of that transaction pursuant to the AVO and the subsequent Order of Justice Conway made November 30, 2023;

b) provide a summary of the independent security opinions obtained by the Receiver with respect to the enforceability and validity of the Five Mortgages (as defined below) registered against the Real Property;

c) provide an update on the Receiver's review of the DX Strategies Inc. ("**DX**") lien claim over the Real Property;

d) report on the activities of the Receiver since its appointment; and

e) provide the evidentiary basis to make an Order approving:
   i) the activities of the Receiver as described in the First Report and the Second Report; and
   ii) an interim distribution to the third and fifth ranking mortgagees.

TERMS OF REFERENCE

14. In preparing this Second Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial statements, the motion materials filed in respect of these proceeding, and discussions with management's counsel (collectively, the "**Information**"). Future oriented financial information relied upon in the Second Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

15. The 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 Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

16. The Receiver will make a copy of the Second Report, and related documents with respect to this Receivership application, available on the Receiver's website at www.ey.com/ca/tungkee. The Receiver has also established a toll-free phone number that is referenced on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

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

BACKGROUND

18. The Respondent Tung Kee Investment Canada Ltd. is an Ontario corporation and was the registered owner of the Real Property. The Respondent Tung Kee Investment Limited Partnership is an Ontario limited partnership and was the beneficial owner of the Real Property. The Real 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 Respondents planned to develop the Real Property as a mixed used development comprised of film studios, offices, a hotel and retail.

19. On or about September 1, 2022, the Respondents defaulted in payment of interest due under the loan that Romspen extended to the Respondents (the "**Romspen Mortgage Loan**"). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage Loan and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. The Respondents failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

20. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage. In early April 2023, Romspen engaged Royal LePage Your Community Realty and launched a process for the marketing and sale of the Real Property (the "**Sale Process**"). The Sale Process undertaken by Romspen resulted in a firm and binding agreement between Romspen and the Times Group, subject to the appointment of a receiver and the issuance of an AVO. The Times APS contemplated a closing date of November 15, 2023.

21. In July 2023, SOW, the majority owner of the fifth ranking mortgage on title to the Real Property, under its own power of sale in respect of the Real Property, entered into an agreement of purchase of sale with 281 Ontario (the "**281 APS**"), for a purchase price that was less than the Times APS (on a net basis).

22. On October 19, 2023, Justice Osborne released his Reasons for Decision issuing the Appointment Order and issuing the AVO approving the Times Transaction. The Sale Process undertaken prior to the Appointment Order, the Times Transaction, the Times APS and the 281 APS are described in detail in the Pre-Receivership Report. A copy of the AVO is attached hereto and marked as **Appendix "E"**.

23. Pursuant to paragraph 6 of the AVO, the Receiver is authorized and directed to make distributions to Romspen and the second mortgagee Amber Mortgage Investment Corporation ("**Amber**") in respect of all of the secured obligations owing to each of them from the sales proceeds forthwith after the Times Transaction closed, subject to obtaining an opinion from its counsel that the security held by Romspen and Amber over the Real Property is valid and enforceable.

24. Between November 10, 2023, and November 15, 2023, the Receiver, its counsel and counsel for the Times Group worked diligently to prepare all of the documents and agreements necessary to be in a position to close the Times Transaction and make the required payments to Romspen and Amber.

25. On November 15, 2023, upon the Receiver filing the Receiver's certificate, the Times Transaction closed.

ENCUMBRANCES/SECURED CLAIMS AGAINST THE REAL PROPERTY

26. There were five mortgages (the "**Five Mortgages**") and one lien claim registered on title to the Real Property as of the closing date of the Times Transaction, summarized below:

Ranking Priority	Creditor	Approximate Amount Owing (per latest payout statements)
First	Romspen	$33.989 million
Second	Amber	$10.182 million
Third	2149602 Ontario Inc.	$12.479 million
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	SOW Miltom Services Limited	$13.001 million
Lien Claim	DX	$4,653,028

27. Pursuant to Subordination and Postponement Agreements dated January 2022 between Romspen and each of Amber, SOW, 2149602 Ontario Inc. ("**214 Ontario**"), Frank Pa and Steven Tung ("**Pa and Tung**" and collectively with Amber, SOW and 214 Ontario, the "**Subordinate Encumbrancers**") each of the Subordinate Encumbrancers subordinated and postponed all of their rights under their security over the Real Property of the Debtors in favour of Romspen.

<u>Romspen Mortgage Loan</u>

28. The Romspen Mortgage Loan was the first ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, and was in the principal amount of $30 million.

29. The Receiver has obtained an independent security opinion from Blaney McMurtry LLP ("**Blaney**") with respect to the validity and enforceability of the security granted by the Respondents in favour of Romspen. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Romspen was valid and enforceable

as against the Real Property (the "**Romspen Security Opinion**"). A copy of the Romspen Security Opinion is attached hereto as **Appendix** "**F**".

30. The Receiver received a payout statement from Romspen which reflected that as at November 10, 2023, the outstanding balance under the Romspen Mortgage Loan was $33,988,530.50, comprised of the loan facility, unpaid interest and other fees and charges (the "**Romspen Payout Statement**"). A copy of the Romspen Payout Statement is attached hereto as **Appendix** "**G**".

31. Prior to the closing of the Times Transaction, the Respondents disputed certain amounts on each of Romspen's and Amber's payout statements, as well as the legal fees sought by those mortgagees.

32. Romspen's counsel and the Respondents agreed that an amount of $239,180.82 be held back by the Receiver until Romspen and the Respondents reach an agreement.

33. On November 16, 2023, the Receiver distributed $33,787,897.39 to Romspen pursuant to the AVO, representing the amount owing as per the Romspen Payout Statement, plus accrued interest to the date of distribution, less the holdback mentioned above.

34. On November 30, 2023, counsel for the Receiver, Romspen, SOW, the Respondents and the third and fourth mortgagees attended before Justice Conway in Chambers, who granted an Order on consent of the parties, among other things, confirming the payment of the remaining balance of Romspen's legal fees of $268,410.50 (the "**Romspen Final Payout Amount**"). The Order also reserves the rights of the fulcrum stakeholder to challenge Romspen's legal fees, and requires the Receiver to hold back a reserve of $50,000 as security for Romspen's costs in defending any challenge to its legal costs by the fulcrum stakeholder. A copy of Justice Conway's Order made November 30, 2023, and the related Endorsement are attached hereto as **Appendix "H"**.

35. On November 30, 2023, the Receiver distributed the Romspen Final Payout Amount. Accordingly, the Romspen Mortgage Loan has now been repaid in full, subject to any adjustment if the fulcrum creditor challenges Romspen's legal fees, and is successful in that regard.

Amber Mortgage Loan

36. Amber was the holder of the second ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $9.5 million, as amended pursuant to a Charge Amending Agreement dated June 16, 2022, notice of which was registered on title to the Real Property on July 4, 2022 (the "**Amber Mortgage Loan**").

37. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of Amber. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Amber is valid and enforceable as against the Real Property (the "**Amber Security Opinion**"). A copy of the Amber Security Opinion is attached hereto as **Appendix** "**I**".

38. The Receiver received a payout statement from Amber indicating that as of November 15, 2023, the outstanding balance owing under the Amber Mortgage Loan was $10,182,160.16, comprised of the loan facility, unpaid interest and other fees and charges (the "**Amber Payout Statement**"). This outstanding balance was subject to further other charges that were incurred until payout. A copy of the of the Amber Payout Statement is attached hereto as **Appendix** "**J**".

39. As previously described, the Respondents disputed certain charges on the Amber Payout Statement. Prior to the Times Transaction closing, Amber's counsel and the Respondents agreed that an amount of $1,109,797.75 be held back by the Receiver until Amber and the Respondents reached agreement, or a determination was made by the Court.

40. On November 16, 2023, the Receiver distributed $9,087,542.27 to Amber pursuant to the AVO.

41. On November 29, 2023, counsel for Amber, SOW (as a potential fulcrum creditor) and the Respondents advised the Receiver that these parties had agreed to a final payout amount to Amber of $984,797.75 (the "**Amber Final Payout Amount**"). The Amber Final Payout Amount represents the full and final determination of all issues with the Amber Payout

Statement, with no rights of any party to challenge any amounts paid out to Amber.

42. On November 30, 2023, the Receiver distributed the Amber Final Payout Amount. Accordingly, the Amber Mortgage Loan has now been repaid in full.

214 Ontario Mortgage Loan

43. 214 Ontario is the holder of the third ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $8.0 million, as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Real Property on February 24, 2022 (the "**214 Ontario Mortgage Loan**").

44. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of 214 Ontario. Blaney has opined that, subject to customary assumptions and qualifications, the security held by 214 Ontario is valid and enforceable as against the Real Property (the "**214 Ontario Security Opinion**"). A copy of the 214 Ontario Security Opinion is attached hereto as **Appendix** "**K**".

45. The Receiver received a payout statement from 214 Ontario's counsel indicating that as of November 15, 2023, the outstanding balance under the 214 Ontario Mortgage Loan was $12,479,345.38, comprised of the loan facility, unpaid interest and other fees and charges (the "**214 Ontario Payout Statement**"). The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up to the date that the 214 Ontario Mortgage Loan is repaid in full. A copy of the of the 214 Ontario Payout Statement is attached hereto as **Appendix** "**L**".

Pa and Tung Mortgage Loan

46. Pa and Tung were the holders of the fourth ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $3.54 million (the "**Pa and Tung Mortgage Loan**").

47. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of Pa and Tung. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Pa and Tung is valid and enforceable as against the Real Property (the "**Pa and Tung Security Opinion**"). A copy of the Pa and Tung Security Opinion is attached hereto as **Appendix** "**M**".

48. The Receiver received a payout statement from Pa and Tung's counsel indicating that as at November 15, 2023, the outstanding balance under the Pa and Tung Mortgage Loan was $3,540,000.00 (the "**Pa and Tung Payout Statement**"). A copy of the of the Pa and Tung Payout Statement is attached hereto as **Appendix** "**N**".

<u>SOW Mortgage Loan</u>

49. SOW was the holder of the fifth ranking mortgage registered against title to the Real Property. It was registered on March 26, 2022, in the principal amount of USD $5.0 million and amended by a charge/mortgage amending agreement dated February 1, 2023 to USD $20 million (the "**SOW Mortgage Loan**"). On January 9, 2023, Sow transferred a 14% interest in the SOW mortgage to Miltom, a tenant in common, securing an indebtedness of $700,000.00.

50. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of SOW. Blaney has opined that, subject to customary assumptions and qualifications, the security held by SOW (including the assignment to Miltom) is valid and enforceable as against the Real Property (the "**SOW Security Opinion**"). A copy of the SOW Security Opinion is attached hereto as **Appendix** "**O**".

51. The Receiver received a payout statement from SOW's counsel indicating that as of October 31, 2023, the outstanding balance under the SOW Mortgage Loan was $13,000,572.88, comprised of the loan facility, unpaid interest and other fees and charges (the "**SOW Payout Statement**"). The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up the date that the SOW

Mortgage Loan is repaid in full. A copy of the SOW Payout Statement is attached hereto as **Appendix** “**P**”.

DX Lien Claim

52. DX registered a Claim for Lien on April 14, 2023, in the amount of $4,653,028.11 (the “**Claim for Lien**”). In its Claim for Lien, DX alleges it supplied “Project management and architectural services” to Tung Kee Investment Canada Inc. from November 7, 2020, to March 7, 2022.

53. On November 11, 2023, counsel for DX delivered documentation that purported to prove “quantum, timeliness of supply, and confirmation that the services/material supplied by DX are lienable pursuant to the terms of the *Construction Lien Act* [sic]”, as well as DX’s entitlement to a priority claim over certain of the Five Mortgages. The documentation consisted of a cover letter from counsel to DX dated November 11, 2023, and the attachments thereto, including the affidavit of Dan Teh sworn November 11, 2023, and a document titled the “Construction Lien Legal Brief” dated November 11, 2023 (collectively, the “**DX Lien Backup Documents**”). On November 17, 2023, counsel for DX provided a copy of DX’s Claim for Lien, along with DX’s Statement of Claim and related Certificate of Action (none of which had been included in DX’s initial material). A copy of the DX Lien Backup Documents is attached hereto as **Appendix “Q”**. DX’s Claim for Lien registered April 14, 2023, and its Statement of Claim and Certificate of Action, both issued June 16, 2023, are attached hereto as **Appendix “R”**.

54. Blaney provided an analysis of DX’s lien, and the DX Lien Backup Documents, under cover of letter from Chad Kopach to DX’s counsel dated November 24, 2023 (the “**Lien Analysis**”). A copy of the Lien Analysis, without the attachments thereto, is attached hereto as **Appendix “S”**.

55. The Lien Analysis details discrepancies and evidentiary gaps in the DX Lien Backup Documents, including the following:

    a. the contract between DX and Tung Kee Investment Canada Inc. has not been produced in full;

b. there are insufficient particulars of the work that DX says it performed in respect of the improvement to the Real Property;
c. there is a lack of backup documents confirming whether the work DX says it performed, was actually performed;
d. on its face, the Claim for Lien was registered at least one year out of time;
e. DX's Statement of Claim does not specifically seek to enforce DX's lien (and in fact does not even include an allegation that DX has a lien);
f. the Statement of Claim does not name any of mortgagees as defendants, and does not allege priority over any one of the Five Mortgages;
g. the DX Lien Backup Documents are inconsistent on which of the Five Mortgages DX claims priority over, in what amount, and on what basis;
h. DX claims priority over SOW's mortgage on the basis of an alleged written notice of lien, but the document that purports to constitute the written notice of lien makes no reference to DX having a lien, and there is no evidence that the document was actually given to SOW; and
i. DX claims priority over SOW's mortgage on the basis of a "directorship conflict", but this is not a basis for a lien claimant to assert a priority claim over a mortgage under the *Construction Act*.

56. Most significantly, however, it appears that DX's lien was not perfected within the time required by the *Construction Act*, and it therefore expired. Even if DX's date of last supply was March 7, 2023, as a result of a typographical error (and not 2022 as alleged in the Claim for Lien), then DX only had until June 6, 2023, to perfect its lien by issuing the Statement of Claim and Certificate of Action, and registering the Certificate of Action on title to the Real Property. The Statement of Claim and Certificate of Action were not issued until June 16, 2023, and the Certificate of Action was registered on title to the Real Property on that day.

57. The Lien Analysis stated, among other things, that the likely net effect of the various errors set out above would be to invalidate DX's lien claim, and that DX would be left with an unsecured claim for some amount of the approximately $4.6 million sought by DX in its Claim for Lien.

58. Blaney invited DX's counsel to provide further documentation/information to address the deficiencies noted in the Lien Analysis. As of the date of this Second Report, Blaney has received no further documentation/information from DX or its counsel.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

59. Attached hereto as **Appendix "T"** is the Receiver's Interim Statement of Receipts and Disbursements for the period from October 19, 2023, to November 30, 2023, which indicates actual receipts over disbursements of $22,181,107.53

PROPOSED FURTHER INTERIM DISTRIBUTION

60. Pursuant to the Endorsement of Justice Conway made November 30, 2023, counsel to the Respondent, SOW, 214 Ontario, Pa and Tung, and the lien claimant agreed to schedule a full day motion for the determination of the amounts owing under the outstanding registered mortgages, and the validity and quantum of the DX lien claim. The parties have agreed to a timetable for, among other things, delivery of materials for a full day motion scheduled for February 16, 2024.

61. The Respondents, DX, 241 Ontario, Pa and Tung, SOW and Miltom have negotiated an interim distribution Order that would see interim distributions made to 241 Ontario and SOW/Miltom in the amounts of $7 million and $8 million, respectively, or totaling $15 million.

62. As set out above, as at the date of this Second Report, the Receiver is currently holding approximately $22,181,000 in remaining proceeds of sale from the Real Property.

ACTIVITIES OF THE RECEIVER TO DATE

63. The Receiver has taken, among other things, the following actions in connection with its obligations under the Appointment Order as set out below:

a) opened a new bank account in the name of the Receiver;

b) maintained a statement of receipts and disbursements and an accounting record for ongoing disbursement requirements and general banking responsibilities;

c) registered the Appointment Order against title to the Real Property;

d) made arrangement for the Times Transaction deposit to be transferred to the bank account held by the Receiver;

e) arranged for insurance coverage for the Real Property and set up the Receiver as loss payee to the insurance policy;

f) arranged to meet with the principal of the Respondents to better understand the state of the books and records and other financial information of the Respondents;

g) posted the Receiver's Reports, Court materials and other documents on the Receiver's Website to keep creditors and other stakeholders apprised of the status of this receivership proceeding;

h) established a toll-free number: 1-833-453-2978 for creditors and other interested parties to contact the Receiver;

i) prepared the First Report in connection with a motion by the Receiver for directions before a single judge of the Court of Appeal on an expedited basis;

j) received and responded to requests for information from various stakeholders;

k) dealt with all ancillary matters relating to the closing of the Times Transaction including, but not limited to, negotiating an assignment agreement and assumption and amendment agreement relating to the Times APS;

l) corresponded with stakeholders in respect of the quantum to hold back from the distributions to Romspen and Amber;

m) made distributions to Romspen and Amber pursuant to the AVO;

n) prepared a distribution waterfall to understand the potential distribution available from the proceeds of the Times Transaction;

o) corresponded with the real estate agent in respect of the closing of the Times Transaction;

p) responded to inquiries relating to the nature of the Respondent's receivership proceeding;

q) reviewed and analyzed the payout statements for the Five Mortgages;

r) reviewed the independent security opinions for each of the Five Mortgages;

s) reviewed Blaney's Lien Analysis on the validity and quantum of the DX lien claim (and mortgage priority claims); and

t) attended multiple Court hearings.

RECOMMENDATION

64. For the reasons enumerated above, the Receiver requests an order approving the relief sought in paragraph 13(e).

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

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

Jeffrey D. Kerbel
Senior Vice-President

Appendix “A”

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.

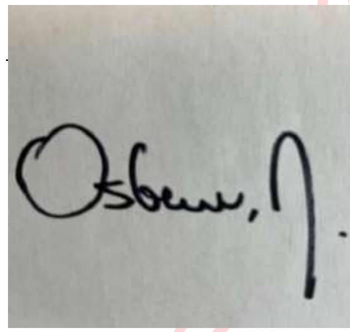
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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 -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

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

Appendix “B”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

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

Respondents

REPORT OF THE PROPOSED RECEIVER
DATED OCTOBER 4, 2023

INTRODUCTION

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

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

PURPOSE

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

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

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

(c) summarize the appraisals for the Property;

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

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

a) the Receivership Order;

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

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

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

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

TERMS OF REFERENCE

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

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

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

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

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

BACKGROUND AND FINANCIAL POSITION OF THE DEBTORS

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

Secured Creditors

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

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

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

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

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

POWER OF SALE BY ROMSPEN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Results of the Sale Process

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

The First Offer and Revised First Offer

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

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

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

The Second Offer and Revised Second Offer

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

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

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

The Letter of Intent

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

SUCCESSFUL BID

The Times APS

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

due diligence condition deadline of September 30, 2023.

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

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

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

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

Evaluation of the Times APS

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

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

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

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

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

POWER OF SALE BY SOW CAPITAL

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

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

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

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

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

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

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

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

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

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

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

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

COMPARISON OF THE APPRAISALS, TIMES APS AND THE SOW APS

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

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

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

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

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

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

OBSERVATIONS OF ROMSPEN'S SALE PROCESS

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

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

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

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

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

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

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

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

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

Approval and Vesting Order

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

Sealing Order

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

Receivership Order

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

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

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

Per:
Jeffrey D. Kerbel
Senior Vice-President

Appendix “C”

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

FIRST REPORT OF THE RECEIVER AND MANAGER
DATED OCTOBER 31, 2023

INTRODUCTION

1. This first report of the Receiver and Manager (the "**First Report**") is filed by Ernst & Young Inc. ("**EYI**" or the "**Receiver**") in its capacity as receiver and manager of all the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by them, pursuant to the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix** "**A**".

2. The Report of the Proposed Receiver dated October 4, 2023 (the "**Pre-Receivership Report**") provided, among other things, background information regarding the Respondents and the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), a summary of the Sale Process that was undertaken by the Applicant prior to the Appointment Order being made, the Receiver's views on the

issuance of an Approval and Vesting Order ("**AVO**") without the Receiver launching its own marketing and sale process for the Real Property, and a request for a Sealing Order sealing terms of the Times APS (defined below), and the competing offers and appraisals for the Real Property. A copy of the Pre-Receivership report is attached hereto as **Appendix** "**B**", without the confidential appendices thereto.

3. The Receivership Application proceeded as a "pre-packaged" receivership, with two competing transactions. The first transaction (the "**Times Transaction**") was contemplated in an agreement of purchase and sale between the Applicant and first-ranking mortgagee Romspen Investment Corporation ("**Romspen**") and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 (the "**Times APS",** attached hereto as **Confidential Appendix "1"**) between the Applicant and Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collective, the "**Times Group**"). The Times APS was conditional on the Appointment Order and the AVO being issued.

4. The second transaction (the "**281 Transaction**") was between SOW Capital Ontario Limited ("**SOW**", the fifth-ranking mortgagee) and the Appellant 2816513 Ontario Inc. ("**281 Ontario**") pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**281 APS**", attached to the affidavit filed by SOW, reproduced at Appendix H, described below).

5. On October 19, 2023, Justice Osborne issued the AVO approving, among other things, the Times Transaction. A copy of the AVO and the related endorsement of Justice Osborne are attached hereto as **Appendices "C"** and **"D"**, respectively.

6. On October 19, 2023, Justice Osborne issued an Order (the "**Sealing Order**") sealing, among other things, confidential information attached to the Affidavit of Wesley Roitman sworn July 19, 2023 (copy attached hereto as **Appendix "E"**, without confidential exhibits thereto), the Affidavit of Wesley Roitman sworn September 26, 2023 (copy attached hereto as **Appendix "F"**, without confidential exhibits thereto), and to the Pre-Receivership Report.

7. The Sealing Order and the Appointment Order were not opposed by any of the mortgagees or the Respondents. In fact, the Respondents delivered a responding Affidavit of Pui Ling Lai sworn October 5, 2023 (attached hereto **as Appendix "G"**) supporting the appointment of a Receiver.

8. The Respondents, SOW and 281 Ontario opposed the AVO. SOW brought a separate motion to approve the sale of the Real Property to 281 Ontario, and in support of that motion delivered an Affidavit of Philip Wong sworn September 26, 2023, a copy of which is attached at **Appendix "H"**. In support of SOW's motion, 281 Ontario delivered an Affidavit of Hunter Lam sworn October 4, 2023, a copy of which is attached at **Appendix "I"**.

9. The Receiver's Pre-Receivership Report included a summary of the competing offers for the Real Property, including the Times APS and the 281 APS. A copy of the Receiver's summary is attached at **Confidential Appendix "2"**.

10. On October 19, 2023, among other things Justice Osborne approved the AVO authorizing the Times Transaction and the Times APS.

PURPOSE

11. The First Report is being filed in connection with an urgent motion regarding the Appointment Order, the AVO and the Times Transaction, which is scheduled to close on **<u>Wednesday, November 15, 2023</u>**.

12. On October 27, 2023, 281 Ontario served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and for leave to hear its Appeal on an expedited basis.

13. On October 30, 2023, the Respondents filed a Notice of Appeal, among other things, to set aside the Appointment Order and the AVO. As alterative relief, the Respondents seek, "if necessary" leave to appeal the Appointment Order and the AVO, and staying the Orders pending Appeal.

14. Neither 281 Ontario nor the Respondents have delivered a notice of motion seeking leave to appeal the AVO, nor seeking a stay of either the Appointment Order or the AVO.

15. The Receiver seeks directions before a single judge of the Court of Appeal regarding, among other things:

a) whether 281 Ontario has standing to appeal, and if so, whether 281 Ontario's appeal of the Appointment Order and the AVO is as of right, or whether it requires leave to appeal;

b) whether the Respondents have an appeal as of right of the Appointment Order and AVO, or whether they require leave to appeal;

c) if leave to appeal is required (and if 281 Ontario has standing with respect to its purported appeal), whether leave should be granted; and

d) if leave is not required (and if 281 Ontario has standing with respect to its purported appeal), whether the Appointment Order and the AVO are stayed by the Notices of Appeal, and if stayed, whether the stays should be lifted.

16. The Receiver's position is that 281 Ontario had no standing on the underlying Application and continues to have no standing on its purported appeal. Furthermore, the Receiver's position is that there is no automatic right of appeal with respect to the Appointment Order or the AVO, pursuant to subsections 193(a) through (d) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and as a result of Respondents' consent to the Appointment Order, section 133 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 precludes its appeal of the Appointment Order. In the alternative, the Receiver 's position is that the Appointment Order and the AVO are not automatically stayed pursuant to section 195 of the *BIA* by the filing of the Notices of Appeal, and that a stay is required to preclude the Times Transaction from closing on November 15, 2023.

TERMS OF REFERENCE

17. In preparing this First Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial statements, the motion materials filed in respect of these proceeding, and discussions with management and its counsel (collectively, the "**Information**"). Future oriented financial information relied upon in the First Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

18. The 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 Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

19. The Receiver will make a copy of the First Report, and related documents with respect to this Receivership application, available on the Receiver's website at www.ey.com/ca/tungkee. The Receiver has also established a toll-free phone number that is referenced on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

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

BACKGROUND

21. The Respondent Tung Kee Investment Canada Ltd. is an Ontario corporation and is the registered owner of the Real Property. The Respondent Tung Kee Investment Limited Partnership is an Ontario limited partnership and is the beneficial owner of the Real Property. The Real 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 Respondents

planned to develop the Real Property as a mixed used development comprised of film studios, offices, a hotel and retail.

22. On or about September 1, 2022, the Respondents defaulted in payment of interest due under the loan that Romspen extended to the Respondents (the "**Romspen Mortgage Loan**"). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage Loan and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. The Respondents failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

23. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage. In early April 2023, the Applicant engaged Royal LePage Your Community Realty and launched a process for the marketing and sale of the Real Property (the "**Sale Process**"). The Sale Process undertaken by Romspen resulted in a firm and binding agreement between Romspen and the Times Group, subject to the appointment of a receiver and the issuance of an AVO. The Times APS contemplates a closing date of November 15, 2023.

24. In July 2023, SOW, the fifth ranking mortgage on title to the Real Property, under its own power of sale in respect of the Real Property entered into an agreement of purchase of sale with 281 Ontario (the "**281 APS**"), for a purchase price that is less than the Times APS (on a net basis).

25. On October 19, 2023 Justice Osborne released his Reasons for Decision issuing the Appointment Order and issuing the AVO approving the sale transaction and the Times APS. The Sale Process undertaken prior to the Appointment Order, the Times APS, and the 281 APS are described in detail in the Pre-Receivership Report.

26. The same day (October 27, 2023) counsel for 281 Ontario delivered its client's Notice of Appeal and counsel to the Respondents advised in writing of its clients' intention to appeal, the Receiver's counsel advised counsel for 281 Ontario and the Respondents that their clients' required leave to appeal, and that the Receiver would be seeking directions in a motion before a single judge of the Court of Appeal the week of November 6, 2023, as the

Times Transaction was scheduled to close on November 15, 2023.

27. The relevant email correspondence from counsel for the Receiver on October 27, 2023 is attached at **Appendix "J"**.

ENCUMBRANCES/SECURED CLAIMS AGAINST THE REAL PROPERTY

28. There are five mortgages (the "**Five Mortgages**") registered on title to the Real Property, summarized below:

Ranking Priority	**Creditor**	**Approximate Amount Owing (per Romspen factum)**
First	Romspen	$33.552 million
Second	Amber Mortgage Investment Corporation	$9.869 million
Third	2149602 Ontario Inc.	$11.394 million
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	SOW	$11.965 million

29. On April 14, 2023, DX Strategies Inc.("**DX**") registered a claim for a lien over the Real Property in the amount of $4,653,028 and perfected the lien by registering a certificate of action on June 16, 2023. DX seeks priority over the mortgages registered on title to the Real Property.

30. The Receiver is in the process of performing an independent security review of the Five Mortgages, and of DX's lien, to determine validity and priority.

APPRAISED VALUE OF THE REAL PROPERTY

31. The Times Transaction reflects a purchase price higher than the value of the Real Property as reflected by the appraisals commissioned by Romspen and SOW. Romspen produced the appraisal of Altus Group Limited dated January 28, 2023 as a confidential appendix (attached hereto as **Confidential Appendix "3"**), and sought (and obtained) the Sealing Order keeping the purchase price in the Times APS and the value in the appraisal confidential. SOW, on the other hand, did not seek a sealing order, and has publicly disclosed the purchase price in the 281 APS, and the valuations set out in the two appraisals SOW had commissioned.

RISKS ASSOCIATED WITH A STAY OF THE APPOINTMENT ORDER AND AVO

32. The prejudice associated with a stay of the Appointment Order and the AVO would include:
    a. erosion of the net recovery through per diem interest of approximately $22,871, plus continued costs of the Receivership;
    b. a likely cap or ceiling on the amount of any future offer for the Real Property at an amount below the two appraisal values publicly disclosed by SOW (both of which are below the purchase price in the Times APS);
    c. the risk of losing the Times APS in the face of not just uncertainty, but in the face of a strong likelihood that a superior offer will not be received; and,
    d. the risk that a second sale process is likely to have a chilling effect on the market for the Real Property.

All of which is respectfully submitted this 31st day of October, 2023.

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

Jeffrey D. Kerbel
Senior Vice-President

Appendix “D”

COURT OF APPEAL FOR ONTARIO

BEFORE: TROTTER J.A.

DATE: NOVEMBER 10, 2023

DISPOSITION OF COURT HEARING:

COURT FILE NO.: M54659, M54664, M54665 (COA-23-CV-1129 & COA-23-CV-1163)

TITLE OF PROCEEDING:

ROMSPEN INVESTMENT CORPORATION V. TUNG KEE INVESTMENT CANADA LTD. ET AL

Background

On October 19, 2023, Justice Peter Osborne, sitting as a judge on the Commercial List in Toronto, made an Appointment Order naming Ernst & Young Inc. as the Receiver over the assets and undertakings of Tung Lee Investment Canada Ltd. and Tung Lee Investments Limited Partnership ("the mortgagors"). On the same day he made an Approval and Vesting Order ("AVO"), which involves the purchase and sale of a 66 acre, undeveloped piece of land in Markham, Ontario ("the property") between the first mortgagee, Romspen Investment Corporation ("Romspen"), to Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collectively, "the Times Group" and the "Times Transaction").

During the same proceeding, Osborne J. refused to approve a competing proposal that would have permitted the fifth mortgagee, SOW Capital Ontario Limited ("SOW"), to sell the property to 2816513 Ontario Inc. ("281"), albeit at a lower price. The approved Times Transaction is scheduled to close on November 15, 2023.

The Appeals

The mortgagors have filed a Notice of Appeal of both aspects of the October 19, 2023 order (i.e., the appointment of the Receiver and the AVO). 281 purports to appeal the approved sale and lead fresh evidence on its appeal, even though Osborne J. concluded that 281, as an unsuccessful bidder, had no standing in the proceedings.

The Receiver brings a Motion for Directions, on an emergency basis, with the ultimate goal of facilitating the approved sale on November 15, 2023. The mortgagors and 281 also seek directions with the joint goal of derailing the sale. The latter both contend that they have appeals as of right under s. 193 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), and that their appeals result in an automatic stay of the November 15, 2023 Times transaction under s. 195 of the *BIA*. Alternatively, they seek leave to appeal today, again with an automatic stay. All parties agree that it is common practice for a single judge hearing a motion for directions to consider and determine leave applications in the context of *BIA* proceedings.

The Receiver, joined by Romspen, take the position that 281 has no standing to appeal the order of Osborne J. Alternatively, they contend that 281 has no appeal as of right. They further submit that leave to appeal is required and it should be refused. In the further alternative, if leave is granted, they request that I exercise my discretion under s. 195 and cancel the stay.

With respect to the mortgagors, the Receiver takes the position that, having consented to the appointment of a Receiver, the mortgagors require leave to appeal to resile from a consent order. The Receiver also submits that the mortgagors have no appeal as of right to this court and that, alternatively leave to appeal should be refused. Again, they request that I exercise my discretion under s. 195 of the *BIA* to permit the transaction to close on November 15, 2023.

Discussion

Given the urgency of the matter, time does not permit the preparation of extensive reasons. I briefly set out my conclusions that I have reached on these dueling motions.

(1) No Appeals as of Right

I have concluded that 281 has no standing to appeal from the Order of Osborne J., who gave cogent reasons on this very issue, at paras. 89 to 92.

Mr. Klaiman for 281 submits that Osborne J. erred in concluding that 281 was a “bitter bidder”; instead, he submitted that his client is a successful purchaser who is entitled at law to have its agreement approved. Osborne J. considered and rejected the same arguments made before me concerning the doctrine of equitable conversion. He further dismissed the submission that, because the SOW/281 APS was entered into before the Receiver was appointed, 281 was put in a better position. As Osborne J. said, it did not permit SOW, the fifth mortgagee, to “jump the line” ahead of others with superior security. I agree with Osborne J.’s analysis. 281 had no standing before him; it has no standing in the Court of Appeal, for the same reasons: paras. 98-101. Accordingly, insofar as 281 is concerned, no statutory stay of proceedings, either based on an appeal as of right or by leave, is triggered by its filing of a Notice to Appeal.

The Receiver and Romspen submit that the mortgagors have no appeal as of right from the Appointment order because they consented to it before Osborne J. As he said at para. 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.”

On this motion, Ms. Poliak for the mortgagors submits that her clients’ consent was not open ended. As noted in an affidavit filed before Osborne J., the consent was qualified: “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.” But that is precisely what happened in this case; Osborne J. took steps to assure the purchase price of the Times Transaction was determined on a basis that was fair and commercially sound, yielding the best outcome for all creditors. The mortgagors have provided no explanation, let alone a compelling one, to justify its reversal from its position before Osborne J.

The mortgagors further submit that their appeals fall under s. 193(a) of the *BIA*, being an appeal that affects it's "future rights." The future right identified is the loss of the mortgagors' right to sue Romspen based on an improvident sale of the property. However, I agree with Mr. Preger for Romspen that, once a Receiver is in place, that right is lost: see *2403177 Ontario Inc. v. Bending Lake Iron Group*, 2016 ONCA 225. Upon the appointment of the Receiver, they lost a "present" or existing right to sue for an improvident sale, not a future right. Leave is required in the circumstances.

With respect to their appeal from the approval of the sale, the mortgagors have no appeal as of right, as defined in s. 193(a) to (d) of the *BIA*. Leave is required.

(2) Leave to Appeal Dismissed

Section 193(e) provides that leave to appeal may be granted on grounds that do not come within paras. (a) to (d) of that provision.

The mortgagors make a number of submissions that are largely factual in nature. Ms. Poliak submits that there was no reason why either of the proposed transactions – the Times Transaction and the SOW/281 sale – could not have gone under Power of Sale proceedings. But this is grounded in the same submission mentioned above, that the mortgagors complain that they lost their rights to commence an action for an improvident sale of the property. However, Osborne J. engaged in a process specifically designed to avoid an improvident sale. He would not have approved the Times Transaction if he thought it was improvident. Ms. Poliak submits that Osborne J. ignored two appraisals produced by the mortgagors that suggested that the property was worth far more than the Times Transaction would yield. In my view, Osborne J. sufficiently addressed this evidence in his reasons, at paras. 81-82.

To summarize, the grounds on which the mortgagors seek leave are fact-specific; whereas leave to appeal requires much more: *Kingsett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONCA 479, at para. 26. In particular, an application for leave to appeal under the *BIA* must raise an issue of general importance to the practice in bankruptcy/insolvency matters, or to the administration of justice as a whole. Another question to be asked is whether the appeal would unduly hinder the progress of the bankruptcy/insolvency proceedings: *Business Development Bank of Canada v. Pine Tree Resorts*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29. In my view, the grounds on which the mortgagors seek leave to appeal do not transcend the facts of this case. Moreover, they would not only hinder the progress of the proceedings, they will largely derail them, an issue addressed further below.

Accordingly, I am not persuaded that this is a proper case for leave to appeal on any of the submissions advanced by Ms. Poliak in her submissions. Once again, a stay of proceedings is not triggered in the circumstances.

(3) No Stay of Proceedings

Given my conclusions above, neither appellant is entitled to an automatic stay of proceedings. If I am mistaken in any of these conclusions, and an automatic stay is somehow triggered, I exercise my discretion under s. 195 of the *BIA* and cancel the stay.

Section 195 of the *BIA* provides as follows:

> s. 195 Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, <u>but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper</u>. [Emphasis added.]

The approach to s. 195 is guided by a similar test for granting an injunction in *RJR-MacDonald Inc. v. Canada*, [1994] 1 S.C.R. 311. See *Matco Capital Limited v. Interex Oil Field Services Ltd.*, 2007 ABCA 317, at para. 11.

In all of the circumstances, this is an appropriate case to cancel a stay. This conclusion draws on the reasons offered by Osborne J. to approve the Times Transaction, as well as the almost inevitable damage (i.e., irreparable harm) that would be caused by not doing so:

- A fair sales process was conducted by Romspen, but only after previous efforts had failed to result in a sale;
- Prior attempts to sell the property, both by the mortgagors and by SOW, yielded potential sales, but at lower purchase prices;
- Preventing the Times Transaction now would reduce the marketability of the property in the future;
- There is no guarantee that the Times Transaction will close if the November 15, 2023 closing date is postponed;
- The improper disclosure of prior appraisals by SOW may adversely impact on the purchase price of any future deal;
- There is no guarantee that, if returned to the market, any better offer would be generated;
- Interest on the outstanding debt was accumulating at a rate of $23,000 a day or $710,000 a month;
- The closing date for the proposed SOW/281 sale had been postponed on more than one occasion without explanation; and
- The proposed SOW/281 sale is now scheduled to close more than two weeks after the Times Transaction, resulting in the accumulation or even more interest.

All of these factors justify the denial of a stay of proceedings.

Conclusion

There will be no stay of proceedings. The Times Transaction is free to close on November 15, 2023.

The parties agreed that the costs of today's proceedings should be dealt with by a judge on the Commercial List after the sale of the property. I wish to thank all counsel for their helpful written and oral submissions.

J.A.

Appendix "E"

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:

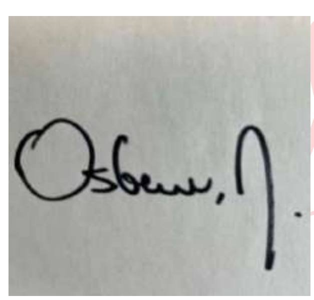
(a) the pendency of these proceedings;

(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

Appendix “F”

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

(T) 416-593-1221
(W) Blaney.com

November 15, 2023

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON M5H 0B3

Dear Sirs:

Re: Opinion to Ernst & Young Inc. ("EY") as Court Appointed Receiver and Manager of all the assets and property of Tung Kee Investment Canada Ltd. (TKIC") and Tung Kee Investment Limited Partnership ("TKIL" and together with TKIC, the "Borrower") regarding the validity and enforceability of security held by Romspen Investment Corporation (the "Lender") over the real property at 3143 19th Ave., Markham, Ontario (the "Property")

We have been provided with:

1. a copy of an Endorsement of the Ontario Superior Court of Justice (Commercial List) made October 19, 2023, appointing EY as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for, or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the first mortgagee over the Property (the "**Proceedings**");

2. a copy of the Application Record of the Lender dated August 18, 2023 (the "**Application Record**"), that includes the Affidavit of Wesley Roitman sworn July 19, 2023 attached at Tab "2" of the Application Record (the "**First Roitman Affidavit**");

3. a copy of the Romspen Motion Record dated September 29, 2023 that includes the Affidavit of Wesley Roitman sworn September 29, 2023 attached at Tab "3" of the Romspen Motion Record (the "**Second Roitman Affidavit**");

4. a copy of the Motion Record of Sow Capital Ontario Limited dated September 26, 2023 (the "**Sow Motion Record**"), that includes the Affidavit of Philip Wong sworn September 26, 2023 attached at Tab "2" of the Sow Motion Record (the "**Wong Affidavit**");

5. a copy of the Responding Application Record of EY dated October 4, 2023;

6. a copy of the Responding Motion Record of the Borrower dated October 5, 2023;

7. a payout statement provided by the Lender dated November 10, 2023 (the "**Payout Statement**"); and

8. a commitment letter dated October 18, 2021 (the "**Original Commitment**") issued by the Lender to TKIL and accepted by the Borrower and others, as amended pursuant to amendments dated December 14, 2021 (the "**First Amendment**"), December [___], 2021 (the "**Second Amendment**")[1], January 23, 2022 (the "**Third Amendment**") and May 1, 2022 (the "**Fourth Amendment**" and collectively with the Original Commitment, the First Amendment, the Second Amendment and the Third Amendment, the "**Commitment**").[2]

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the **"Security"**). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the **"Security Interests"**) in the personal property collateral (the **"Collateral"**) to which the *Personal Properly Security Act* (Ontario) (the "**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

(a) executed copies of the Security;

(b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Government Services (Ontario) and under the following statues:

(i) the Bank *Act* (Canada);

(ii) the Bankruptcy *and Insolvency Act* (Canada); and

(iii) the Execution Act (Ontario);

the results and currency of which are set out in Schedule "B";

(c) Ontario Personal Property Security Registration System Enquiry Response Certificates with a File Currency date of October 3, 2023 with respect to each Borrower, the results of which are summarized in Schedule "C";

(d) subsearch of title against the Property, the results of which are set out in Schedule "D". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm Planning Act (Ontario) compliance nor did we confirm whether there was access to the real property; and

---

[1] This amendment is blank dated in December 2021 but the subsequent amendment and other documents (i.e. the Charge and promissory note) reference this amendment as being dated January 7, 2022.

[2] The dates of the Second Amendment and the Third Amendment as referenced in Recital A of the Fourth Amendment appear to be wrong; the Commitment is found at Exhibit 1 of the Affidavit.

(e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below, we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied, without independent verification or investigation, on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

(a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;

(b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;

(c) the accuracy of the description of the Collateral set out in the Security;

(d) that:

(i) the Borrower has rights in the Collateral;

(ii) value, as that term is defined in the PPSA, has been given to the Borrower; and

(iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;

(e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

(f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;

(g) that the Borrower:

(i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;

(ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;

(iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and

(iv) has duly executed and delivered the Security;

(h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;

(i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;

(j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;

(k) that there are no:

(i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or

(ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

(l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;

(m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

(n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the

Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and

(o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or their property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

(a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or

(b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, as applicable in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.

3. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

4. With respect only to the mortgages that were registered against title to the Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on the parcel register of the Property as of October 4, 2023, we confirm that, as of October 4, 2023, the Charge (as defined in Schedule “A”) was the first ranking mortgage registered against title to the Property.

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.

2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.

5. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security, subject to Opinion no. 4 above, on the ranking of the mortgages registered against title to the Property.

6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.

7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.

8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001,* patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of

those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.

9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.

10. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.

11. We express no opinion on any provision in the Security which:

    (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;

    (b) limits rights of set-off otherwise than in accordance with applicable law;

    (c) states that amendments or waivers of, or with respect to, the Security that are not in writing will be ineffective;

    (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

    (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or

    (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.

12. The enforceability of any provision in the Security which:

    (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;

    (b) stipulates or limits the level of damages to which a party is entitled; or

    (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;

    is subject to the discretion of a court.

13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf, whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.

14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.

15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.

16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, **"Special Property"**) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.

17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lender being given to that account debtor, the terms of the contract between such Borrower and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:

    (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);

    (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and

    (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.

19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly, a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).

21. We express no opinion regarding any issues raised in the Application Record and/or affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.

22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.

23. TKIL's partnership's declaration expired on October 20, 2023 and needs to be renewed.[3]

24. The following are mortgages registered against title to the Property that are subsequent in priority to the Charge (as a result of the postponement described below):

    (a) Instrument No. YR3083072 registered March 26, 2020, being a charge in the principal amount of $5,000,000 from TKIC to Sow Capital Ontario Limited and Jiayi International Investments Ltd., as transferred from Jiayi International Investments Ltd. to Sow Capital Ontario Limited on May 7, 2021 pursuant to Instrument No. YR3247257, as transferred (40% interest) from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. on August 18, 2021 pursuant to Instrument No. YR3300382, as transferred (40% interest) from F A Credit Solutions Canada Inc. to Sow Capital Ontario Limited on January 27, 2022 pursuant to Instrument No. YR3373218, as postponed to the Charge on January 28, 2022 pursuant to Instrument no. YR3373403, as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513700, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538686 on April 5, 2023.[4] The Lender also entered into a subordination and postponement agreement with Sow Capital Ontario Limited in January 2022 whereby, inter alia, Sow Capital Ontario Limited postponed its charge to the Charge;

    (b) Instrument No. YR3373214 registered January 27, 2022, being a charge in the principal amount of $9,500,000 from TKIC to Amber Mortgage Investment Corporation, as amended pursuant to a Charge Amending Agreement dated June 16, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3447697 on July 4, 2022[5];

    (c) Instrument No. YR3373216 registered January 27, 2022, being a charge in the principal amount of $8,000,000 from TKIC to 2149602 Ontario Inc., as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3385745 on February 24, 2022 and as further amended pursuant to a Charge Amending

---

[3] Section 3(4) of the Limited Partnerships Act provides that "A limited partnership is not dissolved if a declaration expires, but an additional fee in the required amount is payable for the subsequent filing of a renewal of a declaration."

[4] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470731 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 on August 30, 2022; as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513701, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538687 on April 5, 2023.

[5] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470726 (the re-registered charge) was registered on PINs 03055-0377, 03055-0379 and 03055-0380 on August 30, 2022.

Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505530 on December 6, 2022[6]; and

(d) Instrument No. YR3373219 registered January 27, 2022, being a charge in the principal amount of $3,540,000 from TKIC to Frank Pa and Stephen Tung.[7]

25. As set out in Schedule C, the order of registrations under the PPSA against the Borrower is: i) Sow Capital Ontario Limited; ii) the Lender; iii) Amber Mortgage Investment Corporation; iv) 2149602 Ontario Inc.; and v) UBS AG. Sow Capital Ontario Limited postponed its registration to the Lender's registrations, so the Lender appears to rank in the first position with respect to personal property security.

26. The Property is subject to a construction lien in the amount of $4,653,028 from DX Strategies Inc. registered on April 14, 2023. A related Certificate of action was registered on June 16, 2023.

27. We have not obtained a tax certificate with respect to the Property, so if there are any outstanding amount of realty taxes due on the Property, those taxes would have priority over the Charge.

28. The Borrowers transferred PIN 03055-0378 to the City of Markham on August 8, 2022. To facilitate the transfer, the Lender and the other mortgagees 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 Charge, were registered on title to the affected parcels on August 30, 2022.

29. We express no opinion regarding the amounts shown as owing on the Payout Statement and the calculation thereof, including the calculation of any interest on unpaid interest owing to the Lender under the Charge.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours very truly,

BLANEY McMURTRY LLP

---

[6] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470728 (the re-registered charge) registered on August 30, 2022, as amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505533 on December 6, 2022, were registered on PINs 03055-0379 and 03055-0380.

[7] This instrument is registered on PIN 03055-0377 only; Instrument No. YR3470730 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 on August 30, 2022.

SCHEDULE "A"

LIST OF SECURITY

1. Charge/Mortgage (the "**Original Charge**") in the principal amount of $30,000,000 over 3143 19th Avenue, Markham, Ontario from Tung Kee Investment Canada Ltd. ("**Tung Kee**") in favour of Romspen Investment Corporation ("**Romspen**") registered in the Land Titles Division of York Region (No. 65) on January 27, 2022 as Instrument No. YR3373212. **[PIN 03055-0077 (LT) only]**

2. Charge/Mortgage (the "**Re-Registered Charge**" and together with the Original Charge, the "**Charge**") in the principal amount of $30,000,000 over 3143 19th Avenue, Markham, Ontario from Tung Kee in favour of Romspen registered in the Land Titles Division of York Region (No. 65) on August 30, 2022 as Instrument No. YR3470724. **[PINs 03055-0379 (LT) and 03055-0380 (LT)]**

SCHEDULE "B"

SEARCH RESULTS

Tung Kee Investment Canada Ltd.

We conducted searches in the Province of Ontario against Tung Kee Investment Canada Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Registered Office:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Incorporation Date:	February 11, 1993
Corporation No.:	1018493
Jurisdiction:	Ontario
Status:	Active
Directors:	Pui Ling Lai (Secretary), Philip Kun To Wong, Man Tung Yung (President)
Notes:	Annual Return has not been filed since 2016
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Canada Ltd. as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Canada Ltd. in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Canada Ltd. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

<u>Tung Kee Investment Limited Partnership</u>

We conducted searches in the Province of Ontario against Tung Kee Investment Limited Partnership. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

<u>Corporate Search (as of October 4, 2023)</u>

Principal Place of Business:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Declaration Date:	October 24, 2003 (Expiry: October 20, 2023)
Business ID No.:	131179558
Jurisdiction:	Ontario
Status:	Active
General Partner:	Tung Kee Investment Canada Ltd.
Notes:	The partnership's declaration expired on October 20, 2023 and its status is now inactive.
Predecessors:	None

<u>Bank Act (Canada)</u>

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Limited Partnership as of October 24, 2023 under this statute.

<u>*Bankruptcy and Insolvency Act* (Canada)</u>

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Limited Partnership in the Office of the Superintendent for all of the Districts and Divisions in Canada.

<u>*Execution Act* (Ontario)</u>

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Limited Partnership. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

SCHEDULE "C"

PPSA Search and Security Confirmation Summary

1. Name of Debtor: TUNG KEE INVESTMENT CANADA LTD.
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612643 Registration: 20220112 1048 1590 3044 Debtor: Tung Kee Investment Canada Ltd.; 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tony Man Tung Yung; Tony M Yung; Man T Yung; Man Tung T Yung; Tony Man T Yung; Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years

	PPSA Registration	
3)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779612751 20220112 1056 1590 3045 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Accounts, Other 3 years PLEDGE OF ALL LIMITED PARTNERSHIP INTERESTS AND UNITS OF TUNG KEE INVESTMENT LIMITED PARTNERSHIP AND THE PROCEEDS THEREOF IN WHATEVER FORM.
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period:	779612904 20220112 1059 1590 3048 Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Inventory, Equipment, Accounts, Other, Motor Vehicle Included 3 years
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779742783 20220118 1447 1590 3866 Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Amber Mortgage Investment Corp. Inventory, Equipment, Accounts, Other 3 years ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
7)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
8)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

2. Name of Debtor: TUNG KEE INVESTMENT LIMITED PARTNERSHIP
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612886 Registration: 20220112 1058 1590 3047 Debtor: Tung Kee Investment Limited Partnership Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years Description:
3)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
4)	PPSA File:	779818977
	Registration:	20220121 1132 1590 4404
	Debtor:	Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership
	Secured Party:	2149602 Ontario Inc.
	Collateral:	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	Period:	2 years
	Description:	ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
5)	PPSA File:	780972921
	Registration:	20220309 1515 9234
	Debtor:	Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.
	Secured Party:	UBS AG
	Collateral:	Inventory, Accounts, Other
	Period:	99 years (perpetual)
	Description:	THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

SCHEDULE "D"

REAL PROPERTY SEARCHES

Municipal Address: 3143 19th Avenue, Markham, Ontario

Registered Owner: TUNG KEE INVESTMENT CANADA LTD.

Subsearch as of: October 4, 2023

Legal Description: PIN 03055-0377 (LT)
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)
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)
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

Registered Encumbrances:

For PIN 03055-0377 only **[unless otherwise noted]**:

1. Instrument No. YR3083072 registered March 26, 2020, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

2. Instrument No. YR3083073 registered March 26, 2020, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

3. Instrument No. YR3247257 registered May 7, 2021, being a Transfer of Charge from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

4. Instrument No. YR3247258 registered May 7, 2021, being a Notice of Assignment of Rents - General from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

5. Instrument No. YR3300382 registered August 18, 2021, being a Transfer of Charge from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. and Sow Capital Ontario Limited.

6. Instrument No. YR3373212 registered January 27, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

7. Instrument No. YR3373213 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

8. Instrument No. YR3373214 registered January 27, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

9. Instrument No. YR3373215 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

10. Instrument No. YR3373216 registered January 27, 2022, being a Charge in the principal amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

11. Instrument No. YR3373217 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

12. Instrument No. YR3373218 registered January 27, 2022, being a Transfer of Charge from F A Credit Solutions Canada to Sow Capital Ontario Limited.

13. Instrument No. YR3373219 registered January 27, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to PA, Frank and Tung, Stephen.

14. Instrument No. YR3373403 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Romspen Investment Corporation.

15. Instrument No. YR3373404 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Amber Mortgage Investment Corp.

16. Instrument No. YR3373405 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to 214962 Ontario Inc.

17. Instrument No. YR3385745 registered February 24, 2022, being a Notice in the amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 214962 Ontario Inc.

18. Instrument No. YR3397626 registered March 22, 2022, being a Notice from The Corporation of the City of Markham. to Tung Kee Investment Canada Ltd.

19. Instrument No. YR3397627 registered March 22, 2022, being a Postponement from Sow Capital Ontario Limited to The Corporation of the City of Markham.

20. Instrument No. YR3397628 registered March 22, 2022, being a Postponement from Romspen Investment Corporation to The Corporation of the City of Markham.

21. Instrument No. YR3397629 registered March 22, 2022, being a Postponement from Amber Mortgage Investment Corp. to The Corporation of the City of Markham.

22. Instrument No. YR3397630 registered March 22, 2022, being a Postponement from 2149602 Ontario Inc. to The Corporation of the City of Markham.

23. Instrument No. YR3397631 registered March 22, 2022, being a Postponement from Pa, Frank and Tung, Stephen to The Corporation of the City of Markham.

24. Instrument No. YR3440956 registered June 17, 2022, being a Notice in the amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

25. Instrument No. YR3440959 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to Pa, Frank and Tung, Stephen.

26. Instrument No. YR3441040 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

27. Instrument No. YR3447697 registered July 4, 2022, being a Notice in the amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

28. Instrument No. YR3454771 registered July 20, 2022, being a Postponement from 2149602 Ontario Inc. to Alectra Utilities Corporation.

29. Instrument No. YR3454772 registered July 20, 2022, being a Postponement from Sow Capital Ontario Limited to Alectra Utilities Corporation.

30. Instrument No. YR3454773 registered July 20, 2022, being a Postponement from Romspen Investment Corporation to Alectra Utilities Corporation.

31. Instrument No. YR3454774 registered July 20, 2022, being a Postponement from Amber Mortgage Investment Corp. to Alectra Utilities Corporation.

32. Instrument No. YR3454775 registered July 20, 2022, being a Postponement from Pa, Frank and Tung, Stephen to Alectra Utilities Corporation.

33. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

34. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

35. Instrument No. YR3505530 registered December 6, 2022, being a Notice in amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

36. Instrument No. YR3505547 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc.

37. Instrument No. YR3505567 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

38. Instrument No. YR3513700 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to Miltom Services Limited and Sow Capital Ontario Limited.

39. Instrument No. YR3538686 registered April 5, 2023, being a Notice from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

40. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

41. Instrument No. YR3541425 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

42. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

<u>For PINs 03055-0379 and 0380 only **[unless otherwise noted]**:</u>

43. Instrument No. YR3470724 registered August 30, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

44. Instrument No. YR3470725 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

45. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

46. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

47. Instrument No. YR3470728 registered August 30, 2022, being a Charge in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

48. Instrument No. YR3470729 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

49. Instrument No. YR3470730 registered August 30, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to Pa, Frank and Tung, Stephen.

50. Instrument No. YR3470731 registered August 30, 2022, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

51. Instrument No. YR3470732 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

52. Instrument No. YR3505533 registered December 6, 2022, being a Notice in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

53. Instrument No. YR3505555 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc. to 2149602 Ontario Inc.

54. Instrument No. YR3505559 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc. to 2149602 Ontario Inc.

55. Instrument No. YR3513701 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to 2149602 Ontario Inc. to Miltom Services Limited and Sow Capital Ontario Limited.

56. Instrument No. YR3538687 registered April 5, 2023, being a Notice in the principal amount of $2.00 rom Tung Kee Investment Canada Ltd. to and Sow Capital Ontario Limited.

57. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. **[NOTE: also registered on 0377]**

58. Instrument No. YR3541426 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

59. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. **[NOTE: also registered on 0377]**

Appendix “G”

PAYOFF STATEMENT

ROMSPEN

ACCOUNT NO.	8923
STATEMENT DATE	2023-11-10

STATEMENT SUMMARY

Outstanding Loan Amount	**$33,988,530.50**
Effective Date	**2023-11-10**

After 1:00pm on 2023-11-10, please pay an additional $8,627.82 per day. This notice expires on 2023-11-30, at which time you are instructed to contact this office for additional instructions.

Property: 3143 19th Avenue Markham ON

BORROWER

Tung Kee Investment Limited Partnership
118 Grey Alder Avenue
Richmond Hill, ON L4B 3P9

ACCOUNT ACTIVITY

Date	Reference	Description	Charges	Credits	Balance
2023-11-10		Principal Balance	$29,880,000.00		$29,880,000.00
2023-11-10		Interest to and including 2023-11-09	$3,699,268.14		$33,579,268.14
2023-11-10		Appraisal retainer fee (Altus Group Limited)	$24,238.50		$33,603,506.64
2023-11-10		Legal fees (Friedman Law Professional Corporation)	$21,308.59		$33,624,815.23
2023-11-10		Legal fees (Dickinson Wright LLP) (incl HST)	$154,227.62		$33,779,042.85
2023-11-10		Interest charged to date on paid disbursements	$6,113.48		$33,785,156.33
2023-11-10		Billed but not yet paid legal fees (Dickinson Wright LLP) (incl HST)	$203,374.17		$33,988,530.50

RECEIVED $80,000.00 FROM THE BORROWER ON DECEMBER 20, 2022 WHICH IS HELD IN TRUST AND NOT APPLIED, AWAITING INSTRUCTIONS FROM THE BORROWER.

THIS STATEMENT IS PREPARED FOR PAYOFF PURPOSES AND MAY NOT BE USED FOR ANY OTHER PURPOSE WITHOUT THE APPROVAL OF LENDER.

ALL FUNDS ARE EXPRESSED IN CANADIAN DOLLARS. THE AMOUNT DUE DOES NOT INCLUDE UNBILLED LEGAL FEES AND DISBURSEMENTS OF DICKINSON WRIGHT LLP FROM NOVEMBER 1, 2023 FORWARD. THE AMOUNT DUE ASSUMES NO FURTHER ACTIVITY ON THE MORTGAGE ACCOUNT AND NO FURTHER EXPENSES OTHER THAN CURRENT OR FUTURE LEGAL FEES.

ROMSPEN RESERVES THE RIGHT TO AMEND THIS STATEMENT IN THE EVENT OF ANY CHANGE.

Yours truly,
ROMSPEN INVESTMENT CORPORATION
PER:

Mary Gianfriddo
Managing Partner
E.&O. E.
HST Registration No. 135897494

Appendix “H”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 30th
	)	
JUSTICE CONWAY	)	DAY OF NOVEMBER, 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

THIS MOTION made by Romspen Investment Corporation ("**Romspen**") was heard this day by judicial video conference.

ON BEING advised of the Consent of Romspen, Sow Capital Ontario Limited and the Respondents (the "**Debtor**s") and on hearing the submissions of each their counsel and counsel for Ernst & Young Inc. in its capacity as receiver and manager of the Respondents (in such capacities, the "**Receiver**"),

1. **THIS COURT ORDERS** that the remaining balance of Romspen's legal fees to date, being $268,410.50, shall be released forthwith by the Receiver to Dickinson Wright LLP ("**DW**")

from the remaining proceeds of sale of the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**").

2. **THIS COURT ORDERS** that any rights of the fulcrum stakeholder to the proceeds of sale of the Real Property (the "**Fulcrum Stakeholder**") to challenge the legal fees charged by DW for services rendered to Romspen from the time of the Debtors' engagement of Chaitons LLP until today be and are hereby reserved (the "**Impugned Period**").

3. **THIS COURT ORDERS** that any challenge to DW's legal fees during the Impugned Period shall be heard by Justice Osborne, subject to his availability, or as the Court may otherwise direct.

4. **THIS COURT ORDERS** that any challenge to DW's legal fees during the Impugned Period shall not proceed until after the validity of the subordinate mortgages and the construction lien registered against the Real Property, and the *quantums* owing thereunder, are determined by the Court, or agreed upon between the required stakeholders and approved by the Court.

5. **THIS COURT ORDERS** that the Receiver shall hold a reserve of $50,000 as security for Romspen's costs in defending any challenge by the Fulcrum Stakeholder to DW's legal fees during the Impugned Period (the "**Reserve**").

6. **THS COURT ORDERS** that the Debtors shall immediately produce to DW unredacted copies of all invoices for legal services rendered by Chaitons LLP to the Debtors during the Impugned Period. If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also be provided. DW shall hold same on a "counsel's eyes only" basis, shall not to share them with Romspen and any claim that the Debtors have waived privilege in providing same is hereby waived.

7. **THIS COURT ORDERS** that prior to any challenge of DW's legal fees during the Impugned Period, upon written request by Romspen, the Debtors shall produce the invoices of Miller Thomson LLP and Teplitsky Colson LLP and any other lawyer who has rendered services to the Debtors during the period since DW's engagement on behalf of Romspen to date (and not limited only to the Impugned Period). If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also

be provided. DW shall hold same on the same basis as set out in paragraph 6 and any claim that the Debtors have waived privilege in providing same is hereby waived.

8. **THIS COURT ORDERS** that in the event that the Fulcrum Stakeholder is not the Debtor, prior to any challenge of DW's legal fees during the Impugned Period, upon written request by Romspen, such Fulcrum Stakeholder shall produce the invoices of all lawyers who have rendered services to the Fulcrum Stakeholder during the period since DW's engagement on behalf of Romspen to date (and not limited only to the Impugned Period). If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also be provided. DW shall hold same on the same basis as set out in paragraph 6 and any claim that the Fulcrum Stakeholder has waived privilege in providing same is hereby waived.

9. **THIS COURT ORDERS** that the Fulcrum Stakeholder's reservation of rights to challenge DW's fees during the Impugned Period shall remain in place and the Reserve shall remain in the hands of the Receiver until the earlier of the Receiver's discharge, further Order of the Court, or the waiver of such rights by the Fulcrum Stakeholder.

Conway J.

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

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

SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703161-00CL **DATE: NOVEMBER 30, 2023**

NO. ON LIST: 2

TITLE OF PROCEEDING: ROMSPEN INVESTMENT CORPORATION v. TUNG KEE INVESTMENT CANADA LTD. et al
BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
PREGER, DAVID PAUL	ROMSPEN INVESTMENT CORPORATION	dpreger@dickinsonwright.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
POLLAK, MAYA	TUNG KEE INVESTMENT CANADA LTD.	Maya@chaitons.com
	TUNG KEE INVESTMENT LIMITED PARTNERSHIP	

For Other:

Name of Person Appearing	Name of Party	Contact Info
BOTA, MCNAMARA	SOW CAPITAL ONTARIO LIMITED	bmcnamara@kmblaw.com
GOLDEN, ERIC	ERNST & YOUNG, Intervenor	egolden@blaney.com
CHAN, JUSTIN	DX STRATEGIES, Lien claimant	jchan@jtcprofcorp.com
DARE, VERN	2149602 ONTARIO INC.	vdare@foglers.com
	PA, FRANK & TUNG, STEPHEN	

ENDORSEMENT OF JUSTICE CONWAY:

[1] Scheduling appointment held today. Two orders are sought, both on consent. The first is with respect to the distribution by the Receiver to Romspen of $268,410.50 for legal fees and the reservation of rights to challenge DW's fees, all as set out in the order.

[2] The second, also on consent/unopposed, is the termination of the Agreement of Purchase and Sale between Sow Capital Ontario Limited and 281653 Ontario Inc. dated July 18, 2023 and the return of the deposit paid thereunder.

[3] The parties in attendance seek to schedule a full day motion for the determination of the amounts owing to the third mortgagee, the fourth mortgagee and the fifth mortgagee and the validity and quantum of DX Strategies' lien claim.

[4] **The full day motion is scheduled for a hearing for February 16, 2024 (any judge, confirmed with the CL office)**. The parties have agreed to the following timetable for, among other things, delivery of materials:

- Receiver shall deliver its report attaching all security opinions by December 11, 2023;
- Any settlement conference will take place by December 16, 2023;
- Mortgage, lien claimants and respondents deliver their materials by January 12, 2024;
- Any responding materials are to be delivered by January 24, 2024; and
- Cross examinations to be conducted during the week of January 29 and are to be completed by February 2, 2024;
- Facta due by February 9, 2024.

[5] Two orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

Conway J.

Appendix “I”

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
T 416-593-1221
W Blaney.com

November 15, 2023

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON M5H 0B3

Dear Sirs:

Re: Opinion to Ernst & Young Inc. ("EY") as Court Appointed Receiver and Manager of all the assets and property of Tung Kee Investment Canada Ltd. ("TKIC") and Tung Kee Investment Limited Partnership ("TKIL" and together with TKIC, the "Borrower") regarding the validity and enforceability of security held by Amber Mortgage Investment Corp. (the "Lender") over the real property at 3143 19th Ave., Markham, Ontario (the "Property")

We have been provided with:

1. a copy of an Endorsement of the Ontario Superior Court of Justice (Commercial List) made October 19, 2023, appointing EY as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the first mortgagee over the Property (the "**Proceedings**");

2. a copy of the Application Record of Romspen Investment Corporation ("**Romspen**") dated August 18, 2023 (the "**Application Record**"), that includes the Affidavit of Wesley Roitman sworn July 19, 2023 attached at Tab "2" of the Application Record (the "**First Roitman Affidavit**");

3. a copy of the Romspen Motion Record dated September 29, 2023, that includes the Affidavit of Wesley Roitman sworn September 29, 2023 attached at Tab "3" of the Romspen Motion Record (the "**Second Roitman Affidavit**");

4. a copy of the Motion Record of Sow Capital Ontario Limited dated September 26, 2023 (the "**Sow Motion Record**"), that includes the Affidavit of Philip Wong sworn September 26, 2023 attached at Tab "2" of the Sow Motion Record (the "**Wong Affidavit**");

5. a copy of the Responding Application Record of EY dated October 4, 2023;

6. a copy of the Responding Motion Record of the Borrower dated October 5, 2023;

7. a payout statement provided by the Lender dated November 2, 2023 (the "**Payout Statement**");

8. a commitment letter dated September 27, 2021 (the “**Original Commitment**”) issued by the Lender to Man Tung Tony Yung and accepted by the Borrower and others; and

9. commitment letter amendments issued by the Lender to Man Tung Tony Yung and accepted by the Borrower and others dated December 28, 2021, April 22, 2022 and September 28, 2022 (the “**Commitment Amendments**” and together with the Original Commitment, the “**Commitment**”).

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the "**Security**"). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the **"Security Interests"**) in the personal property collateral (the **"Collateral")** to which the *Personal Properly Security Act* (Ontario) (the "**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

(a) executed copies of the Security;

(b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Government Services (Ontario) and under the following statues:

 (i) the Bank *Act* (Canada);

 (ii) the Bankruptcy *and Insolvency Act* (Canada); and

 (iii) the Execution Act (Ontario);

 the results and currency of which are set out in Schedule “B”;

(c) Ontario Personal Property Security Registration System Enquiry Response Certificates with a File Currency date of October 3, 2023 with respect to each Borrower, the results of which are summarized in Schedule "C";

(d) subsearch of title against the Property, the results of which are set out in Schedule "D". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario) compliance nor did we confirm whether there was access to the real property; and

(e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below, we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied, without independent verification or investigation, on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

(a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;

(b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;

(c) the accuracy of the description of the Collateral set out in the Security;

(d) that:

    (i) the Borrower has rights in the Collateral;

    (ii) value, as that term is defined in the PPSA, has been given to the Borrower; and

    (iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;

(e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

(f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;

(g) that the Borrower:

    (i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;

    (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;

    (iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and

(iv) has duly executed and delivered the Security;

(h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;

(i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;

(j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;

(k) that there are no:

(i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or

(ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

(l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;

(m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

(n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and

(o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or their property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

(a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or

(b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, as applicable in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.

3. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

4. With respect only to the mortgages that were registered against title to the Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on

the parcel register of the Property as of October 4, 2023, we confirm that, as of October 4, 2023, the Charge (as defined in Schedule "A") was the second ranking mortgage registered against title to the Property.[1]

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.

2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.

5. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security, subject to Opinion no. 4 above, on the ranking of the mortgages registered against title to the Property.

6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.

7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.

8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security

---

[1] When all 5 mortgagees re-registered their security on PINS ending in 0379 and 0380 in August 2022, the Lender also re-registered its security on PIN 03055-0377, so now the Lender has two charges registered on such PIN and the re-registered charge on such PIN ranks in sixth position.

interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001,* patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.

9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.

10. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.

11. We express no opinion on any provision in the Security which:

    (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;

    (b) limits rights of set-off otherwise than in accordance with applicable law;

    (c) states that amendments or waivers of, or with respect to, the Security that are not in writing will be ineffective;

    (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

    (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or

    (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.

12. The enforceability of any provision in the Security which:

    (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;

    (b) stipulates or limits the level of damages to which a party is entitled; or

    (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;

    is subject to the discretion of a court.

13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf,

whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.

14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.

15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.

16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, **"Special Property"**) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.

17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lender being given to that account debtor, the terms of the contract between such Borrower and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:

    (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);

    (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and

    (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.

19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly, a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).

21. We express no opinion regarding any issues raised in the Application Record and/or affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.

22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.

23. The Payout Statement references an “Unpaid Renewal Fee” in the amount of $170,000.00 and “Renewal Fee late charges” in the amount of $20,707.39. Page 6 of the commitment amendment dated September 28, 2022 (the “**September Amendment**”) provides for a Renewal Fee in the amount of $170,000.00. Section 20.00 of the schedule attached to the Charge deals with renewals and states that the Charge secures the payment obligations of the Borrower as changed pursuant to any renewal of the Charge. The Renewal fee therefore appears to be a valid charge enforceable by the Lender. There could, however, be an issue regarding priority of this fee. As mentioned below, each of the subsequent mortgagees entered into subordination agreements with the Lender whereby each respective subsequent mortgagee postponed its charge to the Charge. With respect to 2149602 Ontario Inc. and Frank Pa and Stephen Tung, the subordination agreements say that “consent of the Subordinate Lender shall only be required for increases to the Prior Loan or to the interest rate of the Prior Loan; otherwise the Prior Lender may deal with the Borrower or the Prior Loan as the Prior Lender sees fit”. If any of these mortgagees has not consented to either the Renewal Fee or the increased rate of interest, then such mortgagee could argue that its charge has priority over same. With respect to Sow Capital Ontario Limited, the subordination agreement appears to be silent regarding any required consent for changes to the Charge. The definition of “Security” therein, however, includes “all amendments and modifications thereto…from time to time” so the Lender could argue that the Renewal Fee and increased rate of interest have priority over the charge in favour of Sow Capital Ontario Limited.

24. The “Renewal Fee late charges” on the Payout Statement appear to relate to the interest charged on the Unpaid Renewal Fee. Section 3.03 of the schedule attached to the Charge deals with interest on “Other Money” (i.e. all money other than Principal Amount and Interest owed to the Lender under the Charge) and says that interest on Other Money accrues from the date that the Other Money was paid by the Lender or which otherwise became due to the Lender under the terms of the Charge. The September Amendment, however, appears to be silent as to when the Renewal Fee is due and payable to the Lender. There is therefore an issue as to when interest accrues on such Renewal Fee and at what interest rate. We express no opinion regarding the quantum of any amount of interest on the Unpaid Renewal Fee owing to the Lender under the Charge.

25. The Payout Statement shows interest accruing at 18% from August 1, 2023. The interest rate set out on page 1 of the September Amendment is 12% per annum. This rate is consistent with the interest rate set out on the face of the Charge. The September Amendment, on page 2, provides that if the loan is not repaid on maturity, the loan is automatically extended for one month and the interest rate is increased to 18% per annum from August 1, 2023. Failure to repay the loan on maturity is an event of default under the Charge so this increased rate of interest could be considered a penalty or other charge levied after default and may be unenforceable under section 8 of the *Interest Act*.

26. TKIL's partnership's declaration expired on October 20, 2023 and needs to be renewed.[2]

27. The rights of the holder of the Charge to enforce against the Property are subject to the rights of the holder of the first mortgage registered against title to the Property, being Instrument No. YR3373212 registered January 27, 2022, being a charge in the principal amount of $30,000,000 from TKIC to Romspen (by postponement from Sow Capital Ontario Limited pursuant to Instrument no. YR3373403 registered on January 28, 2022). The Lender entered into a subordination and postponement agreement with Romspen dated January 27, 2022 whereby, inter alia, the Lender postponed the Charge to the first mortgage registered in favour of Romspen.

28. The following are mortgages registered against title to the Property that are subsequent in priority to the Charge (as a result of the postponements described below):

    (a) Instrument No. YR3083072 registered March 26, 2020, being a charge in the principal amount of $5,000,000 from TKIC to Sow Capital Ontario Limited and Jiayi International Investments Ltd., as transferred from Jiayi International Investments Ltd. to Sow Capital Ontario Limited on May 7, 2021 pursuant to Instrument No. YR3247257, as transferred (40% interest) from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. on August 18, 2021 pursuant to Instrument No. YR3300382, as transferred (40% interest) from F A Credit Solutions Canada Inc. to Sow Capital Ontario Limited on January 27, 2022 pursuant to Instrument No. YR3373218, as postponed to the Charge on January 28, 2022 pursuant to Instrument no. YR3373404, as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513700, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538686 on April 5, 2023.[3] The Lender also entered into a priority, subordination, postponement and standstill agreement with Sow Capital Ontario Limited on January 27, 2022 whereby, inter alia, Sow Capital Ontario Limited postponed its charge to the Charge[4];

    (b) Instrument No. YR3373216 registered January 27, 2022, being a charge in the principal amount of $8,000,000 from TKIC to 2149602 Ontario Inc., as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3385745 on February 24, 2022 and as further amended pursuant to a Charge Amending

---

[2] Section 3(4) of the Limited Partnerships Act provides that "A limited partnership is not dissolved if a declaration expires, but an additional fee in the required amount is payable for the subsequent filing of a renewal of a declaration."

[3] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470731 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 on August 30, 2022; as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513701, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538687 on April 5, 2023.

[4] The Sow charge was also postponed to the 2149602 Ontario Inc. charge pursuant to Instrument No. YR3373405 registered on January 28, 2022 and postponed to the Frank Pa and Stephen Tung charge pursuant to Instrument no. YR3505567 registered on December 6, 2022.

Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505530 on December 6, 2022[5]; The Lender also entered into a subordination and postponement agreement with 2149602 Ontario Inc. on January 27, 2022 whereby, inter alia, 2149602 Ontario Inc. postponed its charge to the Charge; and

(c) Instrument No. YR3373219 registered January 27, 2022, being a charge in the principal amount of $3,540,000 from TKIC to Frank Pa and Stephen Tung.[6] The Lender also entered into a subordination and postponement agreement with Frank Pa and Stephen Tung on January 27, 2022 whereby, inter alia, Frank Pa and Stephen Tung postponed their charge to the Charge.

29. As set out in Schedule C, the order of registrations under the PPSA against the Borrower is: i) Sow Capital Ontario Limited; ii) Romspen; iii) the Lender; iv) 2149602 Ontario Inc.; and v) UBS AG. Sow Capital Ontario Limited postponed its registration to Romspen's registrations, but there is no registered subordination to the Lender's registrations. The Lender did, however, enter into a priority, subordination, postponement and standstill agreement with Sow Capital Ontario Limited on January 27, 2022. Pursuant to section 4.11 of that agreement Sow Capital Ontario Limited authorized the Lender to file a financing change statement to evidence the subordination but the Lender has not done so. Section 50 of the PPSA provides that "Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective." So, it is not necessary to register a postponement under the PPSA.

30. The Property is subject to a construction lien in the amount of $4,653,028 from DX Strategies Inc. registered on April 14, 2023. A related Certificate of action was registered on June 16, 2023.

31. We have not obtained a tax certificate with respect to the Property, so if there are any outstanding amount of realty taxes due on the Property, those taxes would have priority over the Charge.

32. The Borrowers transferred PIN 03055-0378 to the City of Markham on August 8, 2022. To facilitate the transfer, Romspen and the other mortgagees 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 Charge, were registered on title to the affected parcels on August 30, 2022.

---

[5] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470728 (the re-registered charge) registered on August 30, 2022, as amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505533 on December 6, 2022, were registered on PINs 03055-0379 and 03055-0380.

[6] This instrument is registered on PIN 03055-0377 only; Instrument No. YR3470730 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 on August 30, 2022.

33. We express no opinion regarding the amounts shown as owing on the Payout Statement and the calculation thereof, including the calculation of any interest on unpaid interest owing to the Lender under the Charge.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours very truly,

BLANEY McMURTRY LLP

SCHEDULE "A"

LIST OF SECURITY

1. Charge/Mortgage (the "**Original Charge**") granted by Tung Kee Investment Canada Ltd. in favour of Amber Mortgage Investment Corp. in the principal amount of $8,500,000 charging the real property at 3143 19th Avenue, Markham, Ontario, and registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) (the "**Land Titles Office**") on January 27, 2022 as Instrument No. YR3373214. **[PIN 03055-0377 only]**

2. Notice of Charge Amending Agreement dated June 16, 2022 executed by TKIC and the Lender and registered in the Land Titles Office on July 4, 2022 as Instrument No. YR3447697 (the "**Notice**"). **[PIN 03055-0377 only]**

3. Charge/Mortgage (the "**Re-registered Charge**" and collectively with the Original Charge and the Notice, the "**Charge**") granted by TKIC in favour of the Lender in the principal amount of $8,500,000 charging the real property at 3143 19th Avenue, Markham, Ontario, and registered in the Land Titles Office on August 30, 2022 as Instrument No. YR3470726. **[PINs 03055-0377, 03055-0379 and 03055-0380]**

SCHEDULE "B"

SEARCH RESULTS

Tung Kee Investment Canada Ltd.

We conducted searches in the Province of Ontario against Tung Kee Investment Canada Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Registered Office:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Incorporation Date:	February 11, 1993
Corporation No.:	1018493
Jurisdiction:	Ontario
Status:	Active
Directors:	Pui Ling Lai (Secretary), Philip Kun To Wong, Man Tung Yung (President)
Notes:	Annual Return has not been filed since 2016
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Canada Ltd. as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Canada Ltd. in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Canada Ltd. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule "C".

Tung Kee Investment Limited Partnership

We conducted searches in the Province of Ontario against Tung Kee Investment Limited Partnership. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Principal Place of Business:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Declaration Date:	October 24, 2003 (Expiry: October 20, 2023)
Business ID No.:	131179558
Jurisdiction:	Ontario
Status:	Active
General Partner:	Tung Kee Investment Canada Ltd.
Notes:	The partnership's declaration expired on October 20, 2023 and its status is now inactive.
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Limited Partnership as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Limited Partnership in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Limited Partnership. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

SCHEDULE "C"

PPSA Search and Security Confirmation Summary

1. Name of Debtor: TUNG KEE INVESTMENT CANADA LTD.
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612643 Registration: 20220112 1048 1590 3044 Debtor: Tung Kee Investment Canada Ltd.; 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tony Man Tung Yung; Tony M Yung; Man T Yung; Man Tung T Yung; Tony Man T Yung; Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years

	PPSA Registration
3)	PPSA File: 779612751 Registration: 20220112 1056 1590 3045 Debtor: 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tung Kee Investment Canada Ltd. Secured Party: Romspen Investment Corporation, as trustee Collateral: Accounts, Other Period: 3 years Description: PLEDGE OF ALL LIMITED PARTNERSHIP INTERESTS AND UNITS OF TUNG KEE INVESTMENT LIMITED PARTNERSHIP AND THE PROCEEDS THEREOF IN WHATEVER FORM.
4)	PPSA File: 779612904 Registration: 20220112 1059 1590 3048 Debtor: Tung Kee Investment Canada Ltd. Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years
5)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
7)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
8)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

2. Name of Debtor: TUNG KEE INVESTMENT LIMITED PARTNERSHIP
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612886 Registration: 20220112 1058 1590 3047 Debtor: Tung Kee Investment Limited Partnership Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years Description:
3)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration
4)	PPSA File: 779818977 Registration: 20220121 1132 1590 4404 Debtor: Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership Secured Party: 2149602 Ontario Inc. Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 2 years Description: ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
5)	PPSA File: 780972921 Registration: 20220309 1515 9234 Debtor: Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. Secured Party: UBS AG Collateral: Inventory, Accounts, Other Period: 99 years (perpetual) Description: THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
6)	PPSA File:	782875944
	Registration:	20220511 1034 9234 2618
	Debtor:	Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung
	Secured Party:	UBS AG
	Collateral:	Inventory, Accounts, Other
	Period:	99 years (perpetual)
	Description:	THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

SCHEDULE "D"

REAL PROPERTY SEARCHES

Municipal Address: 3143 19th Avenue, Markham, Ontario

Registered Owner: TUNG KEE INVESTMENT CANADA LTD.

Subsearch as of: October 4, 2023

Legal Description: PIN 03055-0377 (LT)
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)
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)
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

Registered Encumbrances:

For PIN 03055-0377 only **[unless otherwise noted]**:

1. Instrument No. YR3083072 registered March 26, 2020, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

2. Instrument No. YR3083073 registered March 26, 2020, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

3. Instrument No. YR3247257 registered May 7, 2021, being a Transfer of Charge from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

4. Instrument No. YR3247258 registered May 7, 2021, being a Notice of Assignment of Rents - General from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

5. Instrument No. YR3300382 registered August 18, 2021, being a Transfer of Charge from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. and Sow Capital Ontario Limited.

6. Instrument No. YR3373212 registered January 27, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

7. Instrument No. YR3373213 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

8. Instrument No. YR3373214 registered January 27, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

9. Instrument No. YR3373215 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

10. Instrument No. YR3373216 registered January 27, 2022, being a Charge in the principal amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

11. Instrument No. YR3373217 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

12. Instrument No. YR3373218 registered January 27, 2022, being a Transfer of Charge from F A Credit Solutions Canada to Sow Capital Ontario Limited.

13. Instrument No. YR3373219 registered January 27, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to PA, Frank and Tung, Stephen.

14. Instrument No. YR3373403 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Romspen Investment Corporation.

15. Instrument No. YR3373404 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Amber Mortgage Investment Corp.

16. Instrument No. YR3373405 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to 214962 Ontario Inc.

17. Instrument No. YR3385745 registered February 24, 2022, being a Notice in the amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 214962 Ontario Inc.

18. Instrument No. YR3397626 registered March 22, 2022, being a Notice from The Corporation of the City of Markham. to Tung Kee Investment Canada Ltd.

19. Instrument No. YR3397627 registered March 22, 2022, being a Postponement from Sow Capital Ontario Limited to The Corporation of the City of Markham.

20. Instrument No. YR3397628 registered March 22, 2022, being a Postponement from Romspen Investment Corporation to The Corporation of the City of Markham.

21. Instrument No. YR3397629 registered March 22, 2022, being a Postponement from Amber Mortgage Investment Corp. to The Corporation of the City of Markham.

22. Instrument No. YR3397630 registered March 22, 2022, being a Postponement from 2149602 Ontario Inc. to The Corporation of the City of Markham.

23. Instrument No. YR3397631 registered March 22, 2022, being a Postponement from Pa, Frank and Tung, Stephen to The Corporation of the City of Markham.

24. Instrument No. YR3440956 registered June 17, 2022, being a Notice in the amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

25. Instrument No. YR3440959 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to Pa, Frank and Tung, Stephen.

26. Instrument No. YR3441040 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

27. Instrument No. YR3447697 registered July 4, 2022, being a Notice in the amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

28. Instrument No. YR3454771 registered July 20, 2022, being a Postponement from 2149602 Ontario Inc. to Alectra Utilities Corporation.

29. Instrument No. YR3454772 registered July 20, 2022, being a Postponement from Sow Capital Ontario Limited to Alectra Utilities Corporation.

30. Instrument No. YR3454773 registered July 20, 2022, being a Postponement from Romspen Investment Corporation to Alectra Utilities Corporation.

31. Instrument No. YR3454774 registered July 20, 2022, being a Postponement from Amber Mortgage Investment Corp. to Alectra Utilities Corporation.

32. Instrument No. YR3454775 registered July 20, 2022, being a Postponement from Pa, Frank and Tung, Stephen to Alectra Utilities Corporation.

33. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

34. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

35. Instrument No. YR3505530 registered December 6, 2022, being a Notice in amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

36. Instrument No. YR3505547 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc.

37. Instrument No. YR3505567 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

38. Instrument No. YR3513700 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to Miltom Services Limited and Sow Capital Ontario Limited.

39. Instrument No. YR3538686 registered April 5, 2023, being a Notice from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

40. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

41. Instrument No. YR3541425 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

42. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

For PINs 03055-0379 and 0380 only **[unless otherwise noted]**:

43. Instrument No. YR3470724 registered August 30, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

44. Instrument No. YR3470725 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

45. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

46. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

47. Instrument No. YR3470728 registered August 30, 2022, being a Charge in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

48. Instrument No. YR3470729 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

49. Instrument No. YR3470730 registered August 30, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to Pa, Frank and Tung, Stephen.

50. Instrument No. YR3470731 registered August 30, 2022, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

51. Instrument No. YR3470732 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

52. Instrument No. YR3505533 registered December 6, 2022, being a Notice in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

53. Instrument No. YR3505555 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc. to 2149602 Ontario Inc.

54. Instrument No. YR3505559 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc. to 2149602 Ontario Inc.

55. Instrument No. YR3513701 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to 2149602 Ontario Inc. to Miltom Services Limited and Sow Capital Ontario Limited.

56. Instrument No. YR3538687 registered April 5, 2023, being a Notice in the principal amount of $2.00 from Tung Kee Investment Canada Ltd. to and Sow Capital Ontario Limited.

57. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. **[NOTE: also registered on 0377]**

58. Instrument No. YR3541426 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

59. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. **[NOTE: also registered on 0377]**

Appendix “J”

Amber

Payout Statement

Amber Financial Services Corporation
+1 (778) 297-4999/info@amberfinancial.com
#700-6388 No.3 Road, Richmond, BC V6Y 0L4
www.amberfinancial.com

Recipient(s)

TUNG KEE INVESTMENT CANADA LTD.
TUNG KEE INVESTMENT LIMITED PARTNERSHIP
MAN TUNG TONY YUNG

118 Grey Alder Ave
Richmond Hill, Ontario L4B 3P9

Statement Date[5]	Subject Property[6]
2023/11/02	3143 19TH AVENUE, MARKHAM, ONTARIO L6C 1L8 PID: 030-550-002

Mortgagor: TUNG KEE INVESTMENT CANADA LTD.
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Lender: AMBER MORTGAGE INVESTMENT CORP.
AMBER INCOME OPPORTUNITY FUND LIMITED PARTNERSHIP

Item	Date
Payment Date	**2023/11/15**
Interest Paid-To Date	2022/08/31
Next Payment Due	2023/11/30
Maturity Date	2023/08/01

Item				Amount
Interest Rate				18.00%
Principal Balance			$	8,500,000.00
Unpaid Interest (2022/09/01 - 2023/07/31 12%)			$	935,000.00
Unpaid Interest (2023/08/01 - 2023/10/31 18%)			$	382,500.00
Accrued Interest (2023/11/01-2023/11/14)			$	70,766.83
Accrued Interest (unpaid interest)			$	98,857.24
Unpaid Renewal Fee			$	170,000.00
Accrued Interest (unpaid renewal fee)			$	23,190.51
Title search fee			$	75.28
NSF fees			$	-
Payment received (2022/09/01 - 2023/02/07)			$	(80,000.00)
Accrued Interest (payment received)			$	(12,843.38)
Prepayment Penalty			$	-
Other Fees				
Discharge Fee	$	75.00		
Interests in lieu of 30 days prior written notice	$	-		
Legal Fees, Disbursements and Taxes - Leonard Susman Professional Corporation[1]	$	25,372.25		
Legal Fees, Disbursements and Taxes - Borden Ladner Gervais LLP ("**BLG**")[2]	$	69,166.42		
Total fees			$	94,613.67
Trust Balance			$	-
Ending balance			$	-
Payoff Amount for all amounts owing up until November 15, 2023, subject to the per diem as set out below and any fees, disbursements and taxes owed to BLG on or after November 1, 2023[3 4]			**$**	**10,182,160.16**

Notes

1. The amount represents all amounts owing to Leonard Susman Professional Corporation and constitues the full and final account.
2. The amount as set out herein includes all outstanding invoices payable by the Mortgagor as at October 31, 2023, and does not include any ongoing fees, disbursements and taxes payable to BLG on and after November 1, 2023. A final amount of BLG fees, disbursement and taxes will be provided closer to the closing date of the proposed Times Group purchase transaction.
3. Per-diem Rate: $5,054.77 for each additional day past 1pm on 2023/11/15.
4. Make disbursement check payable to: **Amber Mortgage Investement Corp.**
5. Please note this statement expires on **2023/11/30** , on which you are instructed to contact our office for additional instructions.
6. This statement is intended for repayment/payout/discharge for settlement date set out above against the Subject Property. We reserve the right to amend this statement should any change occur that would alter the total payment amount.

Appendix “K”

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

T 416-593-1221
W Blaney.com

November 17, 2023

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON M5H 0B3

Dear Sirs:

Re: Opinion to Ernst & Young Inc. ("EY") as Court Appointed Receiver and Manager of all the assets and property of Tung Kee Investment Canada Ltd. (TKIC") and Tung Kee Investment Limited Partnership ("TKIL" and together with TKIC, the "Borrower") regarding the validity and enforceability of security held by 2149602 Ontario Inc. (the "Lender") over the real property at 3143 19th Ave., Markham, Ontario (the "Property")

We have been provided with:

1. a copy of an Endorsement of the Ontario Superior Court of Justice (Commercial List) made October 19, 2023, appointing EY as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for, or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the first mortgagee over the Property (the "**Proceedings**");

2. a copy of the Application Record of Romspen Investment Corporation ("**Romspen**") dated August 18, 2023 (the "**Application Record**"), that includes the Affidavit of Wesley Roitman sworn July 19, 2023 attached at Tab "2" of the Application Record (the "**First Roitman Affidavit**");

3. a copy of the Romspen Motion Record dated September 29, 2023, that includes the Affidavit of Wesley Roitman sworn September 29, 2023 attached at Tab "3" of the Romspen Motion Record (the "**Second Roitman Affidavit**");

4. a copy of the Motion Record of Sow Capital Ontario Limited dated September 26, 2023 (the "**Sow Motion Record**"), that includes the Affidavit of Philip Wong sworn September 26, 2023 attached at Tab "2" of the Sow Motion Record (the "**Wong Affidavit**");

5. a copy of the Responding Application Record of EY dated October 4, 2023;

6. a copy of the Responding Motion Record of the Borrower dated October 5, 2023;

7. a payout statement provided by the Lender dated October 25, 2023 (the "**Payout Statement**");

8. an email from Bota McNamara (counsel for Sow Capital Ontario Limited) to Eric Golden and Chad Kopach dated October 25, 2023 sent at 10:45 p.m.;

9. an email from Bota McNamara to Eric Golden dated November 14, 2023 sent at 9:41 p.m.;

10. the loan advance history with respect to the Charge provided by Joseph Fried (counsel for the Lender); and

11. a commitment letter dated September 27, 2021 (the “**Commitment**”) issued by the Lender and accepted by the Borrower and others.

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the **"Security"**). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the **"Security Interests"**) in the personal property collateral (the **"Collateral"**) to which the *Personal Properly Security Act* (Ontario) (the "**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

(a) executed copies of the Security;

(b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Government Services (Ontario) and under the following statues:

  (i) the Bank *Act* (Canada);

  (ii) the Bankruptcy *and Insolvency Act* (Canada); and

  (iii) the Execution Act (Ontario);

  the results and currency of which are set out in Schedule “B”;

(c) Ontario Personal Property Security Registration System Enquiry Response Certificates with a File Currency date of October 3, 2023 with respect to each Borrower, the results of which are summarized in Schedule "C";

(d) subsearch of title against the Property, the results of which are set out in Schedule "D". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario)compliance nor did we confirm whether there was access to the real property; and

(e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

(a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;

(b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;

(c) the accuracy of the description of the Collateral set out in the Security;

(d) that:

   (i) the Borrower has rights in the Collateral;

   (ii) value, as that term is defined in the PPSA, has been given to the Borrower; and

   (iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;

(e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

(f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;

(g) that the Borrower:

   (i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;

   (ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;

(iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and

(iv) has duly executed and delivered the Security;

(h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;

(i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;

(j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;

(k) that there are no:

(i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or

(ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

(l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;

(m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

(n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and

(o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or their property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

(a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or

(b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, as applicable in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.

3. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

4. With respect only to the mortgages that were registered against title to the Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on the parcel register of the Property as of October 4, 2023, we confirm that, as of October 4, 2023, the Charge (as defined in Schedule “A”) was the third ranking mortgage registered against title to the Property.

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.

2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.

5. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security, subject to Opinion no. 4 above on the ranking of the mortgages registered against title to the Property.

6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.

7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.

8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001,* patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.

9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies

contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.

10. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.

11. We express no opinion on any provision in the Security which:

    (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;

    (b) limits rights of set-off otherwise than in accordance with applicable law;

    (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;

    (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

    (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or

    (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.

12. The enforceability of any provision in the Security which:

    (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;

    (b) stipulates or limits the level of damages to which a party is entitled; or

    (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;

    is subject to the discretion of a court.

13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf, whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.

14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.

15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.

16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, **"Special Property"**) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.

17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lender being given to that account debtor, the terms of the contract between such Borrower, and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:

    (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);

    (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and

    (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.

19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).

21. We express no opinion regarding any issues raised in the Application Record and/or any affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.

22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.

23. TKIL's partnership's declaration expired on October 20, 2023 and needs to be renewed.[1]

24. The rights of the holder of the Charge to enforce against the Property are subject to the rights of the holders of the following mortgages that were registered prior to the Charge or otherwise appear to have priority over the Charge:

(a) a mortgage in the principal amount of $30,000,000 from TKIC to Romspen Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373212 on January 27, 2022, and (in the case of PINs 03055-0379 and 03055-0380) Instrument No. YR3470724 on August 30, 2022; and

(b) a mortgage in the principal amount of $9,500,000 from TKIC to Amber Mortgage Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373214 on January 27, 2022, and (in the case of PINs 03055-0377, 0379 and 03055-0380) Instrument No. YR3470726 on August 30, 2022.

25. The following are mortgages registered against title to the Property that are subsequent in priority to the Charge (as a result of the postponements described below):

(a) Instrument No. YR3083072 registered March 26, 2020, being a charge in the principal amount of $5,000,000 from TKIC to Sow Capital Ontario Limited and Jiayi International Investments Ltd., as transferred from Jiayi International Investments Ltd. to Sow Capital Ontario Limited on May 7, 2021 pursuant to Instrument No. YR3247257, as transferred (40% interest) from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. on August 18, 2021 pursuant to Instrument No. YR3300382, as transferred (40% interest) from F A Credit Solutions Canada Inc. to Sow Capital Ontario Limited on January 27, 2022 pursuant to Instrument No. YR3373218, as postponed to the Charge on January 28, 2022 pursuant to Instrument no. YR3373405, as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513700, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538686 on April 5, 2023.[2] The Lender also entered into a priority, subordination, postponement and standstill agreement with Sow Capital Ontario Limited in January 2022 whereby, inter alia, Sow Capital Ontario Limited postponed its charge to the Charge;

(b) Instrument No. YR3373219 registered January 27, 2022, being a charge in the principal amount of $3,540,000 from TKIC to Frank Pa and Stephen Tung, as postponed to the Charge on December 6, 2022 pursuant to Instrument No.

---

[1] Section 3(4) of the Limited Partnerships Act provides that "A limited partnership is not dissolved if a declaration expires, but an additional fee in the required amount is payable for the subsequent filing of a renewal of a declaration."

[2] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470731 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 August 30, 2022; as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513701, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538687 on April 5, 2023.

YR3505547.[3] Frank Pa and Stephen Tung also executed a postponement in June 2022 whereby they postponed their charge to the Charge;

26. As set out in Schedule C, the order of registrations under the PPSA against the Borrower is: i) Sow Capital Ontario Limited; ii) Romspen; iii) Amber Mortgage Investment Corporation; iv) the Lender; and v) UBS AG. The Lender entered into a priority, subordination, postponement and standstill agreement with Sow Capital Ontario Limited in January 2022. Pursuant to section 4.11 of that agreement Sow Capital Ontario Limited authorized the Lender to file a financing change statement to evidence the subordination but the Lender has not done so. Section 50 of the PPSA provides that "Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective." So, it is not necessary to register a postponement under the PPSA.

27. The Property is subject to a construction lien in the amount of $4,653,028 from DX Strategies Inc. registered on April 14, 2023. A related Certificate of action was registered on June 16, 2023.

28. We have not obtained a tax certificate with respect to the Property, so if there are any outstanding amount of realty taxes due on the Property, those taxes would have priority over the Charge.

29. The Borrowers transferred PIN 03055-0378 to the City of Markham on August 8, 2022. To facilitate the transfer, Romspen and the other mortgagees 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 Charge, were registered on title to the affected parcels on August 30, 2022.

30. Sow Capital Ontario Limited takes issue with the extension fee of $106,500.00 and the late charge for extension fee set out in the Payout Statement. Page 2 of the commitment amendment dated May 20, 2022 sets out an extension fee of $213,000.00, 50% of which was to be deducted from the further loan advance contemplated by this amendment and the remaining 50% due on the earlier of July 27, 2022 and sale of a portion of the Property.

31. We express no opinion regarding the amounts shown as owing on the Payout Statement and the calculation thereof, including the calculation of any interest on unpaid interest owing to the Lender under the Charge.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

---

[3] This instrument is registered on PIN 03055-0377 only; Instrument No. YR3470730 (the re-registered charge), as postponed to the Charge on December 6, 2022 pursuant to Instrument No. YR3505555 were registered on PINs 03055-0379 and 03055-0380 on August 30, 2022.

Yours very truly,

BLANEY McMURTRY LLP

SCHEDULE "A"

LIST OF SECURITY

1. Charge/Mortgage (the "**Original Charge**") in the principal amount of $8,000,000 over 3143 19th Avenue, Markham, Ontario from TKIC in favour of the Lender registered in the Land Titles Division of York Region (No. 65) on January 27, 2022 as Instrument No. YR3373216. **[PIN 03055-0077 (LT) only]**

2. Notice of Charge Amending Agreement (the "**First Notice**") executed by TKIC, TKIL, 2407720 Ontario Inc. ("**2407720**"), 2407721 Ontario Inc. ("**2407721**"), Tony Man Tung Yung ("**Man Tung**") and Philip Kun To Wong ("**Philip**") and the Lender dated February 23, 2022 and registered in the Land Titles Division of York Region (No. 65) on February 24, 2022 as Instrument No. YR3385745. **[PIN 03055-0077 (LT) only] [NTD: the charge amending agreement attached to the First Notice is not dated].**

3. Notice of Charge Amending Agreement (the "**Second Notice**") executed by TKIC, TKIL, 2407720, 2407721, Man Tung, Philip and the Lender dated June ___, 2022 and registered in the Land Titles Division of York Region (No. 65) on June 17, 2022 as Instrument No. YR3440956. **[PIN 03055-0377 (LT)] [NTD: the charge amending agreement attached to the Second Notice is not dated].**

4. Charge/Mortgage (the "**Re-Registered Charge**" and collectively with the Original Charge, the First Notice and the Second Notice, the "**Charge**") in the principal amount of $9,500,000 over 3143 19th Avenue, Markham, Ontario from TKIC in favour of the Lender registered in the Land Titles Division of York Region (No. 65) on August 30, 2022 as Instrument No. YR3470728. **[PINs 03055-0379 (LT) and 03055-0380 (LT)]**

5. Amendment to Charge executed by TKIC, TKIL, 2407720, 2407721, Man Tung, Philip and the Lender dated August 30, 2022 and registered in the Land Titles Division of York Region (No. 65) on December 6, 2022 as Instrument No. YR3505530. **[PIN 03055-0377 (LT) only]**

6. Amendment to Charge executed by TKIC, TKIL, 2407720, 2407721, Man Tung, Philip and the Lender dated August 30, 2022 and registered in the Land Titles Division of York Region (No. 65) on December 6, 2022 as Instrument No. YR3505533. **[PINs 03055-0379 (LT) and 03055-0380 (LT)]**

SCHEDULE "B"

SEARCH RESULTS

Tung Kee Investment Canada Ltd.

We conducted searches in the Province of Ontario against Tung Kee Investment Canada Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Registered Office:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Incorporation Date:	February 11, 1993
Corporation No.:	1018493
Jurisdiction:	Ontario
Status:	Active
Directors:	Pui Ling Lai (Secretary), Philip Kun To Wong, Man Tung Yung (President)
Notes:	Annual Return has not been filed since 2016
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Canada Ltd. as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Canada Ltd. in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Canada Ltd. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

Tung Kee Investment Limited Partnership

We conducted searches in the Province of Ontario against Tung Kee Investment Limited Partnership. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Principal Place of Business:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Declaration Date:	October 24, 2003 (Expiry: October 20, 2023)
Business ID No.:	131179558
Jurisdiction:	Ontario
Status:	Active
General Partner:	Tung Kee Investment Canada Ltd.
Notes:	The partnership's declaration expired on October 20, 2023 and its status is now inactive.
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Limited Partnership as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Limited Partnership in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Limited Partnership. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

SCHEDULE "C"

PPSA Search and Security Confirmation Summary

1. Name of Debtor: TUNG KEE INVESTMENT CANADA LTD.
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612643 Registration: 20220112 1048 1590 3044 Debtor: Tung Kee Investment Canada Ltd.; 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tony Man Tung Yung; Tony M Yung; Man T Yung; Man Tung T Yung; Tony Man T Yung; Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years

	PPSA Registration	
3)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779612751 20220112 1056 1590 3045 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Accounts, Other 3 years PLEDGE OF ALL LIMITED PARTNERSHIP INTERESTS AND UNITS OF TUNG KEE INVESTMENT LIMITED PARTNERSHIP AND THE PROCEEDS THEREOF IN WHATEVER FORM.
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period:	779612904 20220112 1059 1590 3048 Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Inventory, Equipment, Accounts, Other, Motor Vehicle Included 3 years
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779742783 20220118 1447 1590 3866 Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Amber Mortgage Investment Corp. Inventory, Equipment, Accounts, Other 3 years ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
7)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
8)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

2. Name of Debtor: TUNG KEE INVESTMENT LIMITED PARTNERSHIP
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612886 Registration: 20220112 1058 1590 3047 Debtor: Tung Kee Investment Limited Partnership Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years Description:
3)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

SCHEDULE “D”

REAL PROPERTY SEARCHES

Municipal Address: 3143 19^{th} Avenue, Markham, Ontario

Registered Owner: TUNG KEE INVESTMENT CANADA LTD.

Subsearch as of: October 4, 2023

Legal Description: PIN 03055-0377 (LT)
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)
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)
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

Registered Encumbrances:

For PIN 03055-0377 only **[unless otherwise noted]**:

1. Instrument No. YR3083072 registered March 26, 2020, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

2. Instrument No. YR3083073 registered March 26, 2020, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

3. Instrument No. YR3247257 registered May 7, 2021, being a Transfer of Charge from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

4. Instrument No. YR3247258 registered May 7, 2021, being a Notice of Assignment of Rents - General from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

5. Instrument No. YR3300382 registered August 18, 2021, being a Transfer of Charge from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. and Sow Capital Ontario Limited.

6. Instrument No. YR3373212 registered January 27, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

7. Instrument No. YR3373213 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

8. Instrument No. YR3373214 registered January 27, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

9. Instrument No. YR3373215 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

10. Instrument No. YR3373216 registered January 27, 2022, being a Charge in the principal amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

11. Instrument No. YR3373217 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

12. Instrument No. YR3373218 registered January 27, 2022, being a Transfer of Charge from F A Credit Solutions Canada to Sow Capital Ontario Limited.

13. Instrument No. YR3373219 registered January 27, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to PA, Frank and Tung, Stephen.

14. Instrument No. YR3373403 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Romspen Investment Corporation.

15. Instrument No. YR3373404 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Amber Mortgage Investment Corp.

16. Instrument No. YR3373405 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to 214962 Ontario Inc.

17. Instrument No. YR3385745 registered February 24, 2022, being a Notice in the amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 214962 Ontario Inc.

18. Instrument No. YR3397626 registered March 22, 2022, being a Notice from The Corporation of the City of Markham. to Tung Kee Investment Canada Ltd.

19. Instrument No. YR3397627 registered March 22, 2022, being a Postponement from Sow Capital Ontario Limited to The Corporation of the City of Markham.

20. Instrument No. YR3397628 registered March 22, 2022, being a Postponement from Romspen Investment Corporation to The Corporation of the City of Markham.

21. Instrument No. YR3397629 registered March 22, 2022, being a Postponement from Amber Mortgage Investment Corp. to The Corporation of the City of Markham.

22. Instrument No. YR3397630 registered March 22, 2022, being a Postponement from 2149602 Ontario Inc. to The Corporation of the City of Markham.

23. Instrument No. YR3397631 registered March 22, 2022, being a Postponement from Pa, Frank and Tung, Stephen to The Corporation of the City of Markham.

24. Instrument No. YR3440956 registered June 17, 2022, being a Notice in the amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

25. Instrument No. YR3440959 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to Pa, Frank and Tung, Stephen.

26. Instrument No. YR3441040 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

27. Instrument No. YR3447697 registered July 4, 2022, being a Notice in the amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

28. Instrument No. YR3454771 registered July 20, 2022, being a Postponement from 2149602 Ontario Inc. to Alectra Utilities Corporation.

29. Instrument No. YR3454772 registered July 20, 2022, being a Postponement from Sow Capital Ontario Limited to Alectra Utilities Corporation.

30. Instrument No. YR3454773 registered July 20, 2022, being a Postponement from Romspen Investment Corporation to Alectra Utilities Corporation.

31. Instrument No. YR3454774 registered July 20, 2022, being a Postponement from Amber Mortgage Investment Corp. to Alectra Utilities Corporation.

32. Instrument No. YR3454775 registered July 20, 2022, being a Postponement from Pa, Frank and Tung, Stephen to Alectra Utilities Corporation.

33. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

34. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

35. Instrument No. YR3505530 registered December 6, 2022, being a Notice in amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

36. Instrument No. YR3505547 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc.

37. Instrument No. YR3505567 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

38. Instrument No. YR3513700 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to Miltom Services Limited and Sow Capital Ontario Limited.

39. Instrument No. YR3538686 registered April 5, 2023, being a Notice from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

40. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

41. Instrument No. YR3541425 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

42. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

<u>For PINs 03055-0379 and 0380 only **[unless otherwise noted]**:</u>

43. Instrument No. YR3470724 registered August 30, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

44. Instrument No. YR3470725 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

45. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

46. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

47. Instrument No. YR3470728 registered August 30, 2022, being a Charge in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

48. Instrument No. YR3470729 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

49. Instrument No. YR3470730 registered August 30, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to Pa, Frank and Tung, Stephen.

50. Instrument No. YR3470731 registered August 30, 2022, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

51. Instrument No. YR3470732 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

52. Instrument No. YR3505533 registered December 6, 2022, being a Notice in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

53. Instrument No. YR3505555 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc. to 2149602 Ontario Inc.

54. Instrument No. YR3505559 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc. to 2149602 Ontario Inc.

55. Instrument No. YR3513701 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to 2149602 Ontario Inc. to Miltom Services Limited and Sow Capital Ontario Limited.

56. Instrument No. YR3538687 registered April 5, 2023, being a Notice in the principal amount of $2.00 rom Tung Kee Investment Canada Ltd. to and Sow Capital Ontario Limited.

57. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. **[NOTE: also registered on 0377]**

58. Instrument No. YR3541426 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

59. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. **[NOTE: also registered on 0377]**

Appendix “L”

Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

Law Clerk: Medina Young
Direct Dial: 416-864-9700 ext. 204
E-mail: myoung@foglers.com

Lawyer: Joseph Fried
Direct Dial: 416.941.8836
E-mail: jfried@foglers.com

October 25, 2023

Our File No. 225540

DELIVERED BY EMAIL TO EGOLDEN@BLANEY.COM

Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East
Suite 1500
Toronto, Ontario
M5C 3G5

Attention: Eric Golden

Dear Sirs:

Re: 2149602 Ontario Inc. mortgage loan to Tung Kee Investment Canada Ltd. on 3143 19th Avenue, Markham, Ontario **(the "Property")** Registered as Instrument No. YR3373216 and Notice as Instrument No. YR3385745 **(the "Mortgage")**

We are the solicitors for the holder of the third mortgage on the above Property.

The amount required to pay out the Mortgage to November 15, 2023 is as follows:

Principal ($3,620,129.41 (CAD) + $26,279,223.54 (HR) (CAD is $4,598,868.72 @ $5.81428)	$8,218,998.13
Interest to November 15, 2023	$4,071,657.37
Outstanding extension fee	$106,500.00
Outstanding Brokerage fee to Atlantic (HS) Financial Corp.	$40,000.00
Late charge for extension fee and interest reserve	$18,130.00
Legal retainer re Receivership paid on September 29, 2023	$23,165.00
Interest on legal retainer of $23,165.00 @ 30% from Sept 29, 2023 to November 15, 2023 (19.04 x 47 days)	$894.88
TOTAL PAYABLE TO 2149602 ONTARIO INC. AS OF NOVEMBER 15, 2023, PRIOR TO 12 P.M.	**$12,479,345.38**

Per Diem: $9,780.62

The amount due in Hong Kong Dollars (HK) will be subject to fluctuations in the Hong Kong Dollar and determined on the payout day. **An updated payout statement will be submitted on the closing date.**

LEGAL FEES OUTSTANDING

Outstanding legal fees re: mortgage transaction	$22,417.20
Legal fees for issuing demand letter	$1,200.00
Legal fees for docketed time re default	$33,888.65
HST on legal fees	$4,561.52
Disbursements and HST on disbursements	$663.30
Received retainer from client	-$23,165.00
TOTAL PAYABLE TO FOGLER, RUBINOFF LLP	**$39,565.67**

Legal fees set up above re default is to and including October 23, 2023. The said amount does not include any fees, expenses costs incurred by our client after October 23, 2023

Payment must be made by wire transfer to **Fogler, Rubinoff LLP in the total amount of set out in the updated statement provided on the closing date**. Attached are our firm's wiring instructions.

This statement is only valid as of today's date and does not include any arrears, expenses, costs and fees that may be due be incurred by our client after issuance of this statement. This statement is subject to fluctuations in the Hong Kong dollar as set out above.

Please note that payment received **by our offices** after 12:00 p.m. shall be deemed for the purpose of calculation of interest to have been made and received by them on the next bank business day. Therefore, please ensure that the per diem interest is calculated accordingly.

FOGLER, RUBINOFF LLP

Per: *Joseph Fried***

Joseph Fried*

**On behalf of* Joseph Fried Professional Corporation

*** Executed pursuant to the Electronic Commerce Act*

E. & O.E.

Appendix “M”

Blaney McMurtry LLP

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

(T) 416-593-1221
(W) Blaney.com

November 20, 2023

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON M5H 0B3

Dear Sirs:

Re: Opinion to Ernst & Young Inc. ("EY") as Court Appointed Receiver and Manager of all the assets and property of Tung Kee Investment Canada Ltd. (TKIC") and Tung Kee Investment Limited Partnership ("TKIL" and together with TKIC, the "Borrower") regarding the validity and enforceability of security held by Frank Pa and Steven Tung (together, the "Lender") over the real property at 3143 19th Ave., Markham, Ontario (the "Property")

We have been provided with:

1. a copy of an Endorsement of the Ontario Superior Court of Justice (Commercial List) made October 19, 2023, appointing EY as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for, or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the first mortgagee over the Property (the "**Proceedings**");

2. a copy of the Application Record of Romspen Investment Corporation ("**Romspen**") dated August 18, 2023 (the "**Application Record**"), that includes the Affidavit of Wesley Roitman sworn July 19, 2023 attached at Tab "2" of the Application Record (the "**First Roitman Affidavit**");

3. a copy of the Romspen Motion Record dated September 29, 2023 that includes the Affidavit of Wesley Roitman sworn September 29, 2023 attached at Tab "3" of the Romspen Motion Record (the "**Second Roitman Affidavit**");

4. a copy of the Motion Record of Sow Capital Ontario Limited dated September 26, 2023 (the "**Sow Motion Record**"), that includes the Affidavit of Philip Wong sworn September 26, 2023 attached at Tab "2" of the Sow Motion Record (the "**Wong Affidavit**");

5. a copy of the Responding Application Record of EY dated October 4, 2023;

6. a copy of the Responding Motion Record of the Borrower dated October 5, 2023;

7. a payout statement provided by the Lender dated October 25, 2023 (the "**Payout Statement**");

8. an email from Bota McNamara (counsel for Sow Capital Ontario Limited) to Eric Golden and Chad Kopach dated October 25, 2023 sent at 10:45 p.m.;

9. an email from Bota McNamara to Eric Golden dated November 14, 2023 sent at 9:41 p.m.;

10. a telephone conversation between Joesph Fried (counsel for the Lender) and Kym Stasiuk on November 17, 2023 at 1:00 p.m.;

11. an email from Lender's counsel to Kym Stasiuk on November 19, 2023 sent at 9:21 p.m.;

12. a refinancing service agreement dated May 18, 2021 (the "**Service Agreement**") issued by the Lender and accepted by the Borrower and others; and

13. a commission agreement dated April 23, 2021 (the "**Commission Agreement**") between the Lender and the Borrower.

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the **"Security"**). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the **"Security Interests"**) in the personal property collateral (the **"Collateral"**) to which the *Personal Properly Security Act* (Ontario) (the "**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

(a) executed copies of the Security;

(b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Government Services (Ontario) and under the following statues:

(i) the Bank *Act* (Canada);

(ii) the Bankruptcy *and Insolvency Act* (Canada); and

(iii) the Execution Act (Ontario);

the results and currency of which are set out in Schedule "B";

(c) Ontario Personal Property Security Registration System Enquiry Response Certificates with a File Currency date of October 3, 2023 with respect to each Borrower, the results of which are summarized in Schedule "C";

(d) subsearch of title against the Property, the results of which are set out in Schedule "D". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario)compliance nor did we confirm whether there was access to the real property; and

(e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

(a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;

(b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;

(c) the accuracy of the description of the Collateral set out in the Security;

(d) that:

    (i) the Borrower has rights in the Collateral;

    (ii) value, as that term is defined in the PPSA, has been given to the Borrower; and

    (iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;

(e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

(f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;

(g) that the Borrower:

(i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;

(ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;

(iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and

(iv) has duly executed and delivered the Security;

(h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;

(i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;

(j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;

(k) that there are no:

(i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or

(ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

(l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;

(m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

(n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and

(o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or their property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

(a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or

(b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, as applicable in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.

3. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

4. With respect only to the mortgages that were registered against title to the Property,

assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on the parcel register of the Property as of October 4, 2023, we confirm that, as of October 4, 2023, the Charge (as defined in Schedule "A") was the fourth ranking mortgage registered against title to the Property.

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.

2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.

5. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security, subject to Opinion no. 4 above on the ranking of the mortgages registered against title to the Property.

6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.

7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.

8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001,* patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of

that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.

9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.

10. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.

11. We express no opinion on any provision in the Security which:

    (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;

    (b) limits rights of set-off otherwise than in accordance with applicable law;

    (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;

    (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

    (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or

    (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.

12. The enforceability of any provision in the Security which:

    (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;

    (b) stipulates or limits the level of damages to which a party is entitled; or

    (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;

    is subject to the discretion of a court.

13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf, whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.

14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.

15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.

16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, **"Special Property"**) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.

17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lender being given to that account debtor, the terms of the contract between such Borrower, and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:

    (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);

    (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and

    (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.

19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).

21. We express no opinion regarding any issues raised in the Application Record and/or any

affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.

22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.

23. TKIL's partnership's declaration expired on October 20, 2023 and needs to be renewed.[1]

24. The rights of the holder of the Charge to enforce against the Property are subject to the rights of the holders of the following mortgages that were registered prior to the Charge or otherwise appear to have priority over the Charge:

(a) a mortgage in the principal amount of $30,000,000 from TKIC to Romspen Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373212 on January 27, 2022, and (in the case of PINs 03055-0379 and 03055-0380) Instrument No. YR3470724 on August 30, 2022;

(b) a mortgage in the principal amount of $9,500,000 from TKIC to Amber Mortgage Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373214 on January 27, 2022, and (in the case of PINs 03055-0377, 0379 and 03055-0380) Instrument No. YR3470726 on August 30, 2022; and

(c) a mortgage in the principal amount of $8,000,000.00 from TKIC to 2149602 Ontario Inc. which was registered against title to the Property as Instrument No. YR3373216 on January 27, 2022 (by postponement from Sow Capital Ontario Limited pursuant to Instrument no. YR3373405 registered on January 28, 2022), as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3385745 on February 24, 2022 and as further amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505530 on December 6, 2022.[2]

25. The following mortgage is registered against title to the Property subsequent in priority to the Charge (as a result of the postponement described below):

(a) Instrument No. YR3083072 registered March 26, 2020, being a charge in the principal amount of $5,000,000 from TKIC to Sow Capital Ontario Limited and Jiayi International Investments Ltd., as transferred from Jiayi International Investments Ltd. to Sow Capital Ontario Limited on May 7, 2021 pursuant to Instrument No. YR3247257, as transferred (40% interest) from Sow Capital Ontario Limited to F A

---

[1] Section 3(4) of the Limited Partnerships Act provides that "A limited partnership is not dissolved if a declaration expires, but an additional fee in the required amount is payable for the subsequent filing of a renewal of a declaration."

[2] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470728 (the re-registered charge) registered on August 30, 2022, as amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505533 on December 6, 2022, were registered on PINs 03055-0379 and 03055-0380.

Credit Solutions Canada Inc. on August 18, 2021 pursuant to Instrument No. YR3300382, as transferred (40% interest) from F A Credit Solutions Canada Inc. to Sow Capital Ontario Limited on January 27, 2022 pursuant to Instrument No. YR3373218, as postponed to the Charge on January 28, 2022 pursuant to Instrument no. YR34440959, as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513700, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538686 on April 5, 2023.[3]

26. As set out in Schedule C, the order of registrations under the PPSA against the Borrower is: i) Sow Capital Ontario Limited; ii) Romspen; iii) Amber Mortgage Investment Corporation; iv) 2149602 Ontario Inc.; and v) UBS AG. Sow Capital Ontario Limited postponed its registration to Romspen's registrations. As of the file currency date set out in Schedule C, the Lender has not made a registration against the Borrower under the PPSA.

27. The Property is subject to a construction lien in the amount of $4,653,028 from DX Strategies Inc. registered on April 14, 2023. A related Certificate of action was registered on June 16, 2023.

28. We have not obtained a tax certificate with respect to the Property, so if there are any outstanding amount of realty taxes due on the Property, those taxes would have priority over the Charge.

29. The Borrowers transferred PIN 03055-0378 to the City of Markham on August 8, 2022. To facilitate the transfer, the Lender and the other mortgagees 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 Charge, were registered on title to the affected parcels on August 30, 2022.

30. We express no opinion regarding the amount shown as owing on the Payout Statement and the calculation thereof.

31. We express no opinion whether or not any amounts are owing to the Lender under the Charge. We note that:

(a) the Charge states that it secures obligations of the Borrower to the Lender under the Service Agreement, but it is unclear what is owing under such agreement. The Service Agreement:

(i) section 4 states that the term of the agreement expires on December 31,

---

[3] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470731 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 August 30, 2022; as transferred from Sow Capital Ontario Limited to Miltom Services Limited (14% interest) on January 9, 2023 pursuant to Instrument No. YR3513701, and as amended pursuant to a Charge Amending Agreement dated February 1, 2023, notice of which was registered on title to the Property pursuant to Instrument No. YR3538687 on April 5, 2023.

2021; [4]

(ii) refers to a consulting fee of $2,000,000 (the "**Consulting Fee**") payable "on the day when the Registered Owner and/or the Beneficial Owners receive the sale proceeds from the sale of …the Property" under section 5(1) but that day will never come since the Registered Owner or Beneficial Owners (as those terms are defined in the Service Agreement) will not receive any proceeds from the sale of the Property. The Lender's counsel, however, appears to take the position that, in respect of the recent sale of the Property completed by EY, in its capacity as court appointed receiver and manager of all the assets and property of the Borrower (the "**Property Sale**"), EY was selling on behalf of the Borrower and the Borrower is therefore entitled to such Consulting Fee;

(iii) makes reference in section 5(2) to the Consultants (i.e. the Lender) being entitled to 10% of the capital raised. At the end of section 5(2) it says that "if there is a cooperating agent involved in raising the capital successfully, then a reasonable percentage as jointly determined by both the Owners and Consultants will be deducted from the aforesaid 10% and given to the cooperating agent." According to the Lender's counsel, the parties verbally agreed that the Consultants would get 4% of the $38,500,000 capital raised, being approximately $1,540,000. This amount plus the Consulting Fee is $3,540,000, being the face amount of the Charge; and

(iv) section 9 states that the agreement terminates upon a receivership being in place for over 30 days.

(b) the Charge also states that it "further secures payment and satisfaction of any and all obligations, indebtedness and liability of the Chargor to the Chargee pursuant to all other documents and agreements delivered by the Chargor to the Chargee from time to time as security for the payment and performance of the Obligations". The Commission Agreement may come within this language, but it is not clear whether any amount is owing under such agreement. With respect to the Commission Agreement:

(i) it provides for a real estate commission to be payable to individuals who, as referred to in the recitals to this agreement, are not registered under the applicable legislation as real estate brokers or agents;

(ii) section 4 states that the term of the agreement expires on December 31, 2022;[5]

(iii) section 5(a) states that "Provided that the Agent or Agents are able to find a buyer or buyers for the purchase of the Property or part(s) of the Property

---

[4] The Charge schedule (in the second paragraph) says "the Obligations secured by the within Charge shall become due and payable on the earlier of: (i) five (5) years from the date of the registration hereof; (ii) an event of default under the Agreements or hereunder; or (iii) on the date of the sale, transfer or any other disposition of the lands herein charged." The Lender's counsel says the parties intended that these time periods supersede any expiry dates in either the Service Agreement or Commission Agreements.

[5] See note above regarding expiry dates.

and that an agreement of purchase and sale is successfully signed by the Registered Owner and the buyer or the buyers with all the conditions waived or fulfilled by the buyer or buyers, the Registered Owner and the Beneficial Owners jointly and severally agree to pay five percent (5%) of the Purchase Price as the Agents' commission…". But as far as we are aware, the Lender did not find a buyer for the purchase of the Property;

(iv) section 5(6) says that "even if the sale of the Property…is not arranged…by the Agents, the Owners agree to pay 2% of the Purchase Price as the Agents' commission…". The Lender's counsel takes the position that the Lender is therefore entitled to 2% of the $68,000,000 purchase price under the Property Sale, or $1,360,000. The total claims of the Lender under the Charge as outlined herein are therefore $4,900,000; however, as previously noted, the face amount of the Charge is $3,540,000 and, accordingly, this is the maximum principal amount that the Lender may claim under the Charge;

(v) section 10 states that the agreement terminates upon a receivership being in place for over 30 days; and

(vi) the copy of this agreement that has been provided to us has not been executed by all parties.

Sow Capital Ontario Limited (the fifth mortgagee) maintains that the obligations under the Service Agreement and the Commission Agreement have not been fulfilled by the Lender and therefore nothing is owing to the Lender thereunder or under the Charge.

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours very truly,

BLANEY McMURTRY LLP

SCHEDULE "A"

LIST OF SECURITY

1. Charge/Mortgage (the "**Original Charge**") in the principal amount of $3,540,000 over 3143 19th Avenue, Markham, Ontario from TKIC in favour of the Lender registered in the Land Titles Division of York Region (No. 65) on January 27, 2022 as Instrument No. YR3373219. **[PIN 03055-0076 (LT) only]**

2. Charge/Mortgage (the "**Re-Registered Charge**" and together with the Original Charge, the "**Charge**") in the principal amount of $3,540,000 over 3143 19th Avenue, Markham, Ontario from TKIC in favour of the Lender registered in the Land Titles Division of York Region (No. 65) on August 30, 2022 as Instrument No. YR3470730. **[PINs 03055-0379 (LT) and 03055-0380 (LT)]**

SCHEDULE "B"

SEARCH RESULTS

Tung Kee Investment Canada Ltd.

We conducted searches in the Province of Ontario against Tung Kee Investment Canada Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Registered Office:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Incorporation Date:	February 11, 1993
Corporation No.:	1018493
Jurisdiction:	Ontario
Status:	Active
Directors:	Pui Ling Lai (Secretary), Philip Kun To Wong, Man Tung Yung (President)
Notes:	Annual Return has not been filed since 2016
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Canada Ltd. as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Canada Ltd. in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Canada Ltd. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

<u>Tung Kee Investment Limited Partnership</u>

We conducted searches in the Province of Ontario against Tung Kee Investment Limited Partnership. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

<u>Corporate Search (as of October 4, 2023)</u>

Principal Place of Business: 118 Grey Alder Ave
Richmond Hill, Ontario
L4B 3P9

Declaration Date: October 24, 2003 (Expiry: October 20, 2023)

Business ID No.: 131179558

Jurisdiction: Ontario

Status: Active

General Partner: Tung Kee Investment Canada Ltd.

Notes: The partnership's declaration expired on October 20, 2023 and its status is now inactive.

Predecessors: None

<u>Bank Act (Canada)</u>

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Limited Partnership as of October 24, 2023 under this statute.

<u>*Bankruptcy and Insolvency Act* (Canada)</u>

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Limited Partnership in the Office of the Superintendent for all of the Districts and Divisions in Canada.

<u>*Execution Act* (Ontario)</u>

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Limited Partnership. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule "C".

SCHEDULE "C"

PPSA Search and Security Confirmation Summary

1. Name of Debtor: TUNG KEE INVESTMENT CANADA LTD.
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612643 Registration: 20220112 1048 1590 3044 Debtor: Tung Kee Investment Canada Ltd.; 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tony Man Tung Yung; Tony M Yung; Man T Yung; Man Tung T Yung; Tony Man T Yung; Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years

	PPSA Registration	
3)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779612751 20220112 1056 1590 3045 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Accounts, Other 3 years PLEDGE OF ALL LIMITED PARTNERSHIP INTERESTS AND UNITS OF TUNG KEE INVESTMENT LIMITED PARTNERSHIP AND THE PROCEEDS THEREOF IN WHATEVER FORM.
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period:	779612904 20220112 1059 1590 3048 Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Inventory, Equipment, Accounts, Other, Motor Vehicle Included 3 years
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779742783 20220118 1447 1590 3866 Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Amber Mortgage Investment Corp. Inventory, Equipment, Accounts, Other 3 years ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
7)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
8)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

2. Name of Debtor: TUNG KEE INVESTMENT LIMITED PARTNERSHIP
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612886 Registration: 20220112 1058 1590 3047 Debtor: Tung Kee Investment Limited Partnership Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years Description:
3)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
4)	PPSA File:	779818977
	Registration:	20220121 1132 1590 4404
	Debtor:	Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership
	Secured Party:	2149602 Ontario Inc.
	Collateral:	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
	Period:	2 years
	Description:	ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
5)	PPSA File:	780972921
	Registration:	20220309 1515 9234
	Debtor:	Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.
	Secured Party:	UBS AG
	Collateral:	Inventory, Accounts, Other
	Period:	99 years (perpetual)
	Description:	THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
6)	PPSA File:	782875944
	Registration:	20220511 1034 9234 2618
	Debtor:	Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung
	Secured Party:	UBS AG
	Collateral:	Inventory, Accounts, Other
	Period:	99 years (perpetual)
	Description:	THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

SCHEDULE “D”

REAL PROPERTY SEARCHES

Municipal Address: 3143 19th Avenue, Markham, Ontario

Registered Owner: TUNG KEE INVESTMENT CANADA LTD.

Subsearch as of: October 4, 2023

Legal Description: PIN 03055-0377 (LT)
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)
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)
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

Registered Encumbrances:

For PIN 03055-0377 only **[unless otherwise noted]**:

1. Instrument No. YR3083072 registered March 26, 2020, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

2. Instrument No. YR3083073 registered March 26, 2020, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

3. Instrument No. YR3247257 registered May 7, 2021, being a Transfer of Charge from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

4. Instrument No. YR3247258 registered May 7, 2021, being a Notice of Assignment of Rents - General from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

5. Instrument No. YR3300382 registered August 18, 2021, being a Transfer of Charge from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. and Sow Capital Ontario Limited.

6. Instrument No. YR3373212 registered January 27, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

7. Instrument No. YR3373213 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

8. Instrument No. YR3373214 registered January 27, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

9. Instrument No. YR3373215 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

10. Instrument No. YR3373216 registered January 27, 2022, being a Charge in the principal amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

11. Instrument No. YR3373217 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

12. Instrument No. YR3373218 registered January 27, 2022, being a Transfer of Charge from F A Credit Solutions Canada to Sow Capital Ontario Limited.

13. Instrument No. YR3373219 registered January 27, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to PA, Frank and Tung, Stephen.

14. Instrument No. YR3373403 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Romspen Investment Corporation.

15. Instrument No. YR3373404 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Amber Mortgage Investment Corp.

16. Instrument No. YR3373405 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to 214962 Ontario Inc.

17. Instrument No. YR3385745 registered February 24, 2022, being a Notice in the amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 214962 Ontario Inc.

18. Instrument No. YR3397626 registered March 22, 2022, being a Notice from The Corporation of the City of Markham. to Tung Kee Investment Canada Ltd.

19. Instrument No. YR3397627 registered March 22, 2022, being a Postponement from Sow Capital Ontario Limited to The Corporation of the City of Markham.

20. Instrument No. YR3397628 registered March 22, 2022, being a Postponement from Romspen Investment Corporation to The Corporation of the City of Markham.

21. Instrument No. YR3397629 registered March 22, 2022, being a Postponement from Amber Mortgage Investment Corp. to The Corporation of the City of Markham.

22. Instrument No. YR3397630 registered March 22, 2022, being a Postponement from 2149602 Ontario Inc. to The Corporation of the City of Markham.

23. Instrument No. YR3397631 registered March 22, 2022, being a Postponement from Pa, Frank and Tung, Stephen to The Corporation of the City of Markham.

24. Instrument No. YR3440956 registered June 17, 2022, being a Notice in the amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

25. Instrument No. YR3440959 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to Pa, Frank and Tung, Stephen.

26. Instrument No. YR3441040 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

27. Instrument No. YR3447697 registered July 4, 2022, being a Notice in the amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

28. Instrument No. YR3454771 registered July 20, 2022, being a Postponement from 2149602 Ontario Inc. to Alectra Utilities Corporation.

29. Instrument No. YR3454772 registered July 20, 2022, being a Postponement from Sow Capital Ontario Limited to Alectra Utilities Corporation.

30. Instrument No. YR3454773 registered July 20, 2022, being a Postponement from Romspen Investment Corporation to Alectra Utilities Corporation.

31. Instrument No. YR3454774 registered July 20, 2022, being a Postponement from Amber Mortgage Investment Corp. to Alectra Utilities Corporation.

32. Instrument No. YR3454775 registered July 20, 2022, being a Postponement from Pa, Frank and Tung, Stephen to Alectra Utilities Corporation.

33. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

34. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

35. Instrument No. YR3505530 registered December 6, 2022, being a Notice in amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

36. Instrument No. YR3505547 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc.

37. Instrument No. YR3505567 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

38. Instrument No. YR3513700 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to Miltom Services Limited and Sow Capital Ontario Limited.

39. Instrument No. YR3538686 registered April 5, 2023, being a Notice from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

40. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

41. Instrument No. YR3541425 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

42. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

<u>For PINs 03055-0379 and 0380 only **[unless otherwise noted]**:</u>

43. Instrument No. YR3470724 registered August 30, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

44. Instrument No. YR3470725 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

45. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

46. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

47. Instrument No. YR3470728 registered August 30, 2022, being a Charge in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

48. Instrument No. YR3470729 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

49. Instrument No. YR3470730 registered August 30, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to Pa, Frank and Tung, Stephen.

50. Instrument No. YR3470731 registered August 30, 2022, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

51. Instrument No. YR3470732 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

52. Instrument No. YR3505533 registered December 6, 2022, being a Notice in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

53. Instrument No. YR3505555 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc. to 2149602 Ontario Inc.

54. Instrument No. YR3505559 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc. to 2149602 Ontario Inc.

55. Instrument No. YR3513701 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to 2149602 Ontario Inc. to Miltom Services Limited and Sow Capital Ontario Limited.

56. Instrument No. YR3538687 registered April 5, 2023, being a Notice in the principal amount of $2.00 from Tung Kee Investment Canada Ltd. to and Sow Capital Ontario Limited.

57. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. **[NOTE: also registered on 0377]**

58. Instrument No. YR3541426 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

59. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. **[NOTE: also registered on 0377]**

Appendix “N”

fogler rubinoff

Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

Law Clerk:	Medina Young
Direct Dial:	416-864-9700 ext. 204
E-mail:	myoung@foglers.com
Lawyer:	Joseph Fried
Direct Dial:	416.941.8836
E-mail:	jfried@foglers.com
Our File No.	225540

October 25, 2023

DELIVERED BY EMAIL TO EGOLDEN@BLANEY.COM

Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East
Suite 1500
Toronto, Ontario
M5C 3G5

Attention: Eric Golden

Dear Sirs:

Re: Frank Pa and Stephne Tung mortgage loan to Tung Kee Investment Canada Ltd.
on 3143 19th Avenue, Markham, Ontario **(the "Property")**
Registered as Instrument No. YR3373219 **(the "Mortgage")**

We are the solicitors for the holder of the fourth mortgage on the above Property.

The amount required to pay out the Mortgage to November 15, 2023 is **$3,540,000.00**.

Payment must be made by wire transfer to **Fogler, Rubinoff LLP in the amount set out in the updated statement provided on the closing date**. Attached are our firm's wiring instructions.

This statement is only valid as of today's date and does not include any arrears, expenses, costs and fees that may be due be incurred by our client after issuance of this statement.

Please note that payment received **by our offices** after 12:00 p.m. shall be deemed for the purpose of calculation of interest to have been made and received by them on the next bank business day. Therefore, please ensure that the per diem interest is calculated accordingly.

FOGLER, RUBINOFF LLP

Per: Joseph Fried**

Joseph Fried*

**On behalf of* Joseph Fried Professional Corporation

*** Executed pursuant to the Electronic Commerce Act*

E. & O.E.

Appendix “O”

Blaney McMurtry LLP

Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

(T) 416-593-1221
(W) Blaney.com

November 23, 2023

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON M5H 0B3

Dear Sirs:

Re: Opinion to Ernst & Young Inc. ("EY") as Court Appointed Receiver and Manager of all the assets and property of Tung Kee Investment Canada Ltd. (TKIC") and Tung Kee Investment Limited Partnership ("TKIL" and together with TKIC, the "Borrower") regarding the validity and enforceability of security held by Sow Capital Ontario Limited (the "Lender") over the real property at 3143 19th Ave., Markham, Ontario (the "Property")

We have been provided with:

1. a copy of an Endorsement of the Ontario Superior Court of Justice (Commercial List) made October 19, 2023, appointing EY as receiver and manager of the Property and of all of the assets and undertakings of the Borrower acquired for, or used in relation to the Property, including all proceeds therefrom, pursuant to proceedings commenced by the first mortgagee over the Property (the "**Proceedings**");

2. a copy of the Application Record of Romspen Investment Corporation ("**Romspen**") dated August 18, 2023 (the "**Application Record**"), that includes the Affidavit of Wesley Roitman sworn July 19, 2023 attached at Tab "2" of the Application Record (the "**First Roitman Affidavit**");

3. a copy of the Romspen Motion Record dated September 29, 2023, that includes the Affidavit of Wesley Roitman sworn September 29, 2023 attached at Tab "3" of the Romspen Motion Record (the "**Second Roitman Affidavit**");

4. a copy of the Motion Record of Sow Capital Ontario Limited dated September 26, 2023 (the "**Sow Motion Record**"), that includes the Affidavit of Philip Wong sworn September 26, 2023 attached at Tab "2" of the Sow Motion Record (the "**Wong Affidavit**");

5. a copy of the Responding Application Record of EY dated October 4, 2023;

6. a copy of the Responding Motion Record of the Borrower dated October 5, 2023;

7. an email from Bota McNamara (counsel for Sow Capital Ontario Limited) to Eric Golden and Chad Kopach dated October 25, 2023 sent at 10:45 p.m.;

8. an email from Bota McNamara to Eric Golden dated November 12, 2023 sent at 2:33 p.m.;

9. an email from Bota McNamara to Eric Golden dated November 14, 2023 sent at 9:43 p.m.;

10. an email from Bota McNamara to Kym Stasiuk dated November 17, 2023 sent at 1:37 p.m.;

11. a payout statement provided by the Lender dated October 31, 2023 (the "**Payout Statement**"); and

12. a promissory note dated January 21, 2020 executed by the Borrower in favour of the Lender, as amended on August 12, 2021.

You have asked us to provide you with an opinion in connection with the security set out in Schedule "A" relating to the Property (the **"Security"**). Specifically, you have asked us to opine on the enforceability of the Security in the Province of Ontario, and on the validity and perfection of the security interests (the **"Security Interests"**) in the personal property collateral (the **"Collateral"**) to which the *Personal Properly Security Act* (Ontario) (the "**PPSA**") applies, as granted under the Security or any of it in the Province of Ontario. We do not act for the Borrower or the Lender in this matter and did not act in the preparation of the Security or the registration of it.

Examination of Documents

For the purposes of the opinions set out herein, we have examined:

(a) executed copies of the Security;

(b) copies of search results conducted in the Province of Ontario against the Borrower with the Ministry of Government Services (Ontario) and under the following statues:

    (i) the Bank *Act* (Canada);

    (ii) the Bankruptcy *and Insolvency Act* (Canada); and

    (iii) the Execution Act (Ontario);

    the results and currency of which are set out in Schedule "B";

(c) Ontario Personal Property Security Registration System Enquiry Response Certificates with a File Currency date of October 3, 2023 with respect to each Borrower, the results of which are summarized in Schedule "C";

(d) subsearch of title against the Property, the results of which are set out in Schedule "D". Please note that a subsearch of title is not a full search of title upon which a title opinion can be given. Our subsearch also did not include a search of adjoining lands to confirm *Planning Act* (Ontario)compliance nor did we confirm whether there was access to the real property; and

(e) such statutes and public records, original or copies (certified or otherwise identified to our satisfaction) of corporate records, certificates and such other instruments as we have deemed necessary or appropriate for the purposes of this opinion.

For the purposes of the opinions expressed below we have considered the questions of law, made the searches and investigations, and examined originals or copies, certified or otherwise identified to our satisfaction, of the certificates of public officials and other certificates, documents and records, that we considered necessary or relevant, and we have relied without independent verification or investigation on all statements as to matters of fact contained in the certificates, documents and records we examined.

Assumptions and Reliances

For the purposes of the opinions expressed below, we have assumed, without independent investigation or inquiry:

(a) that with respect to all documents examined by us, the signatures are genuine, the individuals signing those documents had legal capacity at the time of signing, all documents submitted to us as originals are authentic, and certified, conformed or photocopied copies, or copies transmitted electronically or by facsimile, conform to the authentic original documents;

(b) the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other similar officials with respect to those matters referred to in this letter;

(c) the accuracy of the description of the Collateral set out in the Security;

(d) that:

(i) the Borrower has rights in the Collateral;

(ii) value, as that term is defined in the PPSA, has been given to the Borrower; and

(iii) the Borrower has not agreed to postpone the time for attachment of the Security Interests;

(e) that the Collateral does not include "consumer goods", as that term is defined in the PPSA;

(f) that there is and was at all relevant times a valid, legal, enforceable and subsisting debt or other obligation owing by the Borrower to the Lender;

(g) that the Borrower:

(i) was at the time of authorization, execution and delivery of the Security, and is now, validly constituted and existing under the laws pursuant to which it was constituted;

(ii) had the corporate power and authority to execute, deliver and perform its obligations under the Security;

(iii) has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security; and

(iv) has duly executed and delivered the Security;

(h) that each of the parties to the Security other than the Borrower is validly constituted and existing in accordance with the laws under which it is constituted and has all necessary power and capacity to execute and deliver the Security and perform its obligations under the Security;

(i) that the Security constitutes a legal, valid and binding obligation of each of the parties to it other than the Borrower, enforceable against each of those other parties under the laws of the applicable jurisdiction governing the Security in accordance with its terms, subject to the qualifications below;

(j) that the Security executed by the Borrower has not been amended, restated, replaced, terminated or released, and remains in full force and effect;

(k) that there are no:

(i) agreements, judgments, rulings, instruments, facts or understandings affecting or concerning the Security, the Security Interests and/or the various principal obligations for which the Security is granted; or

(ii) statutory or regulatory prohibitions on, and no consents, licenses, approvals, authorizations or exemptions of any federal or provincial governmental body or regulatory authority required for or in connection with, the execution, delivery and performance by the Borrower of the Security or the Security Interests and/or the various principal obligations with respect to which the Security is granted;

which are not apparent from a review of the Security and which would or might affect the validity or enforceability of the Security;

(l) that the execution and delivery by the Borrower of the Security, and the performance by the Borrower of its rights and obligations under the Security did not and do not breach or contravene, and were not and are not in conflict with, any law or regulation applicable to the Borrower or any other agreement to which the Borrower is a party;

(m) that the execution, delivery and performance of obligations under the Security by the Borrower did not and does not constitute a preference, fraudulent preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under sections 91 or 95 of the *Bankruptcy and Insolvency Act* (Canada) or any similar provincial legislation relating to those issues;

(n) that the Lender has not by implicit or explicit course of conduct, waiver, release, discharge, cancellation, forbearance or other means, oral or written, taken any action or steps which have, or which could or would have, altered, diminished, suspended or otherwise affected the terms, conditions of enforceability of the

Security or the indebtedness, liabilities and obligations secured by the Security or any of it; and

(o) that the Lender did not know and did not have any reason to believe at any time that the creation of the Security Interests was in contravention of any agreement by which the Borrower or their property or assets were bound, if there was such a contravention.

Laws Addressed

Except as stated below, the opinions expressed in this letter are limited to the laws of, and the federal laws of Canada applicable in, the Province of Ontario. In particular, without limiting the preceding statement, we express no opinion:

(a) with respect to the laws of any other jurisdiction, to the extent those laws may govern any aspect of the Security or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests, as a result of the conflict of laws rules of the Province of Ontario; or

(b) whether, under the conflict of laws rules of the Province of Ontario, the laws of the Province of Ontario would govern the validity, perfection, effect of perfection or non-perfection or enforcement of any of the Security Interests.

It is our understanding that the Borrower only has assets in the Province of Ontario, so as instructed by you we have limited our review to Ontario law.

Opinions

Based upon the assumptions and reliances stated above, and subject to the qualifications and limitations stated below, we are of the opinion that:

1. The Security to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower, as applicable in accordance with its terms, and would be valid and enforceable against a trustee in bankruptcy of the Borrower.

2. The Security creates valid Security Interests in favour of the Lender as described in that security under the laws of the Province of Ontario in any Collateral to which the PPSA applies, to secure payment and performance of the obligations secured by the Security.

3. Registration has been made in all public offices provided for under the laws of the Province of Ontario where registration is necessary to perfect the Security Interests in favour of the Lender and such Security Interests would be valid and enforceable against a trustee in bankruptcy of the Borrower.

4. With respect only to the mortgages that were registered against title to the Property, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title to the Property other than those that appear on the parcel register of the Property as of October 4, 2023, we confirm that, as of October 4, 2023, the Charge (as defined in Schedule "A") was the fifth ranking mortgage registered

against title to the Property.[1]

Qualifications and Limitations

The opinions in the letter are subject to the following qualifications and limitations:

1. The legality, validity, binding effect and enforceability of the Security are subject to and may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, liquidation, moratorium, preference and other similar laws of general application affecting the enforcement of creditors' rights generally.

2. The enforceability of the obligations of the Borrower under the Security is subject to general equitable principles, including those relating to the conduct of parties such as reasonableness and good faith in the exercise of discretionary powers, to laws relating to laches, undue influence, unconscionability, duress, misrepresentation and deceit, estoppel and waiver, and to the powers of courts to stay proceedings before them, to stay the execution of judgments to relieve from penalties or the consequences of default (particularly if the default is minor or non-substantive) and to grant relief against forfeiture, and the principle that equitable remedies such as injunctive relief and specific performance are only available in the discretion of the court.

3. A secured creditor may be required to give a debtor reasonable time to satisfy any demand for payment or performance of its obligations under any of the Security before exercising any rights or remedies under it.

4. We express no opinion regarding the existence of, or the right, title or interest of the Borrower in and to, any real property or personal property. There is no title registry system in the Province of Ontario with respect to personal property, and no office of public record in which the title to personal property situate in the Province of Ontario may be examined.

5. We express no opinion regarding the ranking or priority of the Security Interests or other interests expressed to be created by the Security, subject to Opinion no. 4 above on the ranking of the mortgages registered against title to the Property.

6. We express no opinion with respect to any equitable mortgage or any unregistered postponements or other agreements not disclosed by the registered title of the Property.

7. We express no opinion as to whether the provisions of Part VII of the *Financial Administration Act* (Canada) have been complied with. An assignment of federal Crown debts which does not comply with that Act is ineffective as between the assignor and assignee and as against the Crown. Consequently, the Lender would not have a valid security interest in federal Crown debts unless that Act is complied with.

8. The federal laws of Canada require or permit notices, filings or registrations to be made or other steps or actions to be taken in order to preserve, perfect or protect security interests in certain types of property, including, without limitation, rolling stock, vessels registered under the *Canada Shipping Act, 2001,* patents, trade-marks and copyrights. To the extent that security interests are created by the Security in any of

---

[1] Pursuant to Transfer instruments registered on January 9, 2023, Miltom Services Limited appears to hold a 14% interest in the Charge.

that property, then notices, filings or registrations under those laws may be necessary or desirable in order to preserve, perfect or protect those security interests. We have not searched for the existence of any interests or rights against that property under any of those federal laws, and accordingly we express no opinion as to the creation of security interests in that property.

9. The PPSA imposes certain obligations on secured creditors which cannot be varied by contract and which may also affect the enforcement of certain rights and remedies contained in the Security to the extent that those rights and remedies are inconsistent with or contrary to the PPSA.

10. We express no opinion as to the enforceability of any provision of the Security which requires the Borrower to pay, or to indemnify the Lender for, the costs and expenses of the Lender in connection with judicial proceedings, since those provisions are subject to the discretion of the court to determine by whom and to what extent those costs should be paid.

11. We express no opinion on any provision in the Security which:

    (a) purports to restrict the access to, or waive the benefit of, statutory, legal or equitable rights, remedies or defences;

    (b) limits rights of set-off otherwise than in accordance with applicable law;

    (c) states that amendments or waivers of or with respect to the Security that are not in writing will be ineffective;

    (d) purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security;

    (e) purports to exculpate a party from a liability or duty otherwise owed by it to another party; or

    (f) provides that a certificate or a similar document will be treated as conclusive, final or binding.

12. The enforceability of any provision in the Security which:

    (a) purports to sever any provision which is invalid or unenforceable under applicable law without affecting the validity or enforceability of the remainder of the relevant Security;

    (b) stipulates or limits the level of damages to which a party is entitled; or

    (c) selects the jurisdiction whose laws are to apply or where a dispute is to be resolved;

    is subject to the discretion of a court.

13. We express no opinion as to licences, permits or approvals that may be required in connection with the enforcement of the Security by the Lender or by a person on its behalf, whether such enforcement involves the operation of the business of a Borrower or a sale, transfer or disposition of their respective property and assets.

14. We express no opinion as to any Security Interests with respect to any property of a Borrower that is transformed in such a way that it is not identifiable or traceable, or any proceeds of property of a Borrower that are not identifiable or traceable.

15. We express no opinion as to any Security Interests in any of the circumstances described in section 4(1) of the PPSA, in respect of which the PPSA is stated to have no application.

16. We express no opinion as to the validity of the Security Interests: (i) in any Collateral consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement (collectively, **"Special Property"**) to the extent that the terms of the Special Property or any applicable law prohibit its assignment or the granting of security interests in it, or require, as a condition of such assignment or grant, a consent, approval or other authorization or registration which has not been made or given, (ii) in permits, quotas or licenses which are held by or issued to a Borrower, or (iii) in growing crops.

17. The enforceability of the Security Interests in accounts or chattel paper as against an account debtor of a Borrower is subject to notice of the Security Interest and a direction to pay to the Lender being given to that account debtor, the terms of the contract between such Borrower, and that account debtor and any defence or claim arising out of the contract or a closely connected contract, and any other defence or claim of that account debtor against such Borrower, accruing before the account debtor has knowledge of the Security Interest. Further, the Security Interests will not be binding on that account debtor to the extent that the debt or account is paid or otherwise discharged before notice of the Security Interests is given to that account debtor, together with a direction to pay the account or debt to the Lender.

18. Notwithstanding that the Security Interests have been perfected by registration under the PPSA, Security Interests in:

    (a) investment property, as that term is defined in the PPSA, will be defeated by certain claimants obtaining control of that property in the circumstances described in the PPSA or in the *Securities Transfer Act, 2006* (Ontario);

    (b) instruments, chattel paper, documents of title or money, as those terms are defined in the PPSA, will be defeated by certain claimants obtaining possession of that property in the circumstances described in the PPSA or the *Bills of Exchange Act* (Canada); and

    (c) goods (as defined in the PPSA) will be defeated by certain claimants to whom a Borrower sells or leases those goods in the ordinary course of business in the circumstances described in the PPSA.

19. The financing statements registered under the PPSA to perfect the Security Interests do not list motor vehicles (as that term is defined in the PPSA) by vehicle identification number, and accordingly a buyer or lessee of any of those motor vehicles which are classified as equipment (as defined in the PPSA) will take them free of the Security Interests if the buyer or lessee bought or leased them without knowledge of the Security Interests.

20. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario).

21. We express no opinion regarding any issues raised in the Application Record and/or any

affidavit (and exhibits thereto) including but not limited to those related to any litigation or potential litigation relating to the Property and/or between any parties claiming an interest therein.

22. We express no opinion regarding any guarantee with respect to the loan secured by the Charge.

23. TKIL's partnership's declaration expired on October 20, 2023 and needs to be renewed.[2]

24. The rights of the holder of the Charge to enforce against the Property are subject to the rights of the holders of the following mortgages that were registered prior to the Charge or otherwise appear to have priority over the Charge:

(a) a mortgage in the principal amount of $30,000,000 from TKIC to Romspen Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373212 on January 27, 2022, and (in the case of PINs 03055-0379 and 03055-0380) Instrument No. YR3470724 on August 30, 2022;

(b) a mortgage in the principal amount of $9,500,000 from TKIC to Amber Mortgage Investment Corporation which was registered against title to the Property as (in the case of PIN 03055-0377 only) Instrument No. YR3373214 on January 27, 2022, and (in the case of PINs 03055-0377, 0379 and 03055-0380) Instrument No. YR3470726 on August 30, 2022; and

(c) a mortgage in the principal amount of $8,000,000.00 from TKIC to 2149602 Ontario Inc. which was registered against title to the Property as Instrument No. YR3373216 on January 27, 2022 (by postponement from Sow Capital Ontario Limited pursuant to Instrument no. YR3373405 registered on January 28, 2022), as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3385745 on February 24, 2022 and as further amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505530 on December 6, 2022;[3]and

(d) a mortgage in the principal amount of $3,540,000 from TKIC to Frank Pa and Stephen Tung which was registered against title to the Property as Instrument No. YR3373219 on January 27, 2022 (by postponement from the Lender pursuant to Instrument no. YR3440959 registered on June 17, 2022).[4]

25. As set out in Schedule C, the order of registrations under the PPSA against the Borrower is: i) the Lender; ii) Romspen; iii) Amber Mortgage Investment Corporation; iv) 2149602 Ontario Inc.; and v) UBS AG. The Lender postponed its registration to Romspen's

---

[2] Section 3(4) of the Limited Partnerships Act provides that "A limited partnership is not dissolved if a declaration expires, but an additional fee in the required amount is payable for the subsequent filing of a renewal of a declaration."

[3] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470728 (the re-registered charge) registered on August 30, 2022, as amended pursuant to a Charge Amending Agreement dated August 30, 2022, notice of which was registered on title to the Property pursuant to Instrument No. YR3505533 on December 6, 2022, were registered on PINs 03055-0379 and 03055-0380.

[4] These instruments are registered on PIN 03055-0377 only; Instrument No. YR3470730 (the re-registered charge) was registered on PINs 03055-0379 and 03055-0380 on August 30, 2022

registrations under the PPSA and entered into priority, subordination, postponement and standstill agreements with each of Amber Mortgage Investment Corporation and 2149602 Ontario Inc. Pursuant to section 4.11 of each of those agreements, the Lender authorized each of Amber Mortgage Investment Corporation and 2149602 Ontario Inc. to file a financing change statement to evidence the PPSA subordination but neither has done so. Section 50 of the PPSA provides that "Where a security interest is perfected by registration and the interest of the secured party has been subordinated by the secured party to any other security interest in the collateral, a financing change statement may be registered at any time during the period that the registration of the subordinated interest is effective." So, it is not necessary to register a postponement under the PPSA.

26. The Property is subject to a construction lien in the amount of $4,653,028 from DX Strategies Inc. registered on April 14, 2023. A related Certificate of action was registered on June 16, 2023.

27. We have not obtained a tax certificate with respect to the Property, so if there are any outstanding amount of realty taxes due on the Property, those taxes would have priority over the Charge.

28. The Borrowers transferred PIN 03055-0378 to the City of Markham on August 8, 2022. To facilitate the transfer, the Lender and the other mortgagees 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 Charge, were registered on title to the affected parcels on August 30, 2022.

29. We express no opinion regarding the amounts shown as owing on the Payout Statement and the calculation thereof, including the calculation of any interest, or the use of any exchange rates and conversion to Canadian dollars on any amount, owing to the Lender under the Charge.[5]

This opinion is solely for the benefit of its addressees in connection with the Security. This opinion may not be relied upon in any manner by any other person and may not be disclosed, quoted, filed with a governmental agency or otherwise referred to without our prior written consent.

Yours very truly,

BLANEY McMURTRY LLP

[5] The loan facilities from the Lender to the Borrower appear to have been done in four currencies: CAD, USD, HKD and RMB.

SCHEDULE "A"

LIST OF SECURITY

1. Charge/Mortgage (the "**Original Charge**") granted by TKIC in favour of the Lender and Jiayi International Investments Ltd. ("**Jiayi**") in the principal amount of $5,000,000 charging the real property at 3143 19th Avenue, Markham, Ontario, and registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) (the "**Land Titles Office**") on March 26, 2020 as Instrument No. YR3083072. **[PIN 03055-0377 only]**

2. Transfer of the Original Charge ("**Transfer #1**") from Jiayi to the Lender registered in the Land Title Office on May 7, 2021 as Instrument No. YR3247257.

3. Transfer of a 40% interest in the Original Charge ("**Transfer #2**") from the Lender to F A Credit Solutions Canada Inc. ("**FA Credit**") registered in the Land Title Office on August 18, 2021 as Instrument No. YR3300382.

4. Transfer of the Original Charge ("**Transfer #3**") from FA Credit to the Lender registered in the Land Title Office on January 27, 2022 as Instrument No. YR3373218.

5. Charge/Mortgage (the "**Re-registered Charge**" and collectively with the Original Charge, Transfer #1, Transfer #2, Transfer #3, Transfer #4, Transfer #5, Notice #1 and Notice #2, the "**Charge**") granted by TKIC in favour of the Lender in the principal amount of $5,000,000 charging the real property at 3143 19th Avenue, Markham, Ontario, and registered in the Land Titles Office on August 30, 2022 as Instrument No. YR3470731. **[PINs 03055-0379 and 03055-0380]**

6. Transfer of a 14% interest in the Original Charge ("**Transfer #4**") from the Lender to Miltom Services Limited registered in the Land Title Office on January 9, 2023 as Instrument No. YR3513700. **[PIN 03055-0377 only]**

7. Transfer of a 14% interest in the Original Charge ("**Transfer #5**") from the Lender to Miltom Services Limited registered in the Land Title Office on January 9, 2023 as Instrument No. YR3513701. **[PINs 03055-0379 and 03055-0380]**

8. Notice of Charge Amending Agreement ("**Notice #1**") dated February 1, 2023 executed by TKIC and the Lender registered in the Land Titles Office on April 5, 2023 as Instrument No. YR3538686 (the "Notice"). **[PIN 03055-0377 only]**

9. Notice of Charge Amending Agreement ("**Notice #2**") dated February 1, 2023 executed by TKIC and the Lender registered in the Land Titles Office on April 5, 2023 as Instrument No. YR3538687 (the "Notice"). **[PINs 03055-0379 and 03055-0380]**

SCHEDULE "B"

SEARCH RESULTS

Tung Kee Investment Canada Ltd.

We conducted searches in the Province of Ontario against Tung Kee Investment Canada Ltd. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Registered Office:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Incorporation Date:	February 11, 1993
Corporation No.:	1018493
Jurisdiction:	Ontario
Status:	Active
Directors:	Pui Ling Lai (Secretary), Philip Kun To Wong, Man Tung Yung (President)
Notes:	Annual Return has not been filed since 2016
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Canada Ltd. as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Canada Ltd. in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Canada Ltd. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

Tung Kee Investment Limited Partnership

We conducted searches in the Province of Ontario against Tung Kee Investment Limited Partnership. Such searches were conducted under the statutes and in the offices described below and are current as of the dates outlined below:

Corporate Search (as of October 4, 2023)

Principal Place of Business:	118 Grey Alder Ave Richmond Hill, Ontario L4B 3P9
Declaration Date:	October 24, 2003 (Expiry: October 20, 2023)
Business ID No.:	131179558
Jurisdiction:	Ontario
Status:	Active
General Partner:	Tung Kee Investment Canada Ltd.
Notes:	The partnership's declaration expired on October 20, 2023 and its status is now inactive.
Predecessors:	None

Bank Act (Canada)

Canadian Securities Registration Systems' Confirmation Letter re Bank Act Security- Section 427 dated October 24, 2023 has been obtained reflecting that there were no registrations of Notices of Intention against Tung Kee Investment Limited Partnership as of October 24, 2023 under this statute.

Bankruptcy and Insolvency Act (Canada)

Searches conducted on October 24, 2023 pursuant to the Bankruptcy and Insolvency Act (Canada) in the Office of the Superintendent of Bankruptcy, Industry Canada (current to October 20, 2023) disclosed that no registrations appear against Tung Kee Investment Limited Partnership in the Office of the Superintendent for all of the Districts and Divisions in Canada.

Execution Act (Ontario)

Certificate issued by the Sheriff of the Regional Municipality of York (Newmarket) dated October 24, 2023 did not disclose any filings made against Tung Kee Investment Limited Partnership. These are local searches and would only reveal any writs of execution filed in the Region or Municipality named therein.

Personal Property Security Act (Ontario)

Certificate obtained pursuant to this statute revealed the following registrations as of file currency dates shown.

See Schedule “C”.

SCHEDULE "C"

PPSA Search and Security Confirmation Summary

1. Name of Debtor: TUNG KEE INVESTMENT CANADA LTD.
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612643 Registration: 20220112 1048 1590 3044 Debtor: Tung Kee Investment Canada Ltd.; 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tony Man Tung Yung; Tony M Yung; Man T Yung; Man Tung T Yung; Tony Man T Yung; Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years

	PPSA Registration	
3)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779612751 20220112 1056 1590 3045 2407720 Ontario Inc.; 2407721 Ontario Inc.; Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Accounts, Other 3 years PLEDGE OF ALL LIMITED PARTNERSHIP INTERESTS AND UNITS OF TUNG KEE INVESTMENT LIMITED PARTNERSHIP AND THE PROCEEDS THEREOF IN WHATEVER FORM.
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period:	779612904 20220112 1059 1590 3048 Tung Kee Investment Canada Ltd. Romspen Investment Corporation, as trustee Inventory, Equipment, Accounts, Other, Motor Vehicle Included 3 years
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779742783 20220118 1447 1590 3866 Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Amber Mortgage Investment Corp. Inventory, Equipment, Accounts, Other 3 years ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
7)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
8)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

2. Name of Debtor: TUNG KEE INVESTMENT LIMITED PARTNERSHIP
File Currency: October 3, 2023

	PPSA Registration
1)	PPSA File: 761256198 Registration: 20200326 1327 1862 1373 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership; Yungs Development Limited; Yung Man Tung; Secured Party: SOW Capital Ontario Limited Collateral: Inventory, Equipment, Accounts, Other, Period: 5 years General Collateral Description: SECURITY AND RELATED DOCUMENTS INCLUDING, WITHOUT LIMITATION, GENERAL ASSIGNMENT OF RENTS, GENERAL SECURITY AGREEMENT, ASSIGNMENT OF LEASES, ASSIGNMENT OF MATERIAL DOCUMENTS, ASSIGNMENT OF INSURANCE, PROMISSORY NOTE, ALL RELATING TO 3143 19TH AVENUE, MARKHAM, ONTARIO. Note: POSTPONE TO PPSA REFERENCE FILE NO. 779612904 AND PPSA REFERENCE FILE NO. 779612886 AS PER A SUBORDINATION AND POSTPONEMENT AGREEMENT. (Registration #20220131 1452 1590 5908)
2)	PPSA File: 779612886 Registration: 20220112 1058 1590 3047 Debtor: Tung Kee Investment Limited Partnership Secured Party: Romspen Investment Corporation, as trustee Collateral: Inventory, Equipment, Accounts, Other, Motor Vehicle Included Period: 3 years Description:
3)	PPSA File: 779742783 Registration: 20220118 1447 1590 3866 Debtor: Tung Kee Investment Canada Ltd.; Tung Kee Investment Limited Partnership Secured Party: Amber Mortgage Investment Corp. Collateral: Inventory, Equipment, Accounts, Other Period: 3 years Description: ALL PRESENT OR FUTURE PERSONAL PROPERTY OF THE DEBTORS SITUATE IN, ON OR UNDER OR ARISING OUT OF OR FROM OR PERTAINING TO THE FOLLOWING PROPERTY - THE LANDS MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND LEGALLY DESCRIBED IN PIN 03055-0002(LT)

	PPSA Registration	
4)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	779818977 20220121 1132 1590 4404 Tung Kee Investment Canada Ltd; Tung Kee Investment Limited Partnership 2149602 Ontario Inc. Inventory, Equipment, Accounts, Other, Motor Vehicle Included 2 years ASSIGNMENT OF RENTS AND INCOME, ASSIGNMENT OF DEBT (OF BENEFICIAL OWNER), ASSIGNMENT OF FUNDS FOR INTEREST RESERVE AND SECURITY AGREEMENT(S) CREATING A SECURITY INTEREST IN ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTORS LOCATED AT, ON, USED IN CONNECTION WITH, RELATING TO OR DERIVED FROM THE PROPERTY MUNICIPALLY KNOWN AS 3143 19TH AVENUE, MARKHAM, ONTARIO AND SECURITY AGREEMENTS RESPECTING DEPOSITS AND CASH SECURITY.
5)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	780972921 20220309 1515 9234 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd. UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

	PPSA Registration	
6)	PPSA File: Registration: Debtor: Secured Party: Collateral: Period: Description:	782875944 20220511 1034 9234 2618 Tung Kee Investment Limited Partnership; Tung Kee Investment Canada Ltd.; Man T Yung UBS AG Inventory, Accounts, Other 99 years (perpetual) THE DEPOSITS, THE SECURITIES, THE PRECIOUS METALS AND ANY OTHER PROPERTY FROM TIME TO TIME OWNED BY THE DEBTORS (WHETHER OWNED JOINTLY WITH ANY OTHER CHARGOR(S) OR IN ITS OWN NAME) DELIVERED TO, DEPOSITED WITH, TRANSFERRED TO, REGISTERED IN THE NAME OF, HELD IN THE POSSESSION OF, IN THE NAME OF, TO THE ORDER OF, OR UNDER THE CONTROL, INSTRUCTION OR DIRECTION OF (INCLUDING BY WAY OF A POWER OF ATTORNEY OR OTHERWISE), THE SECURED PARTY OR ANY NOMINEE, CUSTODIAN, AGENT, REPRESENTATIVE OR CORRESPONDENT OF THE SECURED PARTY UNDER ANY ARRANGEMENTS.

SCHEDULE “D”

REAL PROPERTY SEARCHES

Municipal Address: 3143 19th Avenue, Markham, Ontario

Registered Owner: TUNG KEE INVESTMENT CANADA LTD.

Subsearch as of: October 4, 2023

Legal Description: PIN 03055-0377 (LT)
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)
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)
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

Registered Encumbrances:

For PIN 03055-0377 only **[unless otherwise noted]**:

1. Instrument No. YR3083072 registered March 26, 2020, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

2. Instrument No. YR3083073 registered March 26, 2020, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited and Jiayi International Investments Ltd.

3. Instrument No. YR3247257 registered May 7, 2021, being a Transfer of Charge from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

4. Instrument No. YR3247258 registered May 7, 2021, being a Notice of Assignment of Rents - General from Jiayi International Investments Ltd. to Sow Capital Ontario Limited.

5. Instrument No. YR3300382 registered August 18, 2021, being a Transfer of Charge from Sow Capital Ontario Limited to F A Credit Solutions Canada Inc. and Sow Capital Ontario Limited.

6. Instrument No. YR3373212 registered January 27, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

7. Instrument No. YR3373213 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

8. Instrument No. YR3373214 registered January 27, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

9. Instrument No. YR3373215 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

10. Instrument No. YR3373216 registered January 27, 2022, being a Charge in the principal amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

11. Instrument No. YR3373217 registered January 27, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

12. Instrument No. YR3373218 registered January 27, 2022, being a Transfer of Charge from F A Credit Solutions Canada to Sow Capital Ontario Limited.

13. Instrument No. YR3373219 registered January 27, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to PA, Frank and Tung, Stephen.

14. Instrument No. YR3373403 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Romspen Investment Corporation.

15. Instrument No. YR3373404 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to Amber Mortgage Investment Corp.

16. Instrument No. YR3373405 registered January 28, 2022, being a Postponement from Sow Capital Ontario Limited to 214962 Ontario Inc.

17. Instrument No. YR3385745 registered February 24, 2022, being a Notice in the amount of $8,000,000 from Tung Kee Investment Canada Ltd. to 214962 Ontario Inc.

18. Instrument No. YR3397626 registered March 22, 2022, being a Notice from The Corporation of the City of Markham. to Tung Kee Investment Canada Ltd.

19. Instrument No. YR3397627 registered March 22, 2022, being a Postponement from Sow Capital Ontario Limited to The Corporation of the City of Markham.

20. Instrument No. YR3397628 registered March 22, 2022, being a Postponement from Romspen Investment Corporation to The Corporation of the City of Markham.

21. Instrument No. YR3397629 registered March 22, 2022, being a Postponement from Amber Mortgage Investment Corp. to The Corporation of the City of Markham.

22. Instrument No. YR3397630 registered March 22, 2022, being a Postponement from 2149602 Ontario Inc. to The Corporation of the City of Markham.

23. Instrument No. YR3397631 registered March 22, 2022, being a Postponement from Pa, Frank and Tung, Stephen to The Corporation of the City of Markham.

24. Instrument No. YR3440956 registered June 17, 2022, being a Notice in the amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

25. Instrument No. YR3440959 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to Pa, Frank and Tung, Stephen.

26. Instrument No. YR3441040 registered June 17, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

27. Instrument No. YR3447697 registered July 4, 2022, being a Notice in the amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp.

28. Instrument No. YR3454771 registered July 20, 2022, being a Postponement from 2149602 Ontario Inc. to Alectra Utilities Corporation.

29. Instrument No. YR3454772 registered July 20, 2022, being a Postponement from Sow Capital Ontario Limited to Alectra Utilities Corporation.

30. Instrument No. YR3454773 registered July 20, 2022, being a Postponement from Romspen Investment Corporation to Alectra Utilities Corporation.

31. Instrument No. YR3454774 registered July 20, 2022, being a Postponement from Amber Mortgage Investment Corp. to Alectra Utilities Corporation.

32. Instrument No. YR3454775 registered July 20, 2022, being a Postponement from Pa, Frank and Tung, Stephen to Alectra Utilities Corporation.

33. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

34. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0379 and 0380]**

35. Instrument No. YR3505530 registered December 6, 2022, being a Notice in amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

36. Instrument No. YR3505547 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc.

37. Instrument No. YR3505567 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc.

38. Instrument No. YR3513700 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to Miltom Services Limited and Sow Capital Ontario Limited.

39. Instrument No. YR3538686 registered April 5, 2023, being a Notice from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

40. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

41. Instrument No. YR3541425 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

42. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. [NOTE: also registered on 0379 and 0380]

<u>For PINs 03055-0379 and 0380 only **[unless otherwise noted]**:</u>

43. Instrument No. YR3470724 registered August 30, 2022, being a Charge in the principal amount of $30,000,000 from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

44. Instrument No. YR3470725 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Romspen Investment Corporation.

45. Instrument No. YR3470726 registered August 30, 2022, being a Charge in the principal amount of $8,500,000 from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

46. Instrument No. YR3470727 registered August 30, 2022, being a Notice of Assignment of Rents – General from Tung Kee Investment Canada Ltd. to Amber Mortgage Investment Corp. **[NOTE: also registered on 0377]**

47. Instrument No. YR3470728 registered August 30, 2022, being a Charge in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

48. Instrument No. YR3470729 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

49. Instrument No. YR3470730 registered August 30, 2022, being a Charge in the principal amount of $3,540,000 from Tung Kee Investment Canada Ltd. to Pa, Frank and Tung, Stephen.

50. Instrument No. YR3470731 registered August 30, 2022, being a Charge in the principal amount of $5,000,000 from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

51. Instrument No. YR3470732 registered August 30, 2022, being a Notice of Assignment of Rents - General from Tung Kee Investment Canada Ltd. to Sow Capital Ontario Limited.

52. Instrument No. YR3505533 registered December 6, 2022, being a Notice in the principal amount of $9,500,000 from Tung Kee Investment Canada Ltd. to 2149602 Ontario Inc.

53. Instrument No. YR3505555 registered December 6, 2022, being a Postponement from Pa, Frank and Tung, Stephen to 2149602 Ontario Inc. to 2149602 Ontario Inc.

54. Instrument No. YR3505559 registered December 6, 2022, being a Postponement from Sow Capital Ontario Limited to 2149602 Ontario Inc. to 2149602 Ontario Inc.

55. Instrument No. YR3513701 registered January 9, 2023, being a Transfer of Charge from Sow Capital Ontario Limited to 2149602 Ontario Inc. to Miltom Services Limited and Sow Capital Ontario Limited.

56. Instrument No. YR3538687 registered April 5, 2023, being a Notice in the principal amount of $2.00 rom Tung Kee Investment Canada Ltd. to and Sow Capital Ontario Limited.

57. Instrument No. YR3541410 registered April 14, 2023, being a Construction Lien in the amount of $4,653,028 from DX Strategies Inc. **[NOTE: also registered on 0377]**

58. Instrument No. YR3541426 registered April 17, 2023, being a Notice of Change of Address for Service from Sow Capital Ontario Limited.

59. Instrument No. YR3563830 registered June 16, 2023, being a Certificate from Ontario Superior Court of Justice to DX Strategies Inc. **[NOTE: also registered on 0377]**

Appendix “P”

PAYOUT STATEMENT

Lender: SOW Capital Ontario Ltd.

Payout Date: October 31, 2023

	CAD
Principal Amount as of the date noted above	$9,743,569
Accrued Interest from August 30, 2019	$3,074,540
For Legal Fees and Disbursements for Mortgage Enforcement to October 31, 2023	$157,767.73
For payment to Avison Young for appraisal	$12,995.00
For payment to for Wagner Andrews Kovacs for appraisal	$11,701.15
TOTAL OWING AS OF THE PAYOUT DATE	**$13,000,572.88**

All accrued interest is to October 31, 2023

The daily rate will continue from November 1,2023

Per diem interest : 4,266 CAD

This Statement expires on November 17, 2023

SOW Capital Ontario Ltd.

Signature: ________________________

Printed Name: Philip Wong Kun To

Title: Director

Date: 31th October 2023

Appendix “Q”

Justin T. Chan, LL.B., LL.M.
Barrister & Solicitor

Justin T. Chan
T 416.867.2565
F 416.867.2566
E jchan@jtcprofcorp.com

November 11, 2023

BY EMAIL (ckopach@blaney.com)

Chad Kopach
Blaney McMurtry LLP
2 Queen Street East
Toronto, Ontario
M5C 3G5

Dear Chad,

Re: DX Strategies ("DX") Construction Lien re Romspen v. Tung Kee

---

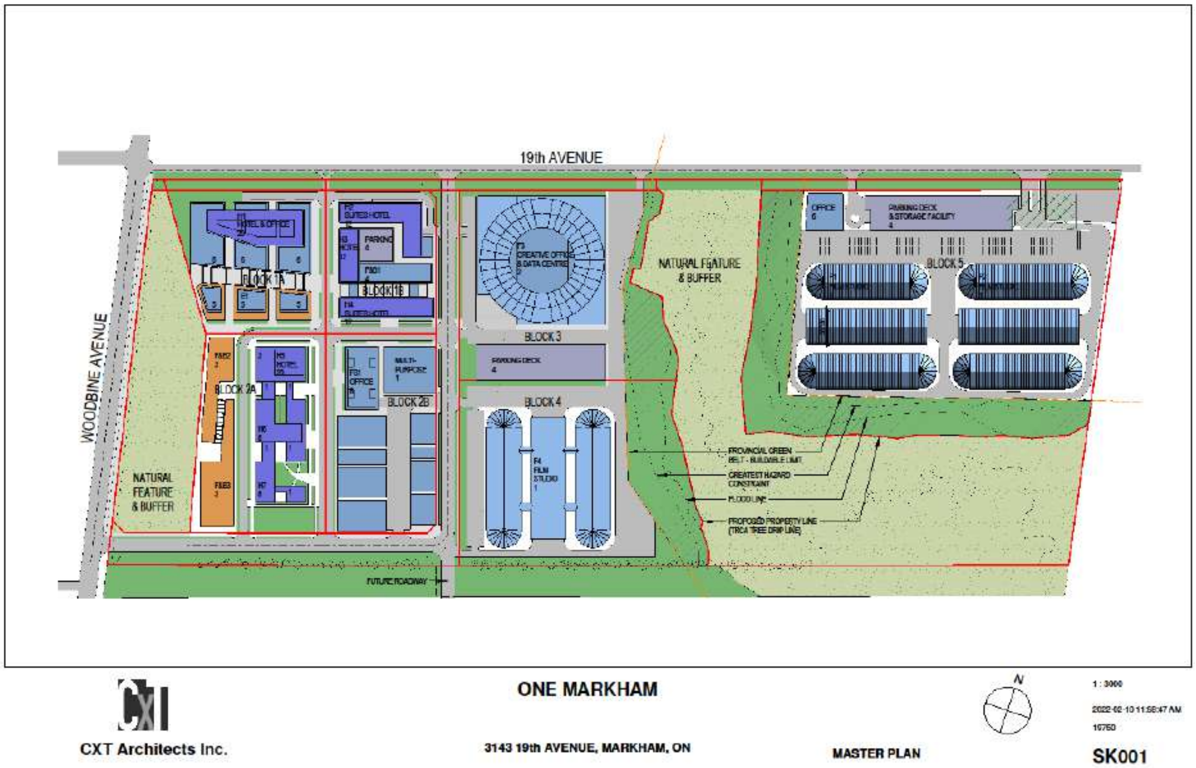
I am writing in response to the Receiver's request for documentation proving quantum, timeliness of supply, and confirmation that the services/materials supplied by DX are lienable pursuant to the terms of the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the "*CLA*").

OVERVIEW

Generally, DX's position is that it should be first entitled to 10% (based on statutory holdback requirements) of the amount that it has registered and perfected under its construction lien against any mortgagees that have not specifically set out in their respective loan agreements that those advances of money were not supposed to be used to improve the land. Next, the remaining amounts after that 10% should be given priority over any advances of money to Tung Kee by any mortgagees who have been given written notice of lien (as per s. 78(6)(b)), namely, Sow Capital.

Finally, any of Sow's amounts that precede DX's written notice of lien should be scrutinized to assess whether such amounts were in fact advanced. Sow registered a Notice on title on February 1, 2023 that increased its previous charge from $5,000,000 to $20,000,000. However, as of February 27, 2023, according to information sent directly from Sow Capital, no increase of $15,000,000 was ever advanced. Furthermore, a document shared by Sow Capital identified Phillip Wong, a director of both Tung Kee and of Sow Capital, paying himself personally ahead of creditors that Tung Kee was owing. Phillip Wong also admitted that he personally injected $6,500,000 into Tung Kee. The Notice registered on February 1, 2023 came well after DX's written notice of lien and any amounts claimed thereunder should fall in priority behind DX's construction lien.

Below is a drawing of the One Markham project from DX Strategies depicting the different blocks and their plans – work that has improved the Property.



This letter is split up into the following sections to demonstrate the entire period for which DX supplied services that are claimed under its construction lien, the quantification of these services through a breakdown/description of the amounts in the invoices for same, and DX's legal position with respect to the priorities available to it under the *CLA.*

A. THE AGREEMENTS
- Relationship between CXT Architects Inc. and DX Strategies Inc.
- Letter dated July 5, 2019 (Attachment "A")
- Letter dated July 19, 2021 (Attachment "B")
- Letter dated August 9, 2021 (Attachment "C1")
- Letter dated June 6, 2022 (Attachment "D")
- DX's Ongoing Efforts

B. THE INVOICES
- Services Rendered Under Invoice No. I-B2016DX
  - Project Management Fees
  - MZO Bonus
  - Consultant Fees
  - Incentive Payment
- Services Rendered Under Unpaid Invoices Pre-Dating Invoice No. I-B2016DX

C. CONSTRUCTION LIEN PRIORITIES

A. THE AGREEMENTS

There were several agreements that were exchanged and executed in the form of letters from DX to Tung Kee (all of which either copied or were sent in care of SOW Capital) at different points in time reflecting the different stages that DX was able to achieve (the "**Agreements**"):

Letter dated July 5, 2019 (Attachment "A")
Letter dated July 19, 2021 (Attachment "B")
Letter dated August 9, 2021 (Attachment "C1")
Letter dated June 6, 2022 (Attachment "D")

DX's invoicing was based on a monthly amount that was agreed to in the Agreements plus consultants fees as they became due.

Relationship between CXT Architects Inc. ("CXT") and DX Strategies Inc.
CXT is an architectural company based in Toronto, Ontario that initiated a proposal letter to SOW Capital regarding the project that forms the subject matter of this litigation and that is further detailed below.

DX Strategies was incorporated provincially in the Province of Ontario on September 12, 2019 to appease the principal of Tung Kee, Tony Tung ("Tony"), to show that there was a separation of the scope of any work from Patrick T.Y. Chan, a principal of CXT Architects. CXT Architects is a subcontractor under DX Strategies for all material times and purposes.

Letter dated July 5, 2019 (Attachment "A")
This July 5, 2019 letter outlined the Project Team, a Project Update, Assumptions, Scope of Services and Management Fees (including a Timeline and Payment Schedule). Specifically, it sets out the proposed scope of the overall project with respect to 3143 19th Avenue, Markham, ON (the "Property") leading up to the approval of a Secondary Plan. It outlines work that was done in the year leading up to the date of the letter. The letter also sets out the work that was required to lead to a normal process of land approval through the Official Plan Amendment, Secondary Plan Amendment and Re-zoning for land that is designated as Future Urban Area but that was then zoned as Agriculture and Open Space.

CXT was acting as project lead on behalf of owner group. The Master Plan design was originally prepared by WZMH Architects and KPF from New York City. This process of approval proved to be much longer and would have made it impossible to meet the Film Studio's timeline. The MZO approval path was therefore the only viable route to develop the Property on the Film Studio's timeline.

This letter details all of the efforts that had been put in to that point in time, especially with respect to settling with WZMH Architects Lien and to be able to transition the project from WZMH/KPF to CXT Architects and with a new start under Philip Wong's leadership. In

Scope of Services, Item 7 it noted that CXT reserves the right to re-visit this contract to include success fee if owner decides to pursue residential re-zoning as this exercise would be extremely difficult to secure approval.

This letter was executed as reviewed by Phillip Wong ("Wong") of SOW Capital Limited ("SOW"), the fifth mortgagee in these proceedings, on December 4, 2020.

Letter dated July 19, 2021 (Attachment "B")
This letter showed that the proposal from July 5, 2019 was revised to reflect Dan's almost fulltime involvement acting as Development Manager and engaging his own architectural office during COVID restriction to develop a new master plan for the MZO application. It briefly outlined the successful efforts that DX Strategies had expended into the Property up until that point and that detailed a revision to the payment schedule, replacing the Payment Schedule set out in the July 11, 2019 letter, to more accurately and fairly reflect the type of efforts that would be necessary moving forward with respect to the Property.

This significant investment of time and effort was recognized and the intention of the parties was to allow for a deferral of the payment for these successful efforts through a special provision that was based on the final realization/monetization of the result (the "Payment Delay"). This is the reason for item 3 (the MZO Bonus) and item 4 (the Post MZO/ Block 1,2 and 3 being tied to success in obtaining 4 million square feet of Gross Floor Area).

Item 5 is related to a residential success fee when/ if CXT is able to convince the city to permit much needed residential units for local crew to be developed on a portion of the land.

Letter dated August 9, 2021 (Attachment "C1")
This letter used the same terms as the July 19, 2021 letter but first outlined the successful city council vote of 12-1 in support of the application with respect to the MZO, which was essentially the fruit of the sole labour of DX and its subcontractors, especially CXT for its design work. A copy of the image of the perspective from the approved MZO design prepared by CXT is attached hereto as Attachment "C2".

At this point, Tung Kee was struggling to pay invoices from DX Strategies as they came due; however, DX Strategies wanted to work with Tung Kee to ensure that the project with respect to the Property would be completed as promised, which includes constructing a major film studio in City of Markham, by Tung Kee Investment Canada to City of Markham's council who were very supportive of the development as apparent in their vote of support. Significant goodwill would have been lost if the project halted at this stage.

This letter also made five significant revisions to the compensation structure to help Tung Kee that SOW was clearly made aware of (as this letter was sent to Wong's SOW address at Philip.wong@sowcapital.com.hk):

a. A revised Appendix to replace the July 19, 2021 one to better reflect the actual payment received up until August 9, 2021;

b. Payment of unpaid fees;

c. MZO Bonus of the Property to reflect the efforts of DX Strategies in securing a successful zoning change of the land from farming land to Business Park Industrial with mixed use provision to complement Film Studio use, usage to be paid upon successful sale of Block 5;

d. Post MZO Bonus with respect to Blocks 1, 2 and 3 of the Property to reflect the efforts of DX Strategies in successful zoning change of the land with higher density which allowed buildings to be built up to a maximum of 20 storeys.

e. A residential zoning bonus with respect to Blocks 1, 2 and 3 (the "Residential Zoning Bonus") to address the housing demand within walkable distant to the film studio.

This letter was signed by Philip Wong on August 15, 2021 with the knowledge that the MZO approval will be imminent. The MZO was endorsed by province on 27 August 2021. In recognition of the work done by DX, the likely hood of success, and Tung Kee's desire to pay after sale of at least one large parcel of land, this contract allowed for the following:

Item 4 (the Post MZO Bonus) was first proposed in recognition for success in securing density of 4.0 million square feet as noted in draft contract of July 19, 2021. The wording had morphed in this letter to include "future consideration". The DSC report incorporated density which reflects the Film Studio's low density development for Block 4 and 5 flanking both sides of creek which dropped the density to 3,575,350 square feet as noted in Table 2 of the DSC report. The right type of land use entitlement with supporting density will increase the land value significantly.

Item 5 (the Residential zoning bonus) was to be determined at later date. It was to become applicable down the road when the opportunity arises to request for rental and affordable housing to attract talent to the area. This work was not done and DX has no intention to collect on it.

It is clear that once the MZO was endorsed, the value of the land increased significantly. The success fee under Item 3 was locked in when the MZO approval was secured. The fee owed is now due, regardless of whether the Property is sold under the Times Transaction or to SOW's proposed buyer.

<u>Letter dated June 6, 2022 (Attachment "D")</u>
This is the final version of the agreement and it is signed by both Tony and Wong (sent to Wong's SOW address at Philip.wong@sowcapital.com.hk) on behalf of Tung Kee. This

final version dropped Item 5 (the Residential zoning bonus) all together. Instead, Item 5 is used to describe fees owed to other consultants.

Item 4 was re-worded as “DX Incentive payment in recognition of payment delay for item 2 and item 3, success fee to close land deal on Block 4 and/or 5”. The intent of the wording was to acknowledge that there is significant fee that was already owed at the date of this letter for which DX had not charged interest. Tung Kee, with SOW being duly informed, would only pay after the sale of Block 4 and/or 5. There is no mention that the sale is tied to successful sale to the Film Studio.

The fee is tied to either 3% of sale price or $1.3 million including HST, whichever is higher. In addition, in this latest fully executed agreement, there is provision for 10% interest starting January 1, 2022 for outstanding fees owed to DX in Item 2. Fees outstanding owed to other consultants are calculated at 10% starting June 1, 2022.

DX’s Ongoing Efforts
As part of this ongoing effort to sell the land and in spite of the DX lien, DX had provided assistance without pay, where required, to potential buyers. Lee Li Holdings called and DX helped provide answers to their question regarding servicing timeline and status of Alectra’s power. This same level of care would have been extended to Times if they had called to inquire about the land. This was to make sure that at least one buyer with best price would close so that all consultants will be paid.

B. THE INVOICES

Services Rendered Under Invoice No. I-B2016DX (the “Invoice”)
On May 13, 2023, DX provided Tung Kee a breakdown of the Invoice at the request of Tung Kee. A copy of the Invoice is attached hereto as Attachment “E”.

On May 18, 2023, Tung Kee acknowledged the Invoice and specifically requested that the Invoice be broken into four different invoices. A copy of this email is attached hereto as Attachment “F”. This was to help Tung Kee break down the amounts that relate to the film studio to be built on Block 5 of the Property and the option, in the future, for the film studio to acquire Blocks 3 and 4 of the Property.

Project Management Fees – Invoice No. I-B2017DX (Attachment “G1”)
Tung Kee specifically requested that further detail be included with respect to the Project Management Fees and this was supplied on May 26, 2023. A copy of this email is attached hereto as Attachment “G2”). The Description therein read:

1. Provided project management services related to design and approval for entire land and to act as owner’s local representative in all development matter pertaining to this land.
2. Retained advisors such as Jim Baird (planner/advisor) to liaise on behalf of DX with city. Include fees charged by CXT Architects Inc. as part of management fee

to prepare Master Plan Design which includes alternatives to test-fit requirement of various interested buyers. CXT provided a part- time Project Manager and back-of-office support on a monthly basis.
3. Met with owner's representative and other stakeholders to provide required update on non- financial land development progress.
4. Attended all required meetings with Owner's group, Element Pacifica, authorities with jurisdiction, consultants and other potential investors or buyers.
5. Provided direction to the entire consulting team such as planner, architects, engineers, other specialists etc. throughout all required approval processes.
6. Work to secure timely completion of work, sign-off by authorities, owner and other stakeholders with interest.

Copies of working papers, communications with the various above-named third parties, presentations prepared and made to certain above-named third parties and other architectural productions such as sketches and drawings used for the above-mentioned work are attached at Attachment G3.

MZO Bonus - Invoice No. I-B2018DX (Attachment "H")
The MZO Bonus was described as follows on Invoice No. I-B2018DX:

1. To secure Ministerial Zoning Order to re-zone land from Agricultural to Business Park employment with special permission for Film Studio, hotel suites with full kitchen, retail, restaurants etc. which supports the film studio industry.
2. To secure permission from TRCA and city to permit private ownership of protected green buffer land (Part 5 and 7)
3. To secure 10MW power for studio land Part 1, 4 and 5 and another 10MW power to support film studio's data center, animation studio and 4 other soundstages on Part 2,6 and 7.

Copies of working papers, communications with the various above-named third parties, presentations prepared and made to certain above-named third parties and other architectural productions such as sketches and drawings used for the above-mentioned work are attached at Attachment G3.

Consultant Fees – I-B2019DX (Attachment "I")
The professional fees owed to consultants amounts to $389,922.71, including HST and this amount is calculated as follows:

Block 5	
Fire cube	$7,473.54
Gunnell	$4,768.37
KMAI	$24,668.47
Masongsong	$48,590.00
NAK	$14,125.00
Quasar	$40,422.59
Blocks 1-4	

Beacon	$26,025.44
GHD	$63,356.84
Gunnell	$4,270.27
Masongsong	$147,849.20
MHBC	$788.18
RPE	$7,584.81

The consultant fees listed in this invoice do not include architects and urban designers carried under the DX fees. The above-listed consultants provided the following services:

Consultant	Services Provided
Fire Cube	Sprinkler system design engineers
Gunnell	Private engineering/servicing for septic system on all of the land
KMAI	Joint venture architect with CXT Architects Inc. for Film Studio site plan and structures
Masongsong	Civil engineers for Storm Water management and acted as Lead coordinator for site engineering
NAK	Landscape Architects
Quasar	Electrical and Mechanical Engineers for Film Studio site and building design
Beacon	Overall land environmentalist, arborist and Biologist for All land
GHD	Hydro-geotechnical engineer for soil and well water design for all land
MHBC	Planner for all land
RPE	Surveyor for all land

Incentive Payment – I-B2020DX (Attachment "J")
Invoice I-B2020DX is payment due in recognition of the Payment Delay, which is immediately due on the sale of either Block 3/4 or of Block 5.

<u>Services Rendered Under Unpaid Invoices Pre-Dating Invoice No. I-B2016DX</u>
Previously unpaid invoices prior to Invoice No. I-B2016DX amount to $42,837.90 for work with respect to Blocks 3-5:

Invoice I-B2002DX (February 13, 2022) (Attachment "K1")
This invoice was for the Alectra Design Deposit (Ref NS002132319).

Invoice I-B2001DX (February 23, 2022) (Attachment "K2")
This invoice was for the One Markham Trademark Government Application Fee

Invoice I-B2008DX (May 26, 2022) (Attachment "K3")
This invoice was for the NSP Schematic Design Review and Alternative Solution as per contract dated May 16, 2022.

Invoice I-B2013DX (September 27, 2022) (Attachment "K4")
This invoice was for the combination of (1) NSP Development of Alternative Solution 1st and 2nd draft, (2) MHBC planning, (3) LRI – construction requirements for film studio,

SPRUNG structure, review OBC and provide code requirements, fire-fighting access requirements, and building classifications.

Invoice I-B2005DX (March 17, 2022) (Attachment “K5”)
This invoice was for the Beacon Geomorphic assessment and NHE trees.

Invoice I-B2006DX (March 22, 2022) (Attachment “K6”)
This invoice was for the Transplan transportation consulting.

Invoice I-B2007DX (March 31, 2022) (Attachment “K7”)
This invoice was for the MHBC consent letter submission to the City of Markham.

C. CONSTRUCTION LIEN PRIORITIES

Refer to the Affidavit of Dan Teh sworn November 10, 2023 (attached hereto as Attachment “L”) and the Construction Lien Legal Brief (attached hereto as Attachment “M”).

Regards,

Justin T. Chan
Justin T. Chan Professional Corporation
JTC/

A

CXT Architects Inc.

05 July 2019

Mr. Tony Yung, c/o Philip Wong

SOW Capital
Unit 602, Unicorn Trade Centre,
127-131 Des Voeux Road Central, Central, Hong Kong

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

Re: **3143 19th Avenue, Markham, ON**
Development Management Contract leading up to approval of Secondary Plan

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

Dear Tony:

We are pleased to provide development management services and local representation for your group of owners.

We have leveraged our relationship to some of the most reputable consulting firms in North America to work on the project over the last year and will continue to reach out to others at the project develops.

A. Project Team:

Dan Teh will be the Partner in-charge of the overall project. He has many years of project management experience, leading projects through all stages of development such as Master Planning and Planning Approval process, Programming, assist in Costing and Pro-forma, preparation of Contract Documents, Building Permitting, Construction, Occupancy of Buildings and Post-construction work.

Jim Baird, recently retired Commissioner of Development Services for the city of Markham, will act as senior advisor for our team. He is highly regarded by the city policy and planning staff in Markham. Jim is a close friend of Stephen Chait and was a trusted advisor to the mayor. His experience as an insider will be invaluable to our team.

B. Project Update:

The City of Markham's announcement of MiX at the Collision Conference in Toronto is an important milestone for the Future Urban Area as it can potentially expedite the city initiated Secondary Plan process. Bringing on a highly respectable developer owner like Shui On Group will dovetail nicely in promoting the city's vision.

WZMH - Master Planner / Architect, MGP-Planner, and owner's representative had met with Economic Development and Senior Planning Policy staff to discuss vision and plans for the property. The meeting was positive with the city asking for a follow up meeting to review more developed Plans. Approximately 9 months was spent to develop the Concept Plan. The work was 3 weeks away from being presented to the city before work was stopped.

We spent the last 6 months working out a settlement with WZMH which included a few weeks of work to make minor adjustment to incorporate owner's comments at no charge. We had recommended accepting the settlement offered and to have WZMH complete the Masterplan in order to meet with city as originally planned.

C. Assumptions:

1. The team of architects, planners and consultants who had been working closely with us over the last year will be retained. Existing planner Malone Given Parsons (MGP) base in Markham will be an important facilitator to the other key stakeholders within the North Markham Land Owner Group (NMLG). The area manager for the city had advised us that it is important to share our ideas early with the NMLG. Obtaining their support will help expedite the Secondary Plan as they will be required to share cost in further studies and ultimately agreeing to pay for their share of the Site Servicing cost for the area.
2. The owner group will be contacting WZMH to settle the outstanding payment and that WZMH will be retained to complete the Concept Master Plan and Secondary Plan. The Architect's Act prohibits CXT from being involved while there is ongoing contractual dispute between another architect and the owner of a project.

342 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.595.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

3. CXT will be engaged directly by the owner. We understand the services required to be comprehensive as the owner group will not have local representation in the city.

D. Scope of Services:

1. Act as Development Manager and lead the project, on behalf of the owner group, to ensure the development objectives outlined by owner is achieved.

2. Participate in NMLG and leverage the consultant team that have been advising that group to assist us in monitoring city activities re: Secondary Plans and Infrastructure Planning for the Future Urban Area.

3. We will be involve in hiring and contracts of full consultant team, monitoring and coordinating their work individually and in team meetings, reporting to ownership group, budgeting invoicing and payments, coordinating plans applications and report submissions to city and agencies and follow up on comments received, reaching out to elected officials, coordination with adjacent owners and stakeholders, public meetings, approvals and satisfy conditions, agreements and permits.

4. Prepare Work Plan Schedule for the Secondary Plan leading up to approval by City of Markham and York Region based on initial meetings with city.

5. Assist the owner group in preparing a new Design Brief for the Mixed-Use Employment and develop a list of important uses that are essential to ensure success.

6. Assist in settlement plan with WZMH for work previously completed and develop clear plan in moving forward. Assist owner's legal counsel in ensuring that Lien is removed.

7. We reserve the right to revisit this contract to include success fee if the owner decides to amend the Official Plan to include some form of residential use such as dormitories, hostels, service apartment and rental apartments.

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

E. Management Fees:

Fix Fee is **$1,300,000 plus HST** (deferred fee of $256,000 included) to charge over the duration of 42 months.

Refer to the attached **Appendix A – Timeline and Payment Schedule** dated 5 July 2019.

1. Upon acceptance of the proposal, we will need the first quarterly retainer of $99,000 to start work. We have attended various meetings, on behalf of owner, with advisors and contacts in the city to obtain intelligence which can inform our project team. We have also reached out to other partners whom we believe can provide services that will be beneficial for the project.

2. Our fees will be drawn monthly against deposited quarterly retainer amount outlined in Schedule A.

3. Fee **does not** include overseas travel expenses such as flights, accommodation and meals. The cost will be drawn against a pre-approved Expense Allowance to be identified by owner.

5. As requested, we have deferred 19.69% of our fees to the end of the Secondary Plan. If the project is terminated, the deferred fee will be calculated up to the end of month from the date which we receive written instruction to stop work by owner.

6. If our service is terminated as a result of sale of property, change ownership structure or mutually agreed termination of contract, we will be entitled to a termination fee of $100,000 in addition to payment made for work already completed.

7. HST will apply to all professional fees and approve expenses.

We invite your comments and would be pleased to expand on our proposal with you personally.

Yours very truly,

CXT ARCHITECTS INC.

Dan H.T. Teh OAA, MRAIC, LEED® AP

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

If you are in agreement with the statements in this letter, please countersign below and return a copy to us for our file.

Reviewed by: ______________________

Mr. Philip Wong
SOW Capital Limited.

Date: Dec. 4. 2020.

Countersigned by: ______________________

Mr. Tony Yung
Tung Kee Investment Limited Partnership

Date: ______________________

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

CKT

Appendix A
Time Line and Payment Schedule (Draft)

3143 19th Ave, Markham	2019		2020				2021				2022				2023				2024			
	Q3 (JUL, AUG, SEPT)	Q4 (OCT, NOV, DEC)	Q1 (JAN, FEB, MAR)	Q2 (APR, MAY, JUN)	Q3 (JULY, AUG, SEPT)	Q4 (OCT, NOV, DEC)	Q1 (JAN, FEB, MAR)	Q2 (APR, MAY, JUN)	Q3 (JULY, AUG, SEPT)	Q4 (OCT, NOV, DEC)	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Project Development Work Flow																						
1.1 Close out of all previous contracts under Tung Kee Investment																						
1.2 Award of Development Management Service Contract to CKT																						
1.3 Meeting with owners group (OG) to discuss new Development Strategies																						
1.4 Meeting with Senior Policy Staff to discuss Development Plan																						
1.5 Prepare and issue new RFP to consultants																						
1.6 Finalize new contract to consultants for work related to Secondary Plan																						
1.7 Revise Existing Master Plan to incorporate OG's requirements																						
1.8 Project Management, Review and Report																						
Owner's Due Diligence																						
2.1 Conduct Market Analysis																						
2.2 Conduct Infra-structure Analysis																						
2.3 Conduct Project Pro-Forma																						
2.4 Project Co-ordination with consultants and city																						
City Initiated Secondary Plan																						
3.1 City Initiated Secondary Plan for Employment Land																						
3.2 Secondary Plan Submissions, by Block																						
3.3 Secondary Plans Supporting Studies Staged Submissions, by block																						
3.4 Secondary Plans review and Approval – City of Markham																						
3.5 Secondary Plans Review and Adoption – York Region (Certify)																						
4.1 Draft Plans of Subdivision & Zoning By-law Submission, by Owner																						
4.2 Draft Plans of Subdivision & Zoning By-law Review and Approval																						
5.1 Detailed Design (1st, 2nd and 3rd Submissions), by Owner																						
5.2 City of Markham Review and Comments of 1st & 2nd Submissions																						
5.3 City of Markham Final Review and Approval																						
5.4 Subdivision Agreement with City of Markham																						
5.5 Site Pre-Servicing / Servicing Work, by Owner																						
6 Registration of Final Plans of Subdivision																						
7 First Building Permits and Construction																						
8 First Occupancy																						
9																						
10																						
11																						

2019 | 2020 | 2021 | 2022 | 2023 | 2024

Pre-Secondary Plan – 19.5%

Secondary Plan – 65.00%

Deferred Payment – 19.23%

Payment Schedule

	Monthly	Quarterly Retainers	Phase total
2019 JUL	$33,000.00	$99,000.00	$198,000.00
2019 AUG	$33,000.00		
2019 SEPT	$33,000.00		
2019 OCT	$33,000.00	$99,000.00	
2019 NOV	$33,000.00		
2019 DEC	$33,000.00		
2020 JAN	$33,000.00	$99,000.00	$846,000.00
2020 FEB	$33,000.00		
2020 MAR	$33,000.00		
2020 APR	$33,000.00	$99,000.00	
2020 MAY	$33,000.00		
2020 JUN	$33,000.00		
2020 JULY	$33,000.00	$99,000.00	
2020 AUG	$33,000.00		
2020 SEPT	$33,000.00		
2020 OCT	$33,000.00	$99,000.00	
2020 NOV	$33,000.00		
2020 DEC	$33,000.00		
2021 JAN	$25,000.00	$75,000.00	
2021 FEB	$25,000.00		
2021 MAR	$25,000.00		
2021 APR	$25,000.00	$75,000.00	
2021 MAY	$25,000.00		
2021 JUN	$25,000.00		
2021 JULY	$25,000.00	$75,000.00	
2021 AUG	$25,000.00		
2021 SEPT	$25,000.00		
2021 OCT	$25,000.00	$75,000.00	
2021 NOV	$25,000.00		
2021 DEC	$25,000.00		
2022 Q1	$75,000.00	$75K	
2022 Q2	$75,000.00	$75K	
2022 Q3	$125,000.00		$250,000.00
2022 Q4	$125,000.00		
			Total $1,300,000.00

Issued Date: July 26, 2019

DRAFT – Invoked to subsequent from Others

B

DX Strategies Inc.

19 July 2021

Mr. Philip Wong
Managing Director

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

RE: **3143 19th Ave, Markham, Ontario** (the "Property")
Development Management Revised Terms

Dear Philip,

I am proud of what we have accomplished together since we first met in the summer of 2019.The countless hours of hard work we have jointly invested to advance our vision for One Markham finally culminated in a well-developed MZO Vision Document which was submitted to the city on 15 May 2021.

The mayor was surprised at how quickly we were able to pivot our strategy from applying for site-specific OPA and Re-zoning to the submission of a well-crafted MZO Vision Document to the city.

A. Stepping up when the project requires a lead designer to provide a clear concept plan

Meeting the dateline was only possible because DX Strategies (DX) has been tirelessly providing uncompromising level of professional service to Tung Kee Investment that goes above and beyond acting on behalf of the owner as Project Manager.

Critical to the team's ability to meet the MZO submission date was DX's ability to take on the responsibility as Master Plan designer immediately after WZMH vacated their role on 28 August 2019. Over the last two years, my unwavering commitment to the project was instrumental in maintaining the momentum required to develop the ultimate master plan.

The well-developed master plan made it easy to explain concept to the politicians, city staff, and our development partners. It also formed the Basis of Design for the consultants to determine phasing, explore interim private land servicing and permanent servicing to site, evaluate the impact of environmental restraint limits on the buildable floor area, etc.

By choosing to keep working, despite the shortfall in payment and funding throughout the master planning duration, DX chose to invest in the project by providing much-needed credit

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

to pay for the required design and project management services leading up to the MZO application.

B. Terms to reflect the revised method of compensation.

The following are the proposed revisions.

Item 1 – Revision of Payment Schedule
We propose the revised Appendix A-1 and A-2 dated 19 July 2021 to replace the one in the previous contract dated 11 July 2019.

This revised payment schedule accurately reflect the actual payment received to date and the projected quarterly payments leading up to Approval of the MZO.

Please initial here as well as on the Appendix A-1 and A-2 to show acceptance.

Accepted by: ________________

Item 2 – Payment of Unpaid Fees
Minimum amount of $527,630 is due to DX Strategies on July 26, 2021. Please refer to Appendix A-3.
The remaining unpaid fees will be due August 31, 2021.

Accepted by: ________________

Item 3 – MZO Bonus
The MZO Bonus would be $1,130,000 inclusive of HST. Please refer to Appendix A-2.

Accepted by: ________________

Item 4 – Post MZO / Block 1, 2, 3 Bonus
The Post MZO / Block 1, 2, 3 Bonus is set at $1,412,500 inclusive of HST. Please refer to Appendix A-2. The target for the employment use that is currently permitted under MZO is to achieve GFA of 4 million SF.

Accepted by: ________________

DX Strategies Inc.

Item 5 – Residential zoning Bonus
The end development goal for Block 1, 2, 3 is to achieve residential zoning. The corresponding residential bonus would be determined at a later date.

Accepted by: _________________

C. Architectural Service for Block 1 and 2

Item 1
Philip and Tony will advocate on behalf of CXT Architects Inc. to retain the right of first refusal as architect for Block 1 and Block 2 with future investors and partners. If a larger firm is preferred, WZMH in collaboration with CXT Architects Inc will be the alternate.

Accepted by: _________________

Additional Terms

1. Our fees will be drawn monthly against the deposited quarterly retainer amount outlined in Appendix A-2. If the project is terminated, the fee will be calculated up to the end of the month from the date on which we receive written instructions to stop work by the owner.
2. The fee does not include overseas travel expenses such as flights, accommodation, and meals. The cost will be drawn against an Expense Allowance to be pre-approved by the owner.
3. HST is included in Appendix A-2 Payment Schedule.

Appendices

A-1. Timeline Schedule leading up to MZO.
A-2. Payment Schedule.
A-3. Project Budget Dashboard

Yours very truly,

DX STRATEGIES INC.

Dan H.T. Teh   Project Manager, Partner, LEED® AP

362 Dupont Street, Toronto, ON M5R 1V9 CANADA   T: 1.416.585.9950   E: dteh@cxtarchitects.com

DX Strategies Inc.

If you agree with the statements in this letter, please sign below and return a copy to us for our file.

Reviewed by: ____________________________________

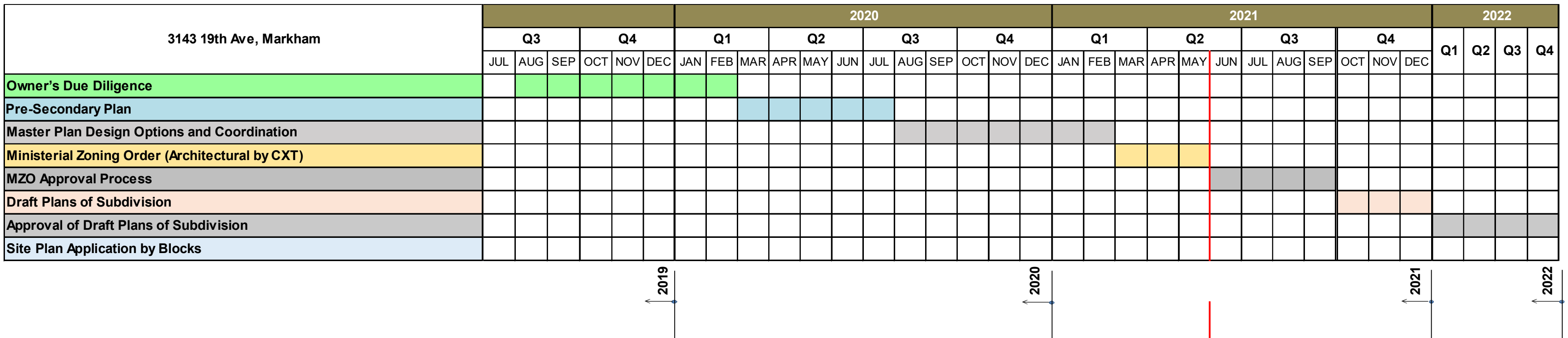
Mr. Philip Wong
Managing Director
Tung Kee Investment Canada Ltd.

Date: ____________________________________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-1: Timeline Schedule leading up to MZO



Payment Schedule

Payment Progress: Paid Amount: $112,800 | UNPAID | UNPAID Amount: $1,055,420

Month	Monthly payment
JUL 2019	
AUG 2019	$22,600.00
SEP 2019	$22,600.00
OCT 2019	$22,600.00
NOV 2019	$22,600.00
DEC 2019	$22,600.00
JAN 2020	$22,500.00
FEB 2020	$22,500.00
MAR 2020	$33,900.00
APR 2020	$33,900.00
MAY 2020	$33,900.00
JUN 2020	$33,900.00
JUL 2020	$33,900.00
AUG 2020	$62,715.00
SEP 2020	$62,715.00
OCT 2020	$62,715.00
NOV 2020	$62,715.00
DEC 2020	$62,715.00
JAN 2021	$62,715.00
FEB 2021	$62,715.00
MAR 2021	$66,105.00
APR 2021	$66,105.00
MAY 2021	$66,105.00
JUN 2021	$50,850.00
JUL 2021	$50,850.00
AUG 2021	$50,850.00
SEP 2021	$50,850.00
OCT 2021 – 2022	TBD

Quarterly Retainer	
Q3 2019	$45,200.00
Q4 2019	$67,800.00
Q1 2020	$78,899.99
Q2 2020	$101,700.00
Q3 2020	$159,330.00
Q4 2020	$188,145.00
Q1 2021	$191,535.00
Q2 2021	$183,060.00
Q3 2021	$152,550.00

Phases	
Owner's Due Diligence	$157,999.99
Pre-Secondary Plan	$169,500.00
Master Plan Design Options and Coordination	$439,005.00
Ministerial Zoning Order	$198,315.00
MZO Approval Process	$203,400.00

Total: $1,168,219.99

Dated: 19 Jul 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-2: Payment Schedule

3143 19th Ave, Markham			Invoices	Fee Schedule		
Period		Stage Description	Invoice No.	Contract Amount	Contract Amt Incl HST	Total deferred Amount till date (Incl HST)
	Aug-19	Owner's Due Diligence	I-A1901	$ 20,000.00	$ 22,600.00	
	Sep-19		I-A1902	$ 20,000.00	$ 22,600.00	
Q4	Oct-19		I-A1903	$ 20,000.00	$ 22,600.00	
	Nov-19		I-A1904	$ 20,000.00	$ 22,600.00	
	Dec-19		I-A1905	$ 20,000.00	$ 22,600.00	
Q1	Jan-20		I-B1000DX	$ 19,911.50	$ 22,500.00	
	Feb-20			$ 19,911.50	$ 22,500.00	
	Mar-20	Pre-Secondary Plan		$ 30,000.00	$ 33,900.00	
Q2	Apr-20			$ 30,000.00	$ 33,900.00	
	May-20			$ 30,000.00	$ 33,900.00	
	Jun-20			$ 30,000.00	$ 33,900.00	
Q3	Jul-20			$ 30,000.00	$ 33,900.00	
	Aug-20	Master Plan Design Options and Coordination		$ 55,500.00	$ 62,715.00	
	Sep-20			$ 55,500.00	$ 62,715.00	
Q4	Oct-20			$ 55,500.00	$ 62,715.00	
	Nov-20			$ 55,500.00	$ 62,715.00	
	Dec-20			$ 55,500.00	$ 62,715.00	
Q1	Jan-21			$ 55,500.00	$ 62,715.00	
	Feb-21			$ 55,500.00	$ 62,715.00	
	Mar-21	Ministerial Zoning Order Architectural Fee not Included		$ 58,500.00	$ 66,105.00	
Q2	Apr-21			$ 58,500.00	$ 66,105.00	
	May-21			$ 58,500.00	$ 66,105.00	
	Jun-21	MZO Approval Process		$ 45,000.00	$ 50,850.00	
Q3	Jul-21			$ 45,000.00	$ 50,850.00	
	Aug-21			$ 45,000.00	$ 50,850.00	
	Sep-21			$ 45,000.00	$ 50,850.00	$ 1,055,420.00
Q4	Oct-21	Draft Plans of Subdivision		TBD		
	Nov-21					
	Dec-21					
Q1	Jan-22	Approval of Draft Plans of				
	Feb-22					
	Mar-22					
Q2	Apr-22					
	May-22					
	Jun-22					
Q3	Jul-22	Site Plan Application by				
	Aug-22					
	Sep-22					
Unpaid fees				$1,055,420.00		
MZO Bonus (1 Million)				$1,130,000.00		
Total Inc HST				**$2,185,420.00**		
Post MZO / Block 1,2,3 Bonus (1.25 Million) (Details TBC)				$1,412,500.00		

Dated: 19 Jul 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-3: Project Budget Dashboard

Consultants	Contract Date	Estimated Budget	Contract Amt to MZO Approval (Inc. HST)	Retainer Received	Retainer Unpaid	Paid out to Consultants	Contract Amt Due	Min Amt due
TOTAL		1,920,356	1,671,024.40	338,116.90	1,072,198.65	307,316.77	1,352,682.50	527,630.03
Project Management [DX]								
• Project Management Services			1,168,220.00	128,467.53	1,039,752.47	112,800.00	1,039,752.47	
Architects / Master Plan Design [CXT]								
• Master Plan Design - Minsterial Zoning Order	26-Apr-21		211,875.00	74,531.41	-	74,531.41	137,343.59	
Planner [MHBC]								
• Planning Services - Minsterial Zoning Order	22-Mar-21		42,375.00	37,500.00	7,976.78	29,523.22	4,875.00	
• MZO Extra Services			8,475.00				8,475.00	
Natural Environmental [Beacon]								
• Phase 1 Pre-Evaluation		9,500						
• NHE and TIPP	7-Apr-21	25,800	44,894.90	8,168.39	-	8,168.39	36,726.51	
• EIS and Implementation		44,000						
• Inspections and Certifications		10,000						
Hydro-G [GHD]								
• Hydrogeological Assessment	7-Apr-21		59,268.50	10,000.00	-	10,000.00	49,268.50	
• Groundwater Monitoring		10,000						
• Extended monitoring (+2 years)		20,000						
• Hydrogeological Report		10,500						
Geotech [Soil-Engineers]								
• Geotechnical		20,000						
• Pre-ESA		3,000						
• Detailed Design Stage 2 Report		10,000						
• Inspections and Certifications		50,000						
Survey [Rady Pentek Edward]								
• Topographic Survey	7-Apr-21	13,000	34,691.00	31,311.87	-	31,311.87	3,379.13	
• First App / LTA		7,200						
• Stake TOB (allowance per diem)	7-Apr-21		8,000		-	-	8,000.00	
• M-Plan		20,000						
• Reference Plans		10,000						
• Registration and Certification		20,000						
Septic [Gunnell Engineering]								
• Sewage and Assimilation	4-Dec-20	48,000	50,850.00	23,137.70	23,137.70	17,313.58	27,712.30	
• Preliminary Design, MECP Pre-Con		10,000						
• Detailed Design and Implementation		40,000						
• Inspections and Certifications		10,000						
Civil [Masongsong]								
• Lead Consultant PM		50,000						
• Preliminary Engineering, Interim and Future Ultimate	4-Dec-20	55,000	50,850.00	25,000.00	1,331.70	23,668.30	25,850.00	
• Private Servicing Costing Comparison (Per Diem Allowance)			11,300.00				11,300.00	
• Draft Plan and ZBA Support		20,000						
• Detailed Design (Municipal)		380,000						
• Inspections and Certifications (Municipal)		330,000						
Transportation [WSP]								
• Preliminary Concept Plan and Studies		45,000						
• TIS		105,000						
• TIS Comments		50,000						
• Draft Plan and Site Plan IFTDS		80,000						
Supporting Subconsultants								
• Landscape and Urban Design								
• Fire								
• Electrical								
• Noise		317,000						
• Archaeological (ASI) - Invoice received not approved		23,555.98						
• Phase 1, 2 ESA, RSC								
• Municipal Lawyer								

Dated: 19 Jul 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

C

DX Strategies Inc.

9 August 2021

Mr. Philip Wong
Managing Director

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

RE: 3143 19th Ave, Markham, Ontario (the "Property")
Development Management Revised Terms

Dear Philip,

I am proud of what we have accomplished together since we first met in the summer of 2019.The countless hours of hard work we have jointly invested to advance our vision for One Markham finally culminated in the city council voting 12-1 in support of our application to the province.

A. Stepping up when the project requires a lead designer to provide a clear concept plan

Meeting the dateline was only possible because DX Strategies (DX) has been tirelessly providing an uncompromising level of professional service to Tung Kee Investment that goes above and beyond acting on behalf of the owner as Project Manager.

Critical to the team's ability to meet the MZO submission date was DX's ability to take on the responsibility as Master Plan designer immediately after WZMH vacated their role on 28 August 2019. Over the last two years, my unwavering commitment to the project was instrumental in maintaining the momentum required to develop the ultimate master plan.

The well-developed master plan made it easy to explain the concept to the politicians, city staff, and our development partners. It also formed the Basis of Design for the consultants to determine phasing, explore interim private land servicing and permanent servicing to site, evaluate the impact of environmental restraint limits on the buildable floor area, etc.

By choosing to keep working, despite the shortfall in payment and funding throughout the master planning duration, DX chose to invest in the project by providing much-needed credit to pay for the required design and project management services leading up to the MZO application.

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxarchitects.com

DX Strategies Inc.

B. Terms to reflect the revised method of compensation.
The following are the proposed revisions.

Item 1 – Revision of Payment Schedule
We propose the revised Appendix A-1 and A-2 dated 9 August 2021 to replace the one in the previous contract dated 11 July 2019.

This revised payment schedule accurately reflects the actual payment received to date and the projected quarterly payments leading up to the Approval of the MZO.

Please initial here as well as on Appendix A-1 and A-2 to show acceptance.

Accepted by: ____________

Item 2 – Payment of Unpaid Fees

The minimum amount of $466,138.38 is past due and payment is to be made on 13 August 2021 as agreed.

The remaining unpaid fees of $840,720 will be due ~~15~~ 30 September 2021 as agreed.

Accepted by: ____________

Item 3 – MZO Bonus
The MZO Bonus of $1,130,000 inclusive of HST is due 7 days after the closing sale of Block 5. Please refer to Appendix A-2.

Accepted by: ____________

Item 4 – Post MZO bonus- Block 1, 2, 3
It is mutually agreed that the Post MZO bonus-Block 1, 2, 3, will be re-visited. The current amount of $1,412,500 inclusive of HST will be recorded for future consideration.

Philp will table an offer to Dan Teh with an opportunity for profit sharing and bonus incentives to consider before the start of Site Plan design work.

Accepted by: ____________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxarchitects.com

DX Strategies Inc.

Item 5 – Residential zoning Bonus
The end development goal for Block 1, 2, 3 is to achieve a certain amount of residential zoning. The corresponding residential bonus would be determined at a later date.

Accepted by: ____________

C. Architectural Service for Block 1 and 2

Item 1
CXT Architects Inc. to retain the right of first refusal as architect for Block 1 and Block 2 with future investors and partners. If a larger firm is preferred, WZMH in collaboration with CXT Architects Inc will be the alternate.

Accepted by: ____________

Additional Terms

1. Our fees will be drawn monthly against the deposited quarterly retainer amount outlined in Appendix A-2. If the project is terminated, the fee will be calculated up to the end of the month from the date on which we receive written instructions to stop work by the owner.
2. The fee does not include overseas travel expenses such as flights, accommodation, and meals. The cost will be drawn against an Expense Allowance to be pre-approved by the owner.
3. HST is included in Appendix A-2 Payment Schedule.

Appendices

A-1. Timeline Schedule leading up to MZO.
A-2. Payment Schedule.
A-3. Project Budget Dashboard

Yours very truly,

DX STRATEGIES INC.

Dan H.T. Teh Project Manager, Partner, LEED® AP

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

If you agree with the statements in this letter, please sign below and return a copy to us for our file.

Reviewed by:

Mr. Philip Wong
Managing Director
Tung Kee Investment Canada Ltd.

Date: 15/8/2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@extarchitects.com

DX Strategies Inc.

Appendix A-1: Timeline Schedule leading up to MZO

3143 19th Ave, Markham	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2	2021 Q3	2021 Q4	2022 Q1	2022 Q2	2022 Q3	2022 Q4
	JUL AUG SEP	OCT NOV DEC	JAN FEB MAR	APR MAY JUN	JUL AUG SEP	OCT NOV DEC	JAN FEB MAR	APR MAY JUN	JUL AUG SEP	OCT NOV DEC				
Owner's Due Diligence														
Pre-Secondary Plan														
Master Plan Design Options and Coordination														
Ministerial Zoning Order (Architectural by CXT)														
MZO Approval Process														
Draft Plans of Subdivision														
Approval of Draft Plans of Subdivision														
Site Plan Application by Blocks														

2019 — 2020 — 2021 — 2022

Payment Schedule

Payment Progress: Paid Amount: $112,800 | UNPAID | UNPAID Amount: $1,066,420

Monthly	Quarterly Retainer	Phases	Total
$22,600.00	$45,200.00	$157,989.99	$1,168,219.99
$22,600.00			
$22,600.00	$67,800.00		
$22,600.00			
$22,600.00			
$22,500.00	$78,899.99		
$22,500.00			
$33,900.00		$169,600.00	
$33,900.00	$101,700.00		
$33,900.00			
$33,900.00			
$33,900.00	$159,330.00	$439,006.00	
$62,715.00			
$62,715.00			
$62,715.00	$188,145.00		
$62,715.00			
$62,715.00			
$62,715.00	$191,636.00	$198,316.00	
$62,715.00			
$66,105.00			
$66,105.00	$183,060.00	$203,400.00	
$66,105.00			
$50,850.00			
$50,850.00	$152,550.00		
$50,850.00			
$50,850.00			
TBD			

Dated: 9 Aug 2021

ššš

DX Strategies Inc.

Appendix A-2: Payment Schedule

3143 19th Ave, Markham			Invoices	Fee Schedule		
Period		Stage Description	Invoice No.	Contract Amount	Contract Amt Incl HST	Total deferred Amount till date (Incl HST)
	Aug-19	Owner's Due Diligence	I-A1901	$ 20,000.00	$ 22,600.00	
	Sep-19		I-A1902	$ 20,000.00	$ 22,600.00	
	Oct-19		I-A1903	$ 20,000.00	$ 22,600.00	
Q4	Nov-19		I-A1904	$ 20,000.00	$ 22,600.00	
	Dec-19		I-A1905	$ 20,000.00	$ 22,600.00	
	Jan-20		I-B1000DX	$ 19,911.50	$ 22,500.00	
Q1	Feb-20			$ 19,911.50	$ 22,500.00	
	Mar-20	Pre-Secondary Plan		$ 30,000.00	$ 33,900.00	
	Apr-20			$ 30,000.00	$ 33,900.00	
Q2	May-20			$ 30,000.00	$ 33,900.00	
	Jun-20			$ 30,000.00	$ 33,900.00	
	Jul-20			$ 30,000.00	$ 33,900.00	
Q3	Aug-20	Master Plan Design Options and Coordination		$ 55,500.00	$ 62,715.00	
	Sep-20			$ 55,500.00	$ 62,715.00	
	Oct-20			$ 55,500.00	$ 62,715.00	
Q4	Nov-20			$ 55,500.00	$ 62,715.00	
	Dec-20			$ 55,500.00	$ 62,715.00	
	Jan-21			$ 55,500.00	$ 62,715.00	
Q1	Feb-21			$ 55,500.00	$ 62,715.00	
	Mar-21	Ministerial Zoning Order Architectural Fee not Included		$ 58,500.00	$ 66,105.00	
	Apr-21			$ 58,500.00	$ 66,105.00	
Q2	May-21			$ 58,500.00	$ 66,105.00	
	Jun-21	MZO Approval Process		$ 45,000.00	$ 50,850.00	
	Jul-21			$ 45,000.00	$ 50,850.00	
Q3	Aug-21			$ 45,000.00	$ 50,850.00	
	Sep-21			$ 45,000.00	$ 50,850.00	$ 1,055,420.00
	Oct-21	Draft Plans of Subdivision		TBD		
Q4	Nov-21					
	Dec-21					
	Jan-22	Approval of Draft Plans of				
Q1	Feb-22					
	Mar-22					
	Apr-22					
Q2	May-22					
	Jun-22					
	Jul-22	Site Plan Application by				
Q3	Aug-22					
	Sep-22					
Unpaid fees					$1,055,420.00	
MZO Bonus (1 Million)					$1,130,000.00	
Total Inc HST					**$2,185,420.00**	
Post MZO / Block 1,2,3 Bonus (1.25 Million) (Details TBC)					$1,412,500.00	

Dated: 9 Aug 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-3: Project Budget Dashboard

Consultants	Contract Date	Estimated Budget	Contract Amt to MZO Approval (Inc. HST)	Retainer Received	Retainer Unpaid	Paid out to Consultants	[illegible]	[illegible] Amt due
TOTAL		1,920,356	1,671,024.40	383,941.02	1,026,783.97	322,037.85	[illegible]	466,138.38
Project Management (DX)								
• Project Management Services			1,168,220.00	166,726.39	1,001,493.61	112,800.00	[illegible]	
Architects / Master Plan Design (CXT)								
• Master Plan Design - Ministerial Zoning Order	26-Apr-21		211,875.00	74,531.41		74,531.41	[illegible]	
Planner (PMBC)								
• Planning Services - Ministerial Zoning Order	22-Mar-21		42,375.00	37,500.00	2,976.78	29,523.22	[illegible]	
• MZO Extra Services			8,475.00				8,475.00	
Natural Environmental (Beacon)								
• Phase 1 Pre-Evaluation		9,500						
• NHE and TPP	7-Apr-21	25,800	44,804.90	8,168.29	-	8,168.29	[illegible]	
• EIS and Implementation		44,000						
• Inspections and Certifications		20,000						
Hydro-G (GHD)								
• Hydrogeological Assessment	7-Apr-21		59,268.50	10,000.00	-	10,000.00	[illegible]	
• Groundwater Monitoring		10,000						
• Extended monitoring (+2 years)		20,000						
• Hydrogeological Report		10,500						
Geotech (Soil Engineers)								
• Geotechnical		20,000						
• Pre-ESA		3,000						
• Detailed Design Stage 2 Report		10,000						
• Inspections and Certifications		50,000						
Survey (Rady Pentek Edward)								
• Topographic Survey	7-Apr-21	13,000	34,691.00	31,311.87	-	31,311.87	[illegible]	
• First App / LTA		2,200						
• Stake TOS (allowance per diem)	7-Apr-21		8,000		-	-	[illegible]	
• M-Plan		20,000						
• Reference Plans		10,000						
• Registration and Certification		20,000						
Septic (Gorrell Engineering)								
• Sewage and Remediation	4-Dec-20	48,000	50,850.00	17,313.58	17,313.58	17,313.58	[illegible]	
• Preliminary Design, MECP Pre-Con		10,000						
• Detailed Design and Implementation		40,000						
• Inspections and Certifications		10,000						
Civil (Masongsong)								
• Lead Consultant PM		50,000						
• Preliminary Engineering, Interim and Future Ultimate	4-Dec-20	55,000	50,850.00	38,389.38	0.00	38,389.38	[illegible]	
• Private Servicing Costing Comparison (Per Diem Allowance)			11,300.00				[illegible]	
• Draft Plan and ZBA Support		20,000						
• Detailed Design (Municipal)		390,000						
• Inspections and Certifications (Municipal)		330,000						
Transportation (WSP)								
• Preliminary Concept Plan and Studies		45,000						
• TIS		105,000						
• TIS Comments		50,000						
• Draft Plan and Site Plan II TOS		80,000						
Supporting Subconsultants								
• Landscape and Urban Design								
• Fire								
• Electrical								
• Noise		117,000						
• Archaeological (ASI) - Invoice received not approved		23,555.98						
• Phase 1, 2 ESA, RSC								
• Municipal Lawyer								

Dated: 9 Aug 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxtarchitects.com

D

DX Strategies Inc.

6 June 2022

Mr. Philip Wong
Managing Director

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

RE: **3143 19th Ave, Markham, Ontario** (the "Property")
DX Development Management Revised Terms and Fee Proposal

Dear Philip,

I am submitting this amended fee proposal which is based on the proposal you had approved dated 19 July 2021 to reflect all the changes that has transpired.

In recognition of our effort, and to protect my interest as a creditor to the project, I would like to receive an agreement which outlines my positions as creditor against the other mortgagees on title. The agreement should refer to this detailed fee proposal and the amount to be registered will be for the full amount indicated in Item 2, Item 3, and Item 5. Item 4 will be deferred until one of the blocks on the east side of creek is sold.

A. Terms to reflect the revised method of compensation.

The following are the proposed revisions.

Item 1 – Revision of Appendixes
We propose the revised Appendix A-1 and A-2 dated 6 June 2022 to replace the ones in the previous contract dated 11 July 2019.

Appendix A-1: Payment Schedule, dated 6 June 2022
This revised schedule reflects the actual payment received to date, the outstanding amount as of May 2022 and the MZO bonus owed.

Appendix A-2: Project Dashboard of Fees Owed and Upcoming Fees, dated 6 June 2022.
The tables in the appendixes are as follows:
1. Unpaid Consultants - fees owed to consultants till date.
2. Consultant Fees Paid by DX - fees paid to consultants by DX which are to be reimbursed by Tung Kee.
3. Upcoming Consultant Fees.

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Please initial here as well as on the Appendix A-1 and A-2 to show acceptance.

Accepted by: ________________

Item 2 – Payment of Unpaid Fees owed to DX

- The unpaid fees owed as of May 2022 is $1,381,142.50 including HST (Refer to Appendix A-1). Interest calculated at rate of ~~24%~~ per annum commencing 1 ~~July 2022~~ will be charged for any unpaid fees. 10% 1. Jan. 2023
- Starting July 2022, a fixed monthly rate of $57,912.50 including HST will be charged for services rendered by DX until such time when there is a change in the scope of work and fees approved by owner to either increase or decrease. Interest calculated at 24% per annum, commencing 30 days after the month end will be charged for late payment.
- To date, consultants' fees paid by DX, on behalf of Tung Kee stands at $32,191.89 including HST (refer to appendix A-2, table 2). The amount is to be reimbursed to DX as part of payment and is subject to the same interest payment for unpaid amounts.

This amount is subject to the provision of the Loan Agreement dated 6 June 2022 between DX Strategies (DX) and Tung Kee Investment Canada Limited (TKI).

Accepted by: ________________

Item 3 – MZO Bonus

The MZO Bonus would be $1,130,000 inclusive of HST. This is due 21 days after the closing sale of Block 5 (Part 4 and 5). Refer to Appendix A-1.

This amount is subject to the provision of the Loan Agreement between DX and TKI.

Accepted by: ________________

Item 4 – DX Incentive payment in recognition of payment delay for item 2 and 3, success fee to close land deal on Block 4 and 5

It is mutually agreed that the Incentive payment will be 3% of final cost of land upon closing and or $ 1,130,000 inclusive of H.S.T, whichever is higher in amount. This is due 21 days after closing sale of either Block 4 (Part 6 and 7) or Block 5 (Part 4 and 5) or both.

Accepted by: ________________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Item 5 –Unpaid fees owed to other consultants

Till date, the amount owed to consultants is $292,969.49 including HST (refer to Appendix A-2, table 1). Interest calculated at ~~24%~~ 10% per annum starting end of June 2022.

This amount is subject to the provision of the Loan Agreement between DX and TKI.

Accepted by: ________________

B. Architectural Service for MZO Block 1, 2, 3 and 4
CXT Architects Inc. to retain the right of first refusal as architect for the blocks noted with future investors and partners. If a larger and more specialized firm is required, CXT will perform work in joint venture with firms such as WZMH Architects or Kearns Mancini Architects Inc. of Toronto.

Accepted by:________________

Additional Terms

1. The Client shall pay upon receipt of invoices on account of *DX Strategies Inc's* fee plus applicable taxes. An unpaid invoice shall bear interest calculated monthly at the rate of ~~24%~~ per annum, commencing 30 days after the date that *DX Strategies Inc.* submits the invoice.
2. If the project is terminated, the fee will be calculated up to the end of the month from the date on which we receive written instructions to stop work by the owner.
3. The fee does not include overseas travel expenses such as flights, accommodation, and meals. The cost will be drawn against an Expense Allowance to be pre-approved by the owner.

10%.

Appendices

A-1. Payment Schedule.
A-2. Project Dashboard of Fees Owed and Upcoming Fees

Yours very truly,

DX STRATEGIES INC.

Dan H.T. Teh Project Manager, Partner, LEED® AP

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

If you agree with the statements in this letter, please sign below and return a copy to us for our file.

Reviewed by: ______________________________

Mr. Philip Wong
Managing Director
Tung Kee Investment Canada Ltd.

Date: 18-6-2022

Reviewed by: ______________________________

Mr. Tony Yung
Tung Kee Investment Canada Ltd.

Date: ______________________________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-1: Payment Schedule

3143 19th Ave, Markham			Invoices	Fee Schedule		
Period		Stage Description	Invoice No.	Contract Amount	Contract Amt Incl HST	Total deferred Amount till date (Incl HST)
	Aug-19	Owner's Due Diligence	I-A1901	$ 20,000.00	$ 22,600.00	
	Sep-19		I-A1902	$ 20,000.00	$ 22,600.00	
Q4	Oct-19		I-A1903	$ 20,000.00	$ 22,600.00	
	Nov-19		~~I-A1904, I-A1905~~	$ 20,000.00	$ 22,600.00	
	Dec-19		I-B1009DX	$ 20,000.00	$ 22,600.00	
Q1	Jan-20		I-B1000DX	$ 19,911.50	$ 22,500.00	
	Feb-20			$ 19,911.50	$ 22,500.00	
	Mar-20	Pre-Secondary Plan	I-B1013DX	$ 30,000.00	$ 33,900.00	
Q2	Apr-20		I-B1017DX	$ 30,000.00	$ 33,900.00	
	May-20			$ 30,000.00	$ 33,900.00	
	Jun-20			$ 30,000.00	$ 33,900.00	
Q3	Jul-20			$ 30,000.00	$ 33,900.00	
	Aug-20	Master Plan Design Options and Coordination		$ 55,500.00	$ 62,715.00	
	Sep-20			$ 55,500.00	$ 62,715.00	
Q4	Oct-20			$ 55,500.00	$ 62,715.00	
	Nov-20			$ 55,500.00	$ 62,715.00	
	Dec-20			$ 55,500.00	$ 62,715.00	
Q1	Jan-21			$ 55,500.00	$ 62,715.00	
	Feb-21			$ 55,500.00	$ 62,715.00	
	Mar-21	Ministerial Zoning Order Architectural Fee not Included		$ 58,500.00	$ 66,105.00	
Q2	Apr-21			$ 58,500.00	$ 66,105.00	
	May-21			$ 58,500.00	$ 66,105.00	
	Jun-21	MZO Approval Process (Approved 27 Aug 21) Start of consent to sever		$ 45,000.00	$ 50,850.00	
Q3	Jul-21			$ 45,000.00	$ 50,850.00	
	Aug-21			$ 45,000.00	$ 50,850.00	
	Sep-21			$ 45,000.00	$ 50,850.00	$ 908,520.00
Q4	Oct-21	Consent to sever and block 5 due diligence		$ 58,500.00	$ 66,105.00	
	Nov-21			$ 58,500.00	$ 66,105.00	
	Dec-21			$ 45,000.00	$ 50,850.00	
Q1	Jan-22	Block 5 Site Plan coord		$ 51,250.00	$ 57,912.50	
	Feb-22			$ 51,250.00	$ 57,912.50	
	Mar-22	Secondary plan and Draft plan of subdivision for Block 1 and 2		$ 51,250.00	$ 57,912.50	
Q2	Apr-22			$ 51,250.00	$ 57,912.50	
	May-22			$ 51,250.00	$ 57,912.50	$ 472,622.50
	Jun-22					
Q3	Jul-22					
	Aug-22					
	Sep-22					
Unpaid fees				**$1,381,142.50**		
MZO Bonus (1 Million + HST)				$1,130,000.00		
Total Inc HST				**$2,511,142.50**		

Dated: 6 Jun 2022

a Lui

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-2: Project Dashboard of Fees Owed and Upcoming Fees

Table 1 - **Unpaid Consultants**

		Unpaid Consultants
J19750 - One Markham	**$**	**89,318.69**
Beacon	$	24,270.22
Gunnell	$	16,591.79
Masongsong	$	34,849.20
MHBC	$	6,022.67
RPE	$	7,584.81
J21030 - Block 5	**$**	**181,050.80**
Fire cube	$	11,993.54
GHD	$	39,211.00
KMAI	$	13,620.00
LRI	$	3,991.72
Masongsong	$	48,590.00
MHBC	$	355.95
NAK	$	14,125.00
Quasar	$	49,163.59
J22020 - Block 1 & 2	**$**	**22,600.00**
Academy (Ryerson University)	$	22,600.00
Grand Total	**$**	**292,969.49**

Table 2 - **Consultant Fees paid by DX (Tungkee to reim**

		Fees paid by DX (Tungkee to reimburse)
J19750 - One Markham	**$**	**19,818.39**
Alectra	$	1,300.00
Beacon	$	10,934.64
MHBC	$	5,666.95
Trademark	$	1,916.80
J21030 - Block 5	**$**	**12,373.50**
Transplan	$	7,797.00
NSP	$	4,576.50
Grand Total	**$**	**32,191.89**

Table 3 - **Upcoming Consultant Fees**

		Upcoming Fees (Incl HST)
J21030 - Block 5		
Fire cube	$	38,856.46
GHD	$	47,026.08
Gunnell	$	51,076.00
KMAI	$	119,780.00
Masongsong	$	7,910.00
NAK	$	70,625.00
NSP	$	62,093.50
Quasar	$	35,586.41
Transplan	$	23,617.00
Wilson Well	$	16,950.00
Grand Total	**$**	**473,520.45**

Great Grand Total (Incl HST)	**$**	**798,681.83**

Dated: 6 Jun 2022

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxtarchitects.com

E

colin.hui@dxstrategies.ca

From:	colin.hui@dxstrategies.ca
Sent:	Saturday, May 13, 2023 8:56 PM
To:	'ty69300300@gmail.com'; 'philip.wong@sowcapital.com.hk'; 'yvonnelai18@hotmail.com'
Cc:	'dteh@cxtarchitects.com'; 'dteh@dxstrategies.ca'
Subject:	J19750 - One Markham
Attachments:	2023-04-10_Statement of account.pdf; I-B2016DX.pdf
Importance:	High

Hi Tony, Philip and Yvonne,

Please see attached the (1) invoice I-B2016DX and the (2) statement of account for unpaid invoices that were previously issued to Tungkee.

See summary as follows (all amounts include HST):

Previously issued invoices:	$	42,837.90
Final invoice (I-B2016DX):	$	4,610,190.21
Total:	$	4,653,028.11

Breakdown of Invoice I-B2016DX as follows:
1. Project management fee owed to end of March 2023, $1,960,267.50 inclusive of HST
2. MZO bonus $1,130,000 inclusive of HST
3. Fees owed to consultants, $389,922.72 (inclusive of HST)
4. DX incentive payment in recognition of payment delay, success fee in selling either Block 3 and 4 OR Block 5.
Amount of $1,130,000 inclusive of HST.

Regards,

Colin Hui
Accounts Manager

DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada
T: 1.416.585.9950

F

colin.hui@dxstrategies.ca

From:	Colin <colin.hui@dxstrategies.ca>
Sent:	Thursday, May 18, 2023 4:22 PM
To:	'Yvonne Lai'
Cc:	dteh; dteh@dxstrategies.ca
Subject:	RE: J19750 - One Markham
Attachments:	I-B2017DX.PDF; I-B2018DX.PDF; I-B2019DX.PDF; I-B2020DX.PDF

Hi Yvonne,

As per your request, please find attached the four replacement invoices (I-B2017DX, I-B2018DX, I-B2019DX, I-B2020DX) for invoice I-B2016DX.

Regards,

Colin Hui
Accounts Manager

DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada
T: 1.416.585.9950

From: Yvonne Lai [mailto:yvonnelai18@hotmail.com]
Sent: May 18, 2023 3:12 PM
To: colin.hui@dxstrategies.ca
Subject: Fw: J19750 - One Markham

Good morning Colin,

Will you please re-do the invoice and split it into four instead of one? Will appreciate if you can send the invoices to me ASAP.

Thanks so much,
Yvonne

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: May 18, 2023 9:23 AM
To: 'Yvonne Lai' <yvonnelai18@hotmail.com>
Cc: colin.hui@dxstrategies.ca <colin.hui@dxstrategies.ca>
Subject: RE: J19750 - One Markham

Yvonne,
Please deal with Collin as I am in Malaysia. Thanks.

Regards,

Dan Teh
OAA, MRAIC, LEED® AP

Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: Yvonne Lai <yvonnelai18@hotmail.com>
Sent: Thursday, May 18, 2023 8:43 AM
To: Dan Teh <dteh@cxtarchitects.com>
Cc: colin.hui@dxstrategies.ca
Subject: Fw: J19750 - One Markham

Good morning Dan,

Will you please send me four individual invoices instead of one?

Thanks,
Yvonne

From: colin.hui@dxstrategies.ca <colin.hui@dxstrategies.ca>
Sent: May 13, 2023 8:55 PM
To: ty69300300@gmail.com <ty69300300@gmail.com>; philip.wong@sowcapital.com.hk <philip.wong@sowcapital.com.hk>; yvonnelai18@hotmail.com <yvonnelai18@hotmail.com>
Cc: dteh@cxtarchitects.com <dteh@cxtarchitects.com>; dteh@dxstrategies.ca <dteh@dxstrategies.ca>
Subject: J19750 - One Markham

Hi Tony, Philip and Yvonne,

Please see attached the (1) invoice I-B2016DX and the (2) statement of account for unpaid invoices that were previously issued to Tungkee.

See summary as follows (all amounts include HST):

Previously issued invoices:	$	42,837.90
Final invoice (I-B2016DX):	$	4,610,190.21
Total:	$	4,653,028.11

Breakdown of Invoice I-B2016DX as follows:
1. Project management fee owed to end of March 2023, $1,960,267.50 inclusive of HST
2. MZO bonus $1,130,000 inclusive of HST
3. Fees owed to consultants, $389,922.72 (inclusive of HST)
4. DX incentive payment in recognition of payment delay, success fee in selling either Block 3 and 4 OR Block 5. Amount of $1,130,000 inclusive of HST.

Regards,

Colin Hui
Accounts Manager

DX Strategies Inc.
362 Dupont Street
Toronto, ON   M5R 1V9   Canada
T: 1.416.585.9950

G

DX Strategies Inc.

May 18, 2023		**INVOICE NO.:**	**I-B2017DX**

Tung Kee Investment Canada Ltd. PROJECT NO.: J19750
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**

To: Professional services rendered for the above mentioned project

To:	DX Project Management Fees for Jun 2020 to Mar 2023 *(Ref Appendix A-1 of DX Development Management Revised Terms and Fee Proposal dated Jun 6, 2022)*		$ 1,734,750.00
	H.S.T.#R771813870	13%	$ 225,517.50
	FEE TOTAL THIS INVOICE		**$ 1,960,267.50**

Description:

1. Provided project management services related to design and approval for entire land and to act as owner's local representative in all development matter pertaining to this land.
2. Retained advisors such as Jim Baird (planner/advisor) to liaise on behalf of DX with city. Include fees charged by CXT Architects Inc. as part of management fee to prepare Master Plan Design which includes alternatives to test-fit requirement of various interested buyers. CXT provided a part- time Project Manager and back-of-office support on a monthly basis.
3. Met with owner's representative and other stakeholders to provide required update on non-financial land development progress.
4. Attended all required meetings with Owner's group, Element Pacifica, Authorities with jurisdiction, consultants and other potential investors or buyers.
5. Provided direction to the entire consulting team such as planner, architects, engineers, other specialists etc. throughout all required approval processes.
6. Work to secure timely completion of work, sign-off by authorities, owner and other stakeholders with interest.

colin.hui@dxstrategies.ca

From:	Colin <colin.hui@dxstrategies.ca>
Sent:	Tuesday, August 29, 2023 1:51 PM
To:	Yvonne Lai
Cc:	ty69300300@gmail.com; dteh@dxstrategies.ca
Subject:	Invoices with details
Attachments:	I-B2017DX_Detailed.pdf; I-B2018DX_Detailed.pdf

Hi Yvonne,

Please find attached the invoices with details as requested by Tony.

Regards,

Colin Hui
Accounts Manager

DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada
T: 1.416.585.9950

H

DX Strategies Inc.

May 18, 2023	**INVOICE NO.:**	**I-B2018DX**
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Limited Partnership 118 Grey Alder Ave Richmond Hill, ON L4B 3P9	PROJECT NO.:	J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**

To: Professional services rendered for the above mentioned project

To:	MZO Bonus (with Decription)		$ 1,000,000.00
	H.S.T.#R771813870	13%	$ 130,000.00
	FEE TOTAL THIS INVOICE		**$ 1,130,000.00**

Description:

1. To secure Ministerial Zoning Order to re-zone land from Agricultural to Business Park employment with special permission for Film Studio, hotel suites with full kitchen, retail, restaurants etc. which supports the film studio industry.
2. To secure permission from TRCA and city to permit private ownership of protected green buffer land (Part 5 and 7)
3. To secure 10MW power for studio land Part 1, 4 and 5 and another 10MW power to support film studio's data center, animation studio and 4 other soundstages on Part 2,6 and 7.

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxstrategies.ca

I

DX Strategies Inc.

May 18, 2023		**INVOICE NO.:**	**I-B2019DX**

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

PROJECT NO.: J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**

To: Professional services rendered for the above mentioned project

To:	Fees owed to consultants		$ 345,064.35
	H.S.T.#R771813870	13%	$ 44,858.36
	FEE TOTAL THIS INVOICE		**$ 389,922.71**

J

DX Strategies Inc.

May 18, 2023		**INVOICE NO.:**	**I-B2020DX**
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Limited Partnership 118 Grey Alder Ave Richmond Hill, ON L4B 3P9		PROJECT NO.:	J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**

To: Professional services rendered for the above mentioned project

To:	DX incentive payment in recognition of payment delay, success fee in selling either Block 3 and 4 or Block 5		$ 1,000,000.00
	H.S.T.#R771813870	13%	$ 130,000.00
	FEE TOTAL THIS INVOICE		**$ 1,130,000.00**

K

DX Strategies Inc.

February 13, 2022		**INVOICE NO.:**	**I-B2002DX**
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Limited Partnership 118 Grey Alder Ave Richmond Hill, ON L4B 3P9		PROJECT NO.:	J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**
Disbursement expense

To:	Alectra Design Deposit (Ref No.: NS00212319)		$ 10,000.00
	H.S.T.#R771813870	13%	$ 1,300.00
	FEE TOTAL THIS INVOICE		**$ 11,300.00**

DX Strategies Inc.

February 23, 2022		**INVOICE NO.:**	**I-B2001DX**

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

PROJECT NO.: J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**
Disbursement expense

To:	One Markham Trademark fee		$	1,399.00
	Government Application Fee (No HST)		$	335.93
			$	1,734.93
	H.S.T.#R771813870	13%	$	181.87
	FEE TOTAL THIS INVOICE		**$**	**1,916.80**

Heirlume Inc. / Haloo

+1 8552867467
orders@heirlumeco.com
https://heirlumeco.com
Business Number HST #: 766715072 RT0001

SALES RECEIPT

BILL TO
Colin Hui
DX Strategies Inc
362 Dupont St
Toronto ON M5R 1V9

SALES 58602666
DATE 14/12/2021

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
	Sales	Premium - Name	1	1,399.00	1,399.00

Stripe Payment: pi_3K6hOTKWRmPLJveV1swzRyFh
Currency: CAD

SUBTOTAL	1,399.00
HST (ON) @ 13%	181.87
TOTAL	1,580.87
BALANCE DUE	**$0.00**

TAX SUMMARY

RATE	TAX	NET
HST (ON) @ 13%	181.87	1,399.00

Reçu du paiement / Payment receipt

Office de la propriété intellectuelle du Canada
Place du Portage, Phase I
50, rue Victoria
Gatineau (Québec) K1A 0C9
Canada

Canadian Intellectual Property Office
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec K1A 0C9
Canada

Nom et address / Name and address:

HEIRLUME INC.
Julie MacDonell
2300 Yonge St.
#1600
Toronto, Ontario
M4P1E4
Canada

Numéro de confirmation Confirmation number	Date et heure de réception Receipt date and time	Montant payé Amount paid
9908448	**2022-01-20** 14:44:15 HNE / EST	**$335.93**

Nº de demande / Application No.	Marque de commerce / Trademark	Droits / Fees
2161386	ONE MARKHAM A UNIQUE EMPLOYMENT ECOSYSTEM	Demande d'enregistrement / Application for registration: $335.93

Total des droits payés / Total fees paid: **$335.93**

Information sur le paiement SVP appelez / For payment inquires please call (819) 994-2269

DX Strategies Inc.

May 26, 2022		**INVOICE NO.:**	**I-B2008DX**

Tung Kee Investment Canada Ltd. — PROJECT NO.: J21030
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

Attention: Mr. Philip Wong

Re: **Block 5 - 3143 19th Avenue, Markham, ON**
Schematic Design Review and Alternative Solution
as per contract dated May 16, 2022

To: Professional services rendered for the above mentioned project

To:	Fees for NSP - See attached invoice		$	4,050.00
	H.S.T.#R771813870	13%	$	526.50
	FEE TOTAL THIS INVOICE		**$**	**4,576.50**

Invoice

NSP Consultant Inc.
64 Hammersmith Avenue
Toronto, ON M4E2W4
nicole@nspconsultant.ca
(647) 385-8411

Date	Invoice #
2022-04-26	1710

Invoice To
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Li 118 Grey Alder Ave Richmond Hill, ON L4B 3P9

Terms	Project
Net 30	22-415-2BC One Markham Sprung Structure

Item	Description	Qty	Rate	Tax	Amount
Principal	Schematic Design Review, and development of Alternative Solution: Ongoing meetings with architectural team to design Alternative Solution Attend two meetings with City of Markham regarding Alternative Solution Preparation of Minutes of Meeting Preparation of Summary of Alternative Solution Preparation of Minutes of Meeting, circulate to Team (second meeting with City and Fire Department) Ongoing meetings with architectural team and clients Fee of $9,000, plus HST. Considered 45% complete	0.45	9,000.00	H	4,050.00
				Subtotal	$4,050.00

Sales Tax Summary

HST (ON)@13.0%	526.50
Total Tax	526.50

Total $4,576.50

GST/HST No. 709485486

DX Strategies Inc.

September 27, 2022 | **INVOICE NO.:** | **I-B2013DX**

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

PROJECT NO.: J21030

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**

To: Professional services rendered for the above mentioned project

To:	Fees and disbursements for One Markham Studio Consultants See attached invoices (LRI, NSP and MHBC)		$ 9,421.25
	H.S.T.#R771813870	13%	$ 1,224.76
	FEE TOTAL THIS INVOICE		**$ 10,646.01**

NSP Consultant Inc.
64 Hammersmith Avenue
Toronto, ON M4E2W4
nicole@nspconsultant.ca
(647) 385-8411

Invoice

Date	Invoice #
2022-06-30	1734

Invoice To
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Li 118 Grey Alder Ave Richmond Hill, ON L4B 3P9

P.O. No.		Terms	Project
		Net 30	22-415-2BC One Markham Sprung Structure

Item	Description	Qty	Rate	Tax	Amount
Principal	Development of Alternative Solution 1st and 2nd draft Ongoing correspondence Fee of $9,000, plus HST. Previously invoiced $4,050	0.55	9,000.00	H	4,950.00
				Subtotal	$4,950.00

Sales Tax Summary

HST (ON)@13.0%	643.50
Total Tax	643.50

Total $5,593.50

GST/HST No. 709485486

MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING LIMITED
230-7050 WESTON ROAD / WOODBRIDGE / ONTARIO / L4L 8G7 / T 905 761 5588 / F 905 761 5589 / WWW.MHBCPLAN.COM

Film Studio c/o CXT Architects Inc.
colinhui @cxtarchitects.com
dteh@cxtarchitects.com
362 Dupont Street
Toronto, Ontario
M5R 1V9

Invoice	2028038
Date	3/31/2022
Billing Period	March 2022
File No.	20183B-REG
P.O.	
Project	One Markham Site - Film Studio SPA (Blocks 3,4 and 5)

The following account is for consulting services including:

3/11/2022 Conference call with P.Ng and D.Teh;

FEES

Planning

McKay, David - 0.80 hrs @ $325.00	$260.00

Administration / Secretarial

Carroll, Betty - 0.50 hrs @ $110.00	$55.00
TOTAL FEES	$315.00

TOTAL FEES & DISBURSEMENTS	$315.00
HST	$40.95
TOTAL AMOUNT DUE	$355.95

HST Registration # R103441127
Net 30 days. 24% per annum on accounts over 30 days

David A. McKay, MSc, MLAI, MCIP, RPP

MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING LIMITED
230-7050 WESTON ROAD / WOODBRIDGE / ONTARIO / L4L 8G7 / T 905 761 5588 / F 905 761 5589 / WWW.MHBCPLAN.COM

Tung Kee Investment Canada Inc. c/o DX Strategies Inc.
colinhui @cxtarchitects.com
dteh@cxtarchitects.com
362 Dupont Street
Toronto, Ontario
M5R 1V9

Invoice	2028039
Date	3/31/2022
Billing Period	March 2022
File No.	20183C-REG
P.O.	
Project	One Markham - Mixed Employment Master Plan

The following account is for consulting services including:

2/28/2022	Respond to D.Teh inquiries regarding MZO;
3/7/2022	Correspondence with D.Teh;
3/9/2022	Discussions with D.Teh and T.Masongsong;

FEES

Planning

McKay, David - 1.60 hrs @ $325.00 .... $520.00

Administration / Secretarial

Carroll, Betty - 0.50 hrs @ $110.00 .... $55.00

TOTAL FEES $575.00

TOTAL FEES & DISBURSEMENTS	$575.00
HST	$74.75
TOTAL AMOUNT DUE	$649.75

HST Registration # R103441127
Net 30 days. 24% per annum on accounts over 30 days

David A. McKay, MSc, MLAI, MCIP, RPP

LRI Engineering Inc.

170 University Avenue
3rd Floor - Box 1
Toronto ON M5H 3B3
Tel: 416-515-9331
Fax: 416-515-1640

Philip Wong

Tung Kee Investment Canada Ltd.
c/o Dan Teh
DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9
Canada

Job 28523 - One Markham [19750]

Invoice

Job no: 28523
Invoice no: 109300
Period End Date: 1/31/2022
Project Manager: Gary Robitaille

Customer number: 10427
PO Number:

Gary Robitaille	17.25 hour(s)	185.00	3,191.25
Mohammad Dadgardoust	1.00 hour(s)	200.00	200.00
Mylissa Prisner	1.00 hour(s)	95.00	95.00
Subtotal			**3,486.25**
13% HST			453.21
Total			**3,939.46**

SERVICES:

Emails regarding construction requirements for film studios and spatial separation requirements. Respond to architect. Edit fee proposal and send to client. Conference call regarding code approach for spatial separation. Review code requirements for questions to client. Emails to architect. Emails regarding construction requirements for the SPRUNG structures. Review OBC and provide code requirements for project as one building or multiple buildings. Conference call to discuss code approach. Conference call to discuss code approach. Review drawings with architect and mechanical engineer to develop code approach with single or multiple buildings. Respond to email regarding fire fighting access requirements. Conference call with architect. Email regarding meeting with the CBO of Markham. Internal discussions regarding design of the water supply for the studio buildings. Conference calls with architects. Review email and provide comments regarding building classifications. Conference call with Markham building officials. Emails regarding design of water tank storage for fire fighting purposes. Review OBC. Emails regarding building classification. Review email regarding separating parking garage into two buildings. Correspond with the architects with Code requirements.

Please remit payment to LRI Engineering Inc.

For billing inquiries please contact 416-515-9331 x 343

Due on receipt

HST No.: 103016929

LRI Engineering Inc.

170 University Avenue
3rd Floor - Box 1
Toronto ON M5H 3B3
Tel: 416-515-9331
Fax: 416-515-1640

Philip Wong

Tung Kee Investment Canada Ltd.
c/o Dan Teh
DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9
Canada

Invoice

Job no:	28523
Invoice no:	109948
Period End Date:	2/28/2022
Project Manager:	Gary Robitaille
Customer number:	10427
PO Number:	

Job 28523 - One Markham [19750]

Gary Robitaille	0.25 hour(s)	185.00	46.25
Subtotal			**46.25**
13% HST			6.01
Total			**52.26**

SERVICES:

Follow-up with architects regarding project status.

Please remit payment to LRI Engineering Inc.

For billing inquiries please contact 416-515-9331 x 343
Due on receipt

HST No.: 103016929

LRI Engineering Inc.

170 University Avenue
3rd Floor - Box 1
Toronto ON M5H 3B3
Tel: 416-515-9331
Fax: 416-515-1640

Philip Wong

Tung Kee Investment Canada Ltd.
c/o Dan Teh
DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9
Canada

Invoice

Job no:	28523
Invoice no:	111781
Period End Date:	6/30/2022
Project Manager:	Gary Robitaille
Customer number:	10427
PO Number:	

Job 28523 - One Markham [19750]

Gary Robitaille	0.25 hour(s)	195.00	48.75
Subtotal			**48.75**
13% HST			6.34
Total			**55.09**

SERVICES:

Drawing Review

Please remit payment to LRI Engineering Inc.

For billing inquiries please contact 416-515-9331 x 343

Due on receipt

HST No.: 103016929

DX Strategies Inc.

March 17, 2022		**INVOICE NO.:**	**I-B2005DX**

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

PROJECT NO.: J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**
Natural Heritage Evaluation & Tree Inventory, & Preservation Plan

To: Professional services rendered for the above mentioned project as per contract dated April 7, 2021

To:	Fees for Beacon Environmental (Oct 21) - See attached invoice (Geomorphic Assessment)		$	5,419.17
To:	Fees for Beacon Environmental (Nov 21) - See attached invoice		$	2,481.00
To:	Fees for Beacon Environmental (Dec 21) - See attached invoice		$	1,776.50
	Subtotal		$	9,676.67
	H.S.T.#R771813870	13%	$	1,257.97
	FEE TOTAL THIS INVOICE		**$**	**10,934.64**

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

BEACON ENVIRONMENTAL

Guiding Solutions in the Natural Environment

Dan Teh
Tung Kee Investment Canada Inc.
c/o DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9

October 29, 2021
Project No: 221231.2
Invoice No: 26700

Project 221231.2 19th Ave & Woodbine Geomorphic Assessment
dteh@cxtarchitects.com

For Professional Services Rendered in the Period Ending: October 29, 2021

Professional Services

	Hours	Rate	Total	
Attard, Maureen	26.50	110.00	2,915.00	
Background review;Project coordination; Historical assessment; Rapid assessment; Meander belt analysis; Provision of digital linework; Internal discussion				
Coker, Grace	9.25	90.00	832.50	
Rapid assessment				
Gorenc, Shelley	5.00	155.00	775.00	
Project management ; Review MBW; Report Preparation				
Upper, Devin	2.50	102.00	255.00	
Figure production and data management				
Zicca, Sarah	.50	100.00	50.00	
Project support				
Totals	43.75		4,827.50	
Total Professional Services				**4,827.50**

Equipment Billing (incl. 10% admin.)

Tablet/GPS Combo

330.00

Disbursements (incl. 10% admin.)

Reimbursable Mileage	261.67	
Total Disbursements	**261.67**	**261.67**
Subtotal Before Taxes		**5,419.17**

Taxes

HST #824938740	13.00 % of 5,419.17	704.49	
Total Taxes		**704.49**	**704.49**
Total Fees and Disbursements			**$6,123.66**

BEACON ENVIRONMENTAL

Guiding Solutions in the Natural Environment

Dan Teh
Tung Kee Investment Canada Inc.
c/o DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9

November 30, 2021
Project No: 221231.2
Invoice No: 26925

Project 221231.2 19th Ave & Woodbine Geomorphic Assessment
dteh@cxtarchitects.com

For Professional Services Rendered in the Period Ending: November 26, 2021

Professional Services

	Hours	Rate	Total	
Attard, Maureen	9.75	110.00	1,072.50	
Project coordination; Report preparation				
Fintelman, Jessica	.50	100.00	50.00	
Project support				
Gorenc, Shelley	3.50	155.00	542.50	
Report review				
Upper, Devin	8.00	102.00	816.00	
Data management and figure production				
Totals	21.75		2,481.00	
Total Professional Services				**2,481.00**

	Subtotal Before Taxes		**2,481.00**
Taxes			
HST #824938740	13.00 % of 2,481.00	322.53	
Total Taxes		**322.53**	**322.53**
	Total Fees and Disbursements		**$2,803.53**

80 Main Street North, Markham, Ontario L3P 1X5
Tel: (905) 201-7622 Fax: (905) 201-0639

BEACON ENVIRONMENTAL

Guiding Solutions in the Natural Environment

Dan Teh
Tung Kee Investment Canada Inc.
c/o DX Strategies Inc.
362 Dupont Street
Toronto, ON M5R 1V9

December 31, 2021
Project No: 221231
Invoice No: 27251

Project 221231 19th Ave & Woodbine NHE
dteh@cxtarchitects.com; colinhui@cxtarchitects.com
For Professional Services Rendered in the Period Ending: December 31, 2021

Professional Services

	Hours	**Rate**	**Total**	
Dorriesfield, Mark	11.50	88.00	1,012.00	
Policy review; Figure production ; TOR preparation; EIS preparation				
Fintelman, Jessica	1.00	100.00	100.00	
NHE TOR Report Production ; Project support				
Quinn, Kristi	1.50	175.00	262.50	
Team meeting				
Steinberg, Chana	3.00	106.00	318.00	
Report preparation				
Torus, Sevan	.75	112.00	84.00	
Tree Data Management; Associate Correspondence				
Totals	17.75		1,776.50	
Total Professional Services				**1,776.50**
			Subtotal Before Taxes	**1,776.50**

Taxes

HST #824938740	13.00 % of 1,776.50	230.95	
Total Taxes		**230.95**	**230.95**
	Total Fees and Disbursements		**$2,007.45**

NOTE: RETAINER WILL BE DEDUCTED FROM FINAL INVOICE

DX Strategies Inc.

March 22, 2022		**INVOICE NO.:**		**I-B2006DX**
Tung Kee Investment Canada Ltd. General Partner of Tung Kee Investment Limited Partnership 118 Grey Alder Ave Richmond Hill, ON L4B 3P9		PROJECT NO.:		J21030

Attention: Mr. Philip Wong

Re: **Block 5 - 3143 19th Avenue, Markham, ON**
Transportation consultation services
as per contract dated Dec 16, 2021

To: Professional services rendered for the above mentioned project

To:	Retainer Fees for Trans-plan - See attached invoice		$	6,900.00
	H.S.T.#R771813870	13%	$	897.00
	FEE TOTAL THIS INVOICE		**$**	**7,797.00**

TRANS-PLAN
Transportation Engineering

TRANS-PLAN TRANSPORTATION INC.

785 Dundas Street West
Toronto, ON M6J 1V2
Phone: (647) 931-7383
Email: admin@trans-plan.com

INVOICE TPI-2022P030-R

INVOICE TO
TUNG KEE INVESTMENT LTD. / SOW CAPITAL LTD.
c/o Mr. Brendan Miehe, B.A.Sc.
Masongsong Associates Engineering Limited
7800 Kennedy Road, Suite 201
Markham, ON L3R 2C7
Project Location: 3143 19th Avenue East, Markham

DATE	PLEASE PAY	DUE DATE
02/22/2022	$7,797.00	02/22/2022

DESCRIPTION	QTY	UNIT COST	AMOUNT
One Markham, Proposed Film Studio Development, Part 2, Block 5, 3143 19th Avenue East, Markham, ON - Transportation Consulting Services	1	$7,797.00	$7,797.00

PAID

SUBTOTAL	$
HST	$897.00
TOTAL	$7,797.00
BALANCE DUE	**$0.00**

We thank you for your business!

Please note that, for your convenience, we offer the following methods of payment:

Option 1: E-mail **e-transfer** to, admin@trans-plan.com

Option 2: **Credit card** payment, please call (647) 931-7383, and provide the following:
Card type, card number, expiration date and CVV (on back of card)

Option 3: EFT **Direct Deposit**, to:
Name: Trans-Plan Transportation Inc.
Account No.: 5231179
Branch No.: 13362
Institution Code: 004

DX Strategies Inc.

March 31, 2022 **INVOICE NO.:** **I-B2007DX**

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

PROJECT NO.: J19750

Attention: Mr. Philip Wong

Re: **3143 19th Avenue, Markham, ON**
Planning Services

To: Professional services rendered for the above mentioned project as per contract dated March 22, 2021

To:	Fees for MHBC (Nov 2021) - See attached invoice		$	2,460.00
	Fees for MHBC (Dec 2021) - See attached invoice		$	2,555.00
			$	5,015.00
	H.S.T.#R771813870	13%	$	651.95
	FEE TOTAL THIS INVOICE		**$**	**5,666.95**

362 Dupont Street, Toronto, ON M5R 1V9 CANADA **T: 1.416.585.9950** **E: dteh@cxtarchitects.com**

MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING LIMITED
230-7050 WESTON ROAD / WOODBRIDGE / ONTARIO / L4L 8G7 / T 905 761 5588 / F 905 761 5589 / WWW.MHBCPLAN.COM

Tung Kee Investment Canada Inc. c/o DX Strategies Inc.
dteh@cxtarchitects.com
362 Dupont Street
Toronto, Ontario
M5R 1V9

Invoice	2027182
Date	11/30/2021
Billing Period	November 2021
File No.	20183C-REG
P.O.	
Project	One Markham - Mixed Employment Master Plan

The following account is for consulting services including:

11/8/2021	Conference call with project team regarding consent application;
11/11/2021	Finalize updated consent application;
11/11/2021	Work on revisions to consent letter; Submit revised consent submission to City;
11/16/2021	Coordinate payment of consent application;
11/19/2021	Revise consent application form to match draft R Plan; Coordinate eplans submission with Planner;
11/22/2021	Coordinate revisions to notice sign; Coordinate installation of notice sign;
11/23/2021	Conference call with City staff; Discussions with D.Tang regarding environmental land conveyance condition;
11/23/2021	Provide consent submission materials to Client;
11/23/2021	Post sign;
11/25/2021	Work on Deputation form for Committee of Adjustment;
11/30/2021	Work on Committee of Adjustment presentation;

FEES

Planning

McKay, David - 4.50 hrs @ $300.00	$1,350.00
Salvagna, Celeste - 4.00 hrs @ $175.00	$700.00
Albert, John - 3.50 hrs @ $90.00	$315.00

Administration / Secretarial

Carroll, Betty - 1.00 hrs @ $95.00	$95.00
TOTAL FEES	$2,460.00

TOTAL FEES & DISBURSEMENTS	$2,460.00
HST	$319.80
TOTAL AMOUNT DUE	$2,779.80

HST Registration # R103441127
Net 30 days. 24% per annum on accounts over 30 days

David A. McKay, MSc, MLAI, MCIP, RPP

MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING LIMITED
230-7050 WESTON ROAD / WOODBRIDGE / ONTARIO / L4L 8G7 / T 905 761 5588 / F 905 761 5589 / WWW.MHBCPLAN.COM

Tung Kee Investment Canada Inc. c/o DX Strategies Inc.
dteh@cxtarchitects.com
362 Dupont Street
Toronto, Ontario
M5R 1V9

Invoice	2027358
Date	12/31/2021
Billing Period	December 2021
File No.	20183C-REG
P.O.	
Project	One Markham - Mixed Employment Master Plan

The following account is for consulting services including:

11/15/2021	Provide consent submission materials to architect; Follow up with staff regarding consent application submission;
12/1/2021	Provide new notice sign's installation photos to Committee of Adjustment;
12/2/2021	Work on resolving conditions with City staff;
12/2/2021	Revise consent application form and consent sketch; Send revised consent application form and consent sketch to City Planner; Work on revisions to Committee of Adjustment Presentation;
12/2/2021	Revise consent sketch;
12/3/2021	Submit revised application form and consent sketch to eplans; Submit deputation and presentation for Committee of Adjustment hearing to Committee of Adjustment;
12/8/2021	Prepare for and attend Committee of Adjustment in favour of Consent Application; Discussions with D.Tang; Correspondence with City staff;
12/8/2021	Provide meeting details and staff report to consultant team for Committee of Adjustment hearing;
12/9/2021	Correspondence with project team;
12/13/2021	Provide conditions of approval for consent application to architect;
12/14/2021	Contact TRCA for online payment request;
12/20/2021	Coordinate payment for TRCA fee for client;
12/30/2021	Forward Final and Binding Notice to clients and lawyer;

FEES

Planning

McKay, David - 5.80 hrs @ $300.00	$1,740.00
Salvagna, Celeste - 3.00 hrs @ $175.00	$525.00
Chung, Amie - 0.50 hrs @ $140.00	$70.00

Technician

Hlavenka, Tania - 0.30 hrs @ $100.00	$30.00

Administration / Secretarial

Carroll, Betty - 2.00 hrs @ $95.00	$190.00
TOTAL FEES	$2,555.00

MHBC
PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING LIMITED
230-7050 WESTON ROAD / WOODBRIDGE / ONTARIO / L4L 8G7 / T 905 761 5588 / F 905 761 5589 / WWW.MHBCPLAN.COM

Tung Kee Investment Canada Inc. c/o DX Strategies Inc., File No. 20183C-REG

TOTAL FEES & DISBURSEMENTS	$2,555.00
HST	$332.15
TOTAL AMOUNT DUE	$2,887.15

HST Registration # R103441127
Net 30 days. 24% per annum on accounts over 30 days

David A. McKay, MSc, MLAI, MCIP, RPP

L

Court File No.: CV-21-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ROMPSPEN INVESTMENT CORPORATION

Applicant

- and -

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

Respondents

AFFIDAVIT OF DAN TEH

SWORN November 11, 2023

I, **DAN TEH**, of the Town of Richmond Hill, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the principal architect at DX Strategies Inc. ("**DX Strategies**"), a creditor with a registered construction lien against the respondent Tung Kee Investment Canada Ltd. ("**Tung Kee**"). As such, I have knowledge of the facts deposed below. Where I do not have personal knowledge of the facts, I have stated the source of my information and belief and believe those facts to be true.

2. I make this affidavit in response to the request by the court-appointed Receiver, Ernst & Young Inc., with respect to these proceedings.

3. I first started work on the subject property in or around August 2014. Attached hereto as Exhibit "**A**" is emails from 2014 and 2015 detailing my involvement through architectural consulting services with respect to the development planning.

4. In or around [June 2019], I met Phillip Wong ("**Phillip**"), a director of both the defendant Tung Kee and the fifth mortgagee in these proceedings, Sow Capital Inc. ("**Sow**")

5. As of November 2, 2023, Phillip remains an Active Director of Tung Kee Investment Canada Inc. since August 30, 2019. Attached hereto as Exhibit "**B**" is a copy of the Corporate Profile Report of Tung Kee Investment Canada Ltd. as of November 2, 2023.

6. As of November 2, 2023, Phillip remains an Active Director of Sow Capital Ontario Limited since December 24, 2019. Attached hereto as Exhibit "**C**" is a copy of the Corporate Profile Report of Sow Capital Ontario Limited as of November 2, 2023.

7. Philip's involvement in project started in the second quarter of 2019 when William Mo, a director representing Tung Kee Investment Limited Partnership in Canada exited the project in the first quarter of 2019.

8. On June 23, 2019, I had my first meeting with Philip and Tony Chiu, both from Hong Kong, acting on behalf of the owner Tony Yung ("**Tony**") of Tung Kee and we discussed the project and status of discussion with City of Markham.

9. Following this meeting, I sent a new contract dated July 5, 2019 to Phillip at Sow where a payment schedule for DX and consultants was attached in Appendix A- Timeline and Payment Schedule. This contract was signed back 4 December 2020.

10. Tung Kee began to default on its payments on May 4, 2020 during the early stages of the global Covid19 shutdown. Tony assured me that payment will be made and reasons cited were due to banks and lending institutions being closed due to health restrictions and where such banking activities take much longer than normal.

11. This went on until July 9, 2021 when DX submitted a new contract in an effort to properly recognize DX Strategies' position as a creditor:

> "By choosing to keep working, despite the shortfall in payment and funding throughout the master planning duration, DX chose to

> invest in the project by providing much-needed credit to pay for the required design and project management services leading up to the MZO application."

This page of contract was initialed at bottom right hand adjacent to the last paragraph where this was mentioned.

12. I had numerous discussions with Tony and Phillip between July of 2019 and August of 2019 about my involvement in the project and the need for me and my contractors to be paid, especially because DX Strategies was putting in so much effort into significantly increasing the value of the land.

13. These discussions that Phillip and I had went toward me protecting DX Strategies in moving forward and ensuring that Tony and Philip acknowledged DX Strategies' continued role as more than just a contractor but also as a lender since I did not immediately cease work and commence legal proceedings to be paid.

14. A revised version of the contract dated August 9, 2021 was subsequently signed back acknowledging this new position on August 15, 2021.

15. This was done after the project received overwhelming endorsement from city's Development Services Committee with a vote of 12-1 in favor a week prior to July 8, 2021. A copy of this letter was attached as Exhibit "**D**" to my Affidavit sworn October 5, 2023.

16. DX Strategies evolved into the key creditor/lender (by agreeing to continue working based on a promise to be paid in full in the future) whose work was actually completed and turned into an ongoing effort to further add value to the land which benefitted all lenders through the successful MZO Application.

17. Without the MZO, the land would have been worth only fraction of what it is currently being sold for and I have compiled a list of the recent sale prices of the land adjacent to the Property. Attached hereto as Exhibit "**E**" is a list of adjacent properties to the Property with their respective sale prices.

18. On May 30, 2022, Timothy Wu of Sow emailed me a proposed loan agreement that would convert the outstanding fees up to May 31, 2022 into a loan. Attached hereto as Exhibit "**F**" is a copy of that email chain and attachment thereto.

19. As the payment continued to fall behind, the wording of the July 19, 2021 contract were revised on June 6, 2022 to reflect the updated the payment schedule and to remind SOW of DX Strategies' position as creditor and to clarify DX Strategies' position against the other mortgagees on title, considering that DX Strategies had started work on the land well before any of the mortgagees at the time got involved. Attached hereto as Exhibit "**G**" is a copy of this email and attachment thereto.

20. On November 15, 2022, Phillip emailed me admitting that at that time, Tung Kee owed him around $11.5 million CAD, among which: $8.6M CAD was loan and interest, $1.8M CAD are for three years of service fees for him and Timothy Wu and an additional $1.1M for service fees and refinancing. Attached hereto as Exhibit "**H**" is a copy of this email and attachment thereto.

21. On November 24, 2022, I emailed a draft of the promissory note that I had my lawyer draft that I wanted registered on title to properly protect and recognize my outstanding amounts. In the cover email, I conceded that DX Strategies would come behind Sow's $11,000,000 (the "**Priority Agreement**"). Attached hereto as Exhibit "**I**" is a copy of this email and attachment thereto.

22. On January 28, 2023, Phillip shared with me a communication that he made to his lawyer where alleged that he wrote to David Tang of Miller Thomson:

> "Hi David, since I have assigned 14% of SOW Ontario mortgage amount to Miller Thomson, SOW Ontario has to increase additional 10m to replace the 14%, to cover my additional loan to Tung Kee and also cover Dan Teh plus consultants. Can you send me the appropriate documents so that I can handle execution. Let me know there is any problem."

Attached hereto as Exhibit "**J**" is a screenshot of this WhatsApp message. Attached hereto as Exhibit "**K**" is a screenshot from my WhatsApp chat with Phillip of the email that Phillip alleges that he sent David Tang of Miller Thomson with the same instructions that Phillip sent on January 9, 2023.

23. In February of 2023, I followed up on my proposed promissory note that was sent on November 24, 2022 discussed the idea of a loan agreement/promissory note with Philip in person in between his meetings with interested buyers in the land. In this meeting, Phillip mentioned to me that Tony would rather my loan be merged into a new Sow amended amount.

24. At one of these meetings on February 8, 2023, Phillip shared with me a breakdown of how the $20,000,000 USD that Sow registered on title with a Notice on February 1, 2023 was going to be split up (the "**Sow Breakdown**"). This breakdown was signed by what looked to me to be Tony (based on previously executed documents that I have seen), Phillip and two others. Attached hereto as Exhibit "**L**" is a picture that Phillip sent to me on the same date that the document was initialed (February 8, 2023).

25. I was shocked to see that, through the Sow Breakdown, Miller Thomson would go ahead of Sow, leaving out key parties like DX Strategies who worked tirelessly to build the value in the land which is now being sold at a fire-sale price that does not fairly account for the true potential of the MZO.

26. Furthermore, I made the Priority Agreement back in November of 2022 without any knowledge that Miller Thomson would rank ahead of me. I felt, and still feel, that the Miller Thomson amount was expressly hidden from me in an attempt to secure Miller Thomson's payout ahead of mine. There was no mention of Miller Thomson being paid out ahead of me until now.

27. On February 15, 2023, Phillip asked to use my lawyer to register a Charge/Mortgage Amendment Agreement that would increase the Previous Charge of $5,000,000 USD to $20,000,000 USD. After seeing that Sow is now at this point trying to officially register DX Strategies and other consultants right at the bottom of the list to be

paid in conjunction with Phillip, a managing director of Tung Kee, getting paid out ahead of me, I voiced my concern (through my lawyer's comments) and objections. Attached hereto are as Exhibit "**M**" is my email to Phillip where I question the logic and fairness of such an arrangement, especially to be on equal priority with Miller Thomson and attachment thereto.

28. On March 6, 2023, I emailed Phillip a final draft of the promissory note (the "**Draft Promissory Note**"). In the cover email to sending the Promissory Note, I made it clear that the intent was to work with Sow and Tung Kee without having to register a construction lien. Attached hereto as Exhibit "**N**" is a copy of the draft loan agreement and cover email.

29. Shortly after I sent the Draft Promissory Note, Phillip called me to say that Tony would not sign the Draft Promissory Note.

30. I believe the urgency of my loan agreement may have caused Phillip to rush to register his loans that were unsecured against the land in February 2023.

SWORN before me over videoconference on this 11th day of November, 2023. The affiant was located in the City of Richmond Hill, Province of Ontario and the Commissioner was located in the City of Montreal, Province of Quebec. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.)

Justin Chan

A Commissioner for Taking Affidavits etc.

Justin Chan

Da

DAN TEH

Signature:

Dan Teh (Nov 11, 2023 09:16 EST)

Email: dteh@cxtarchitects.com

Affidavit of Dan Teh (11-Nov-23)

Final Audit Report 2023-11-11

Created:	2023-11-11
By:	Justin Chan (jchan@jtcprofcorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAqeQYxzccDm6SI5m-vrDKK9TwIZBqsn8v

"Affidavit of Dan Teh (11-Nov-23)" History

Document created by Justin Chan (jchan@jtcprofcorp.com)
2023-11-11 - 10:51:38 AM GMT- IP address: 72.138.80.131

Document emailed to dteh@cxtarchitects.com for signature
2023-11-11 - 10:52:05 AM GMT

Email viewed by dteh@cxtarchitects.com
2023-11-11 - 1:23:15 PM GMT- IP address: 64.229.210.3

Signer dteh@cxtarchitects.com entered name at signing as Dan Teh
2023-11-11 - 2:16:34 PM GMT- IP address: 64.229.210.3

Document e-signed by Dan Teh (dteh@cxtarchitects.com)
Signature Date: 2023-11-11 - 2:16:36 PM GMT - Time Source: server- IP address: 64.229.210.3

Agreement completed.
2023-11-11 - 2:16:36 PM GMT

This is **Exhibit "A"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

CXT Architects Inc.

12 December 2014

Mr. Tony Yung
Tung Kee Investment Limited Partnership
75 Queen's College Drive,
Richmond Hill, ON
M5B 3N7

By electronic mail only

RE: Woodbine Ave & 19th Ave, Markham
Summary of issues discussed with Tony Yung on 11 October, 2014

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

1. A project schedule, outlining two timeline scenarios, was sent to Tony for review. The schedule outlined two scenarios in terms of approval timeline for owner's consideration.

2. Dan explained both scenarios.
   - **Scenario 1-** ***Wait for the Secondary Plan Approval to be finalised and then make amendment.*** The vision and the significantly higher density of 3.5 times. Tony agreed to change programming mix and significantly reduce the Destination themed shopping concept. This takes approximately. 2 years longer than Scenario 2.
   - **Scenario 2-** ***Lead at Concept Master Plan, before the Secondary Plan is finalised.*** Request for destination shopping and service apartment early in the process. Engage in Master Environmental Servicing Plan (MESP) stage by formally submitting a plan of sub-division, as described below in item B-3. City's planners had previously indicated their preference to include the right use and density when the planning policies are being developed. Prior to completion of CMP, TKI must be prepared to move forward independent of the group by engaging own planning consultant, site-servicing engineer, traffic/ transportation engineers to build case for density and use required to create a world class destination.

3. Tony would like to get a sense of support by city planners for the concept being envisioned. Dan stressed that meetings with city staff is pre-mature. This was confirmed by MGP in an earlier meeting.

4. Dan proposed starting a separate conversation with the local politicians, like the mayor and local councillor, to gauge their response and support and then prepare accordingly. This can be done after the upcoming election at end of October.

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

CXT Architects Inc.

5. Tony requested for a proposed 2 year work plan to be prepared for review.

6. Tony mentioned that he had arranged financing with a financial institution in Singapore and would like CXT to develop a work plan for the next two years in preparation for the eventual Secondary Plan approval by end of 2016.

END

Yours truly,

CXT ARCHITECTS INC.

Dan H.T. Teh OAA, MRAIC, LEED® AP

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

CXT Architects Inc.

Minutes of Meeting

Project:	**Woodbine & 19th Ave**
RE:	**Minutes of Meeting No. J14030 - 2**
Date:	**28 November 2014**
Time:	**2:00PM**
Venue:	**Markham City Hall, 4th floor meeting room**

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

Present		**Abbreviation**
Mr. Alan Ho	Council, City of Markham	CAH
Ms. Fiony Lau	Administrative assistant, City of Markham	FL
Mr. William Mo	Tung Kee Investment	TKI
Mr. Dan Teh	CXT Architects Inc.	CXT

Distribution		
Mr. William Mo	Tung Kee Investment	WM
Mr. Tony Yung	Tung Kee Investment	TY
Mr. Andes Lin	Tung Kee Investment	AL
Mr. Dan Teh	CXT Architects Inc.	CXT

Item	**Description**	**Action**
1.0	Introduction of key personnel in project. Councilor Alan Ho is well acquainted with William Mo from his days as banker for HSBC.	
2.0	Dan Teh presented discussed the vision of TKI and owner’s desire to build a unique landmark destination for work, play and entertainment.	
3.0	Councilor Ho immediate response was to inquire about the owner and to make sure that this bold vision and world class development do not end up being just a grand vision	

that is not based on reality, subsequently returning to council to request converting commercial to residential. There are 4 to 5 projects in his ward that has been stalled due to greed and unscrupulous developers. This has made the city cautious when grand projects are before them for review.

4.0 He advised exploring the option of a joint-venture partner who has a recognizable name, similar to the arrangement between The Sifton family and Cadillac Fairview. CF brings a lot of experience and immediate credibility to the grand vision. TY

5.0 Councilor Ho is very keen to see new type of mixed use commercial development that are integrated and connected. Like the idea of a green podium that unify the master-plan.

6.0 He mentioned the Buttonville Airport re-development plan that has a 70 stores hotel apartment tower. He sees merit in height which minimizes spread of many lower buildings which will take up open public space.

7.0 He suggested looking at Buttonville for precedent in terms of height, density, mix of use and strategy used by Cadillac Fairview to minimize traffic impact by staggering opening hours of businesses within the project. CXT

8.0 He mentioned that the mayor is very interested to find a developer who is interested to build a large convention center to rival Toronto Convention center that can accommodate between 2500 to 3000 seats capacity function. CXT

9.0 Look for ways to create a strong public benefit component that is a result of granting higher density to the project. Buttonville created a belvedere lookout overlooking a large man made pond and public waterfront promenade which connects the ground level retail spaces. Similarly, look for way to reinforce the green-belt by introducing public park edge, reinforcing the natural environment within the CXT development.

10.0	He cautioned against the number of towers on the master plan. He would like to see fewer buildings by building taller. He has concern that Parcel A has a FSI of 5.4 times. This has much higher than Buttonville which has more open space as a result of the tall landmark tower.	CXT
11.0	He advised to get the full vision and density approve earlier, within the next two years, rather than later. After two years he believes it will become much harder. He strongly suggested getting all issues regarding density, height and uses approved by council before the area becomes more populated by residents.	CXT/WM
12.0	Markham council is keen on LEED, innovative waste management solutions such as vacuum suction system, public green space, and interconnected design facilitating pedestrian activities and getting people out of car ….	INFO
13.0	He requested that we provide more detailed drawings with better designed exterior images instead of just massing model. He would like to have a good set of documents to be able to show to his colleagues for discussion and support.	CXT

END of Minutes of Meeting No.: J14030-2 2014-12-01

Prepared by: CXT Architects Inc.

CXT Architects Inc.

10 December 2014

Mr. Tony Yung
Tung Kee Investment Limited Partnership
75 Queen's College Drive,
Richmond Hill, ON, M5B 3N7

By electronic mail only

RE: Woodbine Ave & 19th Ave, Markham
Two years Action Plan leading to Secondary Plan/ MESP submission for Tung Kee Investment Limited Partnership's property at Woodbine Avenue and Nineteenth Avenue, Markham.

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

This document outlines key stages of work that will unfold over the next two years. Within each stage are itemized action and studies we deemed essential to ensure that the project is ready for Re-zoning and Site Plan application as soon as Secondary Plan Approval from the City of Markham is secured by September, 2016.

The following is a summary of the approval process ahead, as outlined by City of Markham's Senior Planner Ms. Margaret Wouters, emailed to us dated 5 May, 2014.

1. We are at the Conceptual Master Plan (CMP) stage, which is the development of a master plan for the entire urban expansion area (Future Urban Area). This is expected to be complete by end of 2015.
2. After the CMP, Secondary Plans have to be completed and approved. We can expect Secondary Plan and Master Environmental Servicing Plan (MESP) to be completed for each concession block. City will expect the residential developers to prepare the Secondary Plans for the residential concession blocks.
3. The city had suggested that we discuss with MGP whether the Employment block owners intend to prepare a Secondary Plan themselves or to leave it up to the city to undertake. The Secondary Plans/ MESPS are expected to take about a year to complete leading to end of 2016.
4. Once SPA is approved. The city will be in a position to accept plan of subdivision, zoning amendment and site plan applications, with all supporting studies (servicing, traffic, etc). The city would want to see a plan of subdivision application to set out the roads and blocks, as well as site plan applications on individual blocks.
5. Building permits to follow plan of subdivision/ zoning/ site plan approval.

The stages described below are anticipated flow of events based on schedule prepared by Malone Givens Parson dated December 20, 2013. To date, we have not been informed of change in the proposed schedule.

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

STAGE 1- Preliminary level Master Plan

This stage of work has been completed in November, 2014 which results in a positive meeting with Councilor Alan Ho.

1. Prepare concept massing for different density options.
2. Develop concept which is approximately 3.5 times in density. This is high by Markham standard.
3. Concept plan consists of Retail, Service Commercial, Restaurants and Bars, Entertainment, Office, Hotel, Convention Center and Service apartments. Buildings consist of landmark towers with combined hotel/ office use, campus office blocks set on top of a commercial podium.
4. Decision made by TKI to reduce the retail; component and to adjust concept as to comply with permitted uses noted in the OPA document. Strategy is not to challenge use being proposed by MGP to advance the vision of the NMLG objective.
5. TKI will seek amendment in future to add use not identified.

Update: CXT Architects Inc. initiated first meeting with Councilor Alan Ho. Meeting was held at City Hall on November 28, 2014. The outcome was positive and councilor requested more detailed design with regards to external building design and vision. (Refer to Minutes of Meetings No.2 for more information of meeting.)

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

STAGE 2- Schematic Master Plan in conjunction with city's own Concept Master Plan Stage

Start January, 2015 and complete by June, 2015. Prepare initial presentation material requested by Councilor Alan Ho, to be sent to him by middle of April, 2015. Add 2 months for revisions ending June, 2015. This allows us 4 months to respond to city's CMP due in October, 2015.

1. Incorporate comments and suggestions given by Councilor Ho during meeting.
2. Develop Master Plan to show more permitted uses under the new Markham Official Plan for Service Employment and Business Park Employment such as offices, convention and trade center, limited retail etc. Consider how best to introduce residential in future and how it is incorporated into phasing strategy. Reduce the amount of destination shopping retail area.
3. Identify transportation road pattern, drop off and pick-up area, parking ramps in and out of underground parking, loading docks and area for centralized garbage pick-up.
4. Make adjustment to reflect the right mix of use and density, placement of major development component guided by clear phasing strategy.
5. CXT will prepare rendered Landscape and Master Plan, supplemented with 1 aerial perspective and 2 street level perspectives, for Councilor Ho's use in

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

meetings with mayor and colleagues. Scheduled meeting at middle of April, 2015.

6. Indicate our intention to work closely with city staff and conduct further study such as servicing and traffic to address their concern, ahead of application, if there is support.
7. Make revision to reflect comments from other municipal leaders.
8. Evaluate level of support and formulate a position before completion of CMP. Schedule have 4 months buffer for TKI to respond.
9. Commence Stage 3.

STAGE 3- Owner's due diligence

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

Start April, 2015 to overlap with Schematic Master Plan design and complete by December, 2015.

1. TKI will start to build trust and credibility with municipal and regional leaders. There are a few stalled projects in Councilor Ho's Ward which were sold as world class commercial development but ultimately failed due to weak market demand. Developers use this reason to re-zone employment lands to residential use. He cautioned against this time of approach. There is a climate of distrust with unknown names promising big visions. Buttonville Airport's owner teamed up with Cadillac Fairview, one of the largest and respected development companies in Canada. This brings instant credibility to the project.
2. Commence discussion and interviews with reputable Commercial Development firm, such as Brookfield Multiplex, capable of providing accurate feasibility analysis, leasing strategies, construction phasing and financial modeling related to each version. Final outcome is to identify a recognizable name to front the project for TKI.
3. Develop construction phasing strategies and construction schedules for various phases to respond to different financial models.

STAGE 4- Preliminary Engineering concept for Site servicing and Traffic Impact strategies

Start June, 2015 and complete by August, 2015.

1. Engage Site Servicing engineer to develop an expedited servicing plan to TKI property, possibly paying upfront, to get the work started ahead of City's own schedule. Identify cost. MMM is the preferred consulting team based on existing working knowledge of the Future Urban Area of North Markham.
2. Key to securing density will be proximity to Regional Transit Priority Network at along 19th and Woodbine Avenue corridor. Traffic engineer to propose conceptual workable solutions short and long term.

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

STAGE 5- Comprehensive Block Plan as part of Secondary Plan and Master Environmental Servicing Plan (MESP) submission

Start Comprehensive Block Plan which reflects the Schematic Master Plan by October, 2015 and work towards city's target Secondary Plan Approval date of September, 2016.

The Block Plan will "provide framework for development potential and establish guidelines to direct things such as building heights, setbacks, public realms, servicing and parking access, landscape, streetscape and open space treatments and pedestrian connection, phasing of development…"

The following should be done in preparation.

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

1. Architectural team to prepare detail master plan layout to determine main road alignment to Woodbine Avenue and 19th Avenue, internal block layout and location of internal roads, clarify anticipated density, building heights, setbacks, proposed uses, entrances to various blocks, below and above ground parking layout, proposed underground parking ramps, proposed loading docks and garbage pick-up locations, etc.
2. Prepare Phasing Plan for future block development.
3. Engage Planner to represent TKI's interest in the approval process. The planner can be MGP if fee is acceptable to TKI.
4. Instruct engineers to determine initial servicing capacity required for project. This is further development of work started at Stage 4. Provide information to the level required by city staff.
5. Prepare Community Infrastructure Impact Statement, Transportation Impact Assessment as considered appropriate.

STAGE 6- Zoning Amendment and Site Plan Application

Start January, 2017 and complete by June, 2019.

1. Approval of re-zoning will probably be conditional on obtaining Site Plan Approval.
2. As such, we will need to advance the Comprehensive Block Plan into Site Plan Application drawings to address issues such as site servicing plans, overall grading plan, ground floor plans, underground level plans, elevations, sections, landscape design etc.
3. Engineers to prepare Storm Water Management Report, Site Servicing Plan, Road design, Traffic Impact Study and other studies required by city staff.
4. Specialist Consultant to be retained to perform Economic Impact Study, to obtain zoning amendment and Site Plan approval.
5. Site Plan approval by 2020.

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

CXT Architects Inc.

STAGE 7- Building Permit Application Documents for full Phase 1 development

Start June, 2018 and complete December, 2020. Allow for 2.5 year to obtain full building permit. Full Permit by December, 2020.

1. Prepare building permit documents for buildings to be constructed as part of Phase 1 development plan.
2. Obtain Foundation permit by end of 2019.
3. Obtain Full building permit by end of 2020.

STAGE 8- Tender and Construction of Phase 1

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

Start in early 2021 and complete construction by fall of 2024.

1. Construction to take 3 to 4 years to complete.
2. Occupancy by fall of 2024.

STAGE 9- Phase 2

END.

Yours truly,

CXT ARCHITECTS INC.

Dan H.T. Teh OAA, MRAIC, LEED® AP

362 DUPONT STREET, TORONTO, ON M5R 1V9 CANADA T: 1.416.585.9950 F: 1.416.971.9123 WWW.CXTARCHITECTS.COM

CXT Architects Inc.

February 27, 2015

INVOICE NO.: I-A5878

PROJECT NO.: J14030

Mr. Tony Yung
c/o Mrs. Yvonne Yung
Tung Kee Investment Limited
75 Queen's College Drive
Richmond Hill, ON
L4B 1X4

PRINCIPALS

PATRICK T.Y. CHAN
pchan@cxtarchitects.com

DAN H.T. TEH
dteh@cxtarchitects.com

ASSOCIATE

AMY SHEFFIELD
asheffield@cxtarchitects.com

Attention: Mr. Tony Yung

Re: **Woodbine Ave and 19th Ave, City of Markham**
Per Diem Architectural Services - Not part of stage 2

To: Professional services rendered for the above mentioned project as per our agreement dated 14 March 2014

To: Time Spent from 01 August 2014 to 27 February 2015 by:
(see attached for breakdown)

				Rate		*No Charge*	Amount
D. Teh	61	Hrs.	X	$ 180.00	=		$ 10,980.00
D. Teh (No Charge)	*17.5*	*Hrs.*	*X*	*$180.00*	=	*$3,150.00*	
Y. Zhou	27.5	Hrs.	X	$ 85.00	=		$ 2,337.50
Y. Zhou (No Charge)	*1*	*Hrs.*	*X*	*$85.00*	=	*$85.00*	
	107					*$ 3,235.00*	$ 13,317.50
G.S.T. #R865814792						13%	$ 1,731.28

FEE TOTAL THIS INVOICE **$15,048.78**

Decscription of Time Spent from 1 August 2014 to 27 February 2015

Date	Duration	Notes
Dan HT Teh		
Tung Kee Investment Ltd Partnership:J14030 - Woodbine Ave & 19th Ave		
08/05/2014	***2.00***	***Conference call to T. Yung, meeting with William Moe - No Charge***
11/20/2014	3.50	Prepare for meeting with Concillor
11/21/2014	3.00	Prepare for meeting with Concillor
11/22/2014	3.00	Prepare for meeting with Concillor
11/27/2014	***2.50***	***OPA & Spa review - No charge***
11/27/2014	***0.50***	***OPA & Spa review - No charge***
11/28/2014	3.00	Meeting w. Alan Ho
11/28/2014	***0.50***	***Buttonville Airport review - No Charge***
11/28/2014	***2.00***	***Buttonville Airport review - No Charge***
11/29/2014	***3.50***	***Buttonville Airport review - No Charge***
11/30/2014	2.00	Prepare 2 year plan
12/01/2014	2.50	Prepare 2 year plan
12/02/2014	2.50	Prepare 2 year plan
12/02/2014	3.00	Letters & Minutes to Tung Kee
12/04/2014	4.50	Discuss w. WZMH
12/11/2014	5.50	Correspondence 2 year plan to 10 year
12/12/2014	6.50	Letters and 2 year plan to owner
12/14/2014	1.50	Letters and 2 year plan to owner
12/17/2014	***1.50***	***Discuss with Tony and William - No charge***
01/15/2015	***2.00***	***Public meeting by City - No charge***
01/16/2015	2.00	Called planners to discuss
01/20/2015	2.00	Revise wording as requested by Andes Lin
01/22/2015	1.50	Revise wording as requested by Andes Lin
02/03/2015	***1.00***	***Conversation with Tony - No charge***
02/05/2015	***1.00***	***Conversation with Tony - No charge***
02/05/2015	***1.00***	***Prep of material re: conversation w Tony - No Charge***
02/09/2015	2.00	Meetings w. Andes & William @ Markham
02/09/2015	1.00	Called Alan Ho to arrange meeting
02/10/2015	1.00	Called Margaret Wouters to arrange meeting
02/11/2015	3.00	Meeting with Concillor Ho, Andes & William
02/12/2015	2.00	Arrange meeting with Brookfield Multiplex and Markham
02/13/2015	3.00	Conversation with Malone Given Parsons to discuss representation with Andes and William
02/19/2015	1.50	Meeting with consultants
02/20/2015	1.50	Meeting with Brookfield Multiplex
Total	78.50 -	***17.5*** = 61 hrs.
Yi Zhou		
Tung Kee Investment Ltd Partnership:J14030 - Woodbine Ave & 19th Ave		
08/05/2014	***1.00***	***Organizing and sending files - No Charge***
10/02/2014	0.50	10 year plan schedule
10/03/2014	2.50	10 year plan schedule
10/08/2014	6.00	10 year plan schedule
10/09/2014	4.00	10 year plan schedule

		10/10/2014		5.50		10 year plan schedule				
		10/10/2014		0.50		10 year plan schedule				
		11/24/2014		1.00		10 year plan schedule & preparation for meeting				
		11/28/2014		1.00		10 year plan schedule & preparation for meeting				
		12/11/2014		3.00		10 year plan schedule & minutes of meeting				
		12/12/2014		3.50		10 year plan schedule & minutes of meeting				
				28.50	•	***1.0*** = 27.5 hrs.				

FW: Woodbine & 19th Avenue

dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Thu 2023-11-09 2:28 PM
To:Justin Chan <jchan@jtcprofcorp.com>
Cc:dteh@cxtarchitects.com <dteh@cxtarchitects.com>

1 attachments (525 KB)
I-A5878.pdf;

[redacted]

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: Dan Teh <dteh@cxtarchitects.com>
Sent: Tuesday, November 17, 2015 11:56 AM
To: 'ty69300300@gmail.com' <ty69300300@gmail.com>
Cc: 'williammo@rogers.com' <williammo@rogers.com>
Subject: FW: Woodbine & 19th Avenue

Hi Tony,

I hope you are keeping well and still playing lots of tennis and staying fit. I need to follow your example. Working too hard with not enough exercise and sleep.

It is almost end of the year and I need to address a long outstanding invoice with you dated February 27, 2015. I am sending this email to try to reach out to you to find a resolution. More important for me is to make sure I did not misunderstand what you had wanted me to do on your behalf. I had discussed this with William and he had advised me to talk with you directly.

As I had mentioned to you when we met in HK, I am responsible for your project in my office. If there is any problem with our service or billing, it reflects badly on me. I would like you to talk to me honestly so that I can address any questions you may have.

I would like to call you at a time that works best for you. Please let me know time and date.

Best regards,
Dan Teh

From: Seow-Woon Lim [mailto:swlim@cxtarchitects.com]
Sent: Tuesday, November 17, 2015 10:06 AM
To: dteh@cxtarchitects.com
Subject: Woodbine & 19th Avenue

Dan,

As per your request, please find invoice for the above mentioned project.

Regards,

Seow-Woon Lim

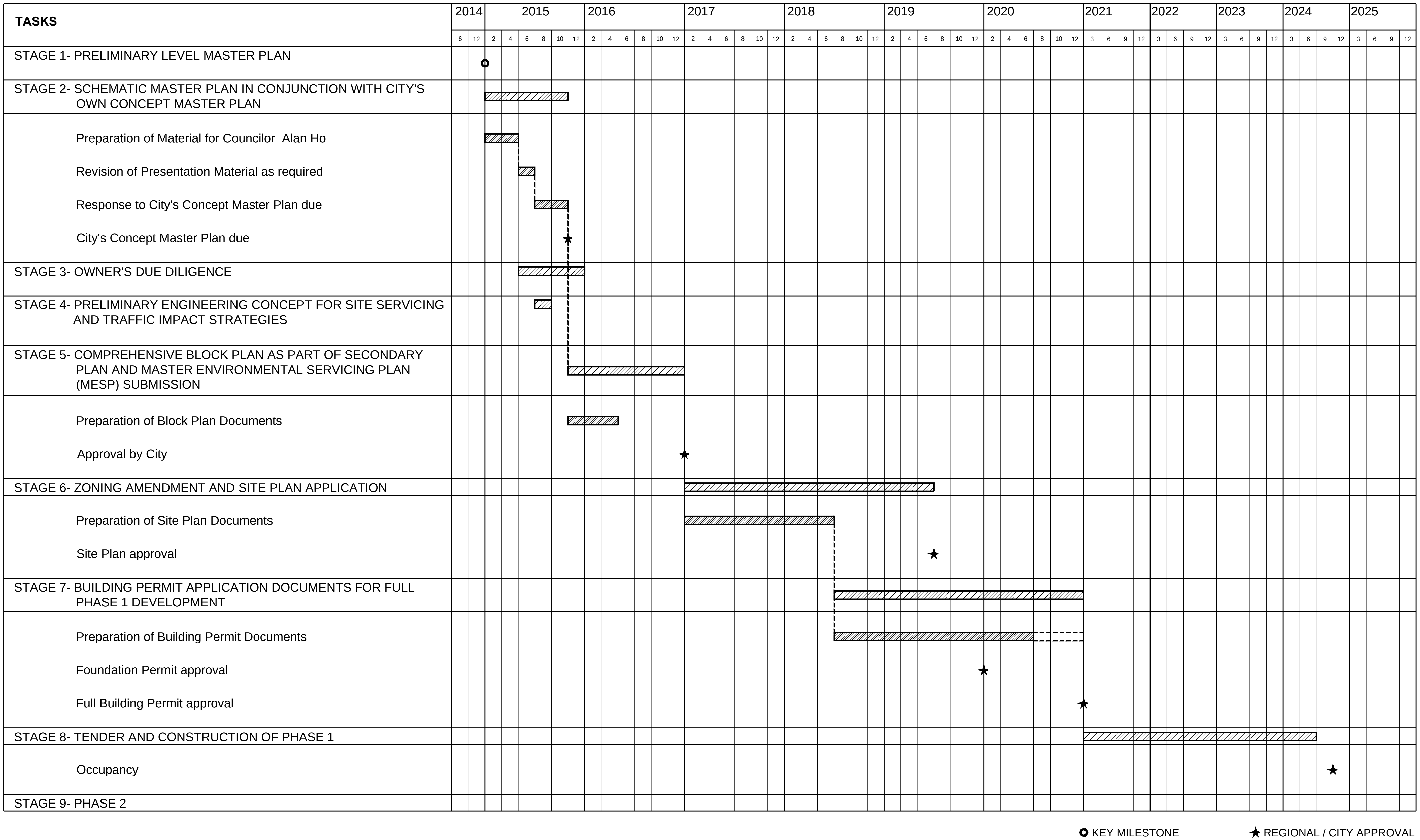
CXT Architects Inc.
362 Dupont Street
Toronto, ON   M5R 1V9   Canada
T: 1.416.585.9950 x22   F: 1.416.971.9123
www.cxtarchitects.com

TUNG KEE INVESTMENT INC.

10 YEARS- OVERALL DEVELOPMENT SCHEDULE

3143 NINETEENTH AVENUE, MARKHAM 12 DECEMBER 2014

CXT Architects Inc.



FW: Woodbine and 19th- Update and 10 year work plan.

dteh@cxtarchitects.com <dteh@cxtarchitects.com>

Thu 2023-11-09 2:29 PM

To:Justin Chan <jchan@jtcprofcorp.com>
Cc:dteh@cxtarchitects.com <dteh@cxtarchitects.com>

4 attachments (781 KB)

2014-12-12- Summary of discuss w Tony format.pdf; Ten Years Work Plan.pdf; 2014-12-12 Ten years-Project Schedule.pdf; Minutes of Meeting # 2.pdf;

[redacted]

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: Dan Teh <dteh@cxtarchitects.com>
Sent: Thursday, December 3, 2015 6:17 PM
To: 'William' <williammo@rogers.comHi>
Subject: FW: Woodbine and 19th- Update and 10 year work plan.

Hi William,

I am re-sending you this information we prepared for Tony outlining the schedule in detail and how we envision work to unfold. I have even projected start of construction and date for occupancy if he proceed according to plan. This was not done as a proposal but serve to show him that there is a lot of work to be done in order to get him the schedule he expects.

The schedule closely mirror the new schedule proposed by MGP. This shows we spent the time required to get the schedule right. This was done almost a year ago without comments back from Tony.

For your information when you talk to him.

Best regards,
Dan The.

From: Dan H.T. Teh [mailto:dteh@cxtarchitects.com]
Sent: Friday, December 12, 2014 4:10 PM
To: 'William Mo'

Cc: 'Andes.F.Lin@Apeirongroup.com'; 'tonyyung69300300@gmail.com'; 'danteh360@gmail.com'; 'Yi Zhou'
Subject: Woodbine and 19th- Update and 10 year work plan.

Andes,

I know that Tony had just returned from his trip from Europe. As such, I have prepared a few documents that summarise the work we have completed to date and also the work that is still ahead. This is to follow up on my promise to prepare a 2 year Work Plan for his review back in October. This package also includes a Minute of Meeting from our recent meeting with the local politician, Councillor Alan Ho.

I have prepared a 10 years work plan, instead of the 2 years, as requested by Tony in our conversation in October. Tony had indicated to me that he wanted to get the project built as soon as possible, as financing had been arranged. There is a letter and related schedule explaining the various stages and actions required leading to completion of construction for Phase 1. It explains the ground work needed from the owner's team in order to dovetail into the city's approval timeline.

Mr. William Mo and I had a positive meeting with the councillor and he is very supportive of the vision we had presented. Please refer to Minutes of Meeting No.2 attached. The councillor expects us to provide more detailed renderings of the project for him to share with his colleagues.

We need to be clear what we would like to present and then prepare the documents accordingly. We need to keep in mind that he had advocated for us to show the full vision instead of returning to amend the secondary plan or zoning documents. This is because he believes that the opposition to such a project with tall towers will become stronger as more residents move into the area.

Look forward to your comments and would be happy to answer any questions you may have.

Regards,

Dan H.T. Teh
dteh@cxtarchitects.com

CXT Architects Inc.

362 Dupont Street
Toronto, ON   M5R 1V9   Canada
T: 1.416.585.9950 x25   F: 1.416.971.9123
www.cxtarchitects.com

This is **Exhibit "B"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

Transaction Number: APP-A10305068347
Report Generated on November 02, 2023, 21:14

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

TUNG KEE INVESTMENT CANADA LTD. as of November 02, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	TUNG KEE INVESTMENT CANADA LTD.
Ontario Corporation Number (OCN)	1018493
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	February 11, 1993
Registered or Head Office Address	118 Grey Alder Ave, Richmond Hill, Ontario, Canada, L4B 3P9

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

V. Quintanilla W.

Director/Registrar

Active Director(s)

Minimum Number of Directors	[Not Provided]
Maximum Number of Directors	[Not Provided]

Name	PUI LING LAI
Address for Service	118 Grey Alder Ave, Richmond Hill, Ontario, Canada, L4B 3P9
Resident Canadian	Yes
Date Began	February 11, 1993

Name	PHILIP KUN TO WONG
Address for Service	South Horizons, Flat E Block 19 Ap Lei Chau 2/f, Hong Kong, China,
Resident Canadian	No
Date Began	August 30, 2019

Name	MAN TUNG YUNG
Address for Service	16 Shui Hau, Lantau Island Hong Kong, China,
Resident Canadian	No
Date Began	April 23, 1993

Active Officer(s)

Name	PUI LING LAI
Position	Secretary
Address for Service	118 Grey Alder Ave, Richmond Hill, Ontario, Canada, L4B 3P9
Date Began	November 18, 2016

Name	MAN TUNG YUNG
Position	President
Address for Service	16 Shui Hau, Lantau Island Hong Kong, China,
Date Began	November 18, 2016

Corporate Name History

Name	TUNG KEE INVESTMENT CANADA LTD.
Effective Date	February 26, 1993
Previous Name	1018493 ONTARIO INC.
Effective Date	February 11, 1993

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: PUI LING LAI - DIRECTOR	November 03, 2020
CIA - Notice of Change PAF: PUI LING LAI - DIRECTOR	October 03, 2019
CIA - Notice of Change PAF: PUI LING LAI - DIRECTOR	November 21, 2016
CIA - Notice of Change PAF: MAN TUNG YUNG - DIRECTOR	November 01, 2016
Annual Return - 2016 PAF: YVONNE YUNG - DIRECTOR	June 12, 2016
Annual Return - 2015 PAF: YVONNE YUNG - DIRECTOR	June 12, 2016
Annual Return - 2014 PAF: YVONNE YUNG - DIRECTOR	August 02, 2014
Annual Return - 2013 PAF: YVONNE YUNG - DIRECTOR	August 02, 2014
Annual Return - 2012 PAF: YVONNE YUNG - DIRECTOR	December 01, 2012
Annual Return - 2011 PAF: YVONNE YUNG - DIRECTOR	November 17, 2012
Annual Return - 2010 PAF: YVONNE YUNG - DIRECTOR	November 10, 2012
Annual Return - 2009 PAF: YVONNE YUNG - DIRECTOR	July 17, 2010
Annual Return - 2003 PAF: YVONNE YUNG - DIRECTOR	March 11, 2006

Annual Return - 2004 PAF: YVONNE YUNG - DIRECTOR	March 11, 2006
Annual Return - 2005 PAF: YVONNE YUNG - DIRECTOR	March 11, 2006
Annual Return - 2002 PAF: YVONNE YUNG - DIRECTOR	March 11, 2006
Annual Return - 2002 PAF: YVONNE YUNG - DIRECTOR	August 31, 2003
Annual Return - 2001 PAF: YVONNE YUNG - DIRECTOR	May 20, 2002
CIA - Notice of Change PAF: PUI LING LAI YUNG - DIRECTOR	October 05, 1995
BCA - Special Resolution	October 02, 1995
Other - SPECIAL NOTICE 2 PAF: LAI PUI LING YUNG - DIRECTOR	May 20, 1994
CIA - Notice of Change PAF: PUI LING LAI YUNG - DIRECTOR	June 08, 1993
CIA - Initial Return PAF: PUI LING LAI YUNG - Director	February 26, 1993
BCA - Articles of Amendment	February 26, 1993
BCA - Articles of Incorporation	February 11, 1993

All “PAF” (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

This is **Exhibit “C”** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

Justin Chan

Ontario

Ministry of Public and
Business Service Delivery

Profile Report

SOW CAPITAL ONTARIO LIMITED as of November 02, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	SOW CAPITAL ONTARIO LIMITED
Ontario Corporation Number (OCN)	2734061
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	December 24, 2019
Registered or Head Office Address	181 University Avenue, 2100, Toronto, Ontario, Canada, M5H 3M7

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	10

Name	WONG KAN CHUNG
Address for Service	181 University Avenue, 2100, Toronto, Ontario, Canada, M5H 3M7
Resident Canadian	Yes
Date Began	April 30, 2021

Name	ALFA YONG LI
Address for Service	2555 Westminster Hwy, 92, Richmond, British Columbia, Canada, V7C 5P6
Resident Canadian	Yes
Date Began	December 24, 2019

Name	PHILIP WONG
Address for Service	127-131 Des Voeux Road, Unicorn Trade Centre 602, Central, Hong Kong Special Administrative Region, China,
Resident Canadian	No
Date Began	December 24, 2019

Active Officer(s)

Name	WONG KAN CHUNG
Position	Secretary
Address for Service	181 University Avenue, 2100, Toronto, Ontario, Canada, M5H 3M7
Date Began	April 30, 2021

Name	PHILIP WONG
Position	President
Address for Service	127-131 Des Voeux Road, Unicorn Trade Centre 602, Central, Hong Kong Special Administrative Region, China,
Date Began	December 24, 2019

Corporate Name History

Name	SOW CAPITAL ONTARIO LIMITED
Effective Date	December 24, 2019

Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Document List

Filing Name	Effective Date
CIA - Initial Return PAF: PHILIP WONG - DIRECTOR	May 04, 2021
BCA - Articles of Incorporation	December 24, 2019

All “PAF” (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

This is **Exhibit "D"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

DX Strategies Inc.

9 August 2021

Mr. Philip Wong
Managing Director

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

RE: 3143 19th Ave, Markham, Ontario (the "Property")
Development Management Revised Terms

Dear Philip,

I am proud of what we have accomplished together since we first met in the summer of 2019.The countless hours of hard work we have jointly invested to advance our vision for One Markham finally culminated in the city council voting 12-1 in support of our application to the province.

A. Stepping up when the project requires a lead designer to provide a clear concept plan

Meeting the dateline was only possible because DX Strategies (DX) has been tirelessly providing an uncompromising level of professional service to Tung Kee Investment that goes above and beyond acting on behalf of the owner as Project Manager.

Critical to the team's ability to meet the MZO submission date was DX's ability to take on the responsibility as Master Plan designer immediately after WZMH vacated their role on 28 August 2019. Over the last two years, my unwavering commitment to the project was instrumental in maintaining the momentum required to develop the ultimate master plan.

The well-developed master plan made it easy to explain the concept to the politicians, city staff, and our development partners. It also formed the Basis of Design for the consultants to determine phasing, explore interim private land servicing and permanent servicing to site, evaluate the impact of environmental restraint limits on the buildable floor area, etc.

By choosing to keep working, despite the shortfall in payment and funding throughout the master planning duration, DX chose to invest in the project by providing much-needed credit to pay for the required design and project management services leading up to the MZO application.

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@oxtarchitects.com

DX Strategies Inc.

B. Terms to reflect the revised method of compensation.
The following are the proposed revisions.

Item 1 – Revision of Payment Schedule
We propose the revised Appendix A-1 and A-2 dated 9 August 2021 to replace the one in the previous contract dated 11 July 2019.

This revised payment schedule accurately reflects the actual payment received to date and the projected quarterly payments leading up to the Approval of the MZO.

Please initial here as well as on Appendix A-1 and A-2 to show acceptance.

Accepted by: ____________

Item 2 – Payment of Unpaid Fees

The minimum amount of $466,138.38 is past due and payment is to be made on 13 August 2021 as agreed.

The remaining unpaid fees of $840,720 will be due ~~15~~ 30 September 2021 as agreed.

Accepted by: ____________

Item 3 – MZO Bonus
The MZO Bonus of $1,130,000 inclusive of HST is due 7 days after the closing sale of Block 5. Please refer to Appendix A-2.

Accepted by: ____________

Item 4 – Post MZO bonus- Block 1, 2, 3
It is mutually agreed that the Post MZO bonus-Block 1, 2, 3, will be re-visited. The current amount of $1,412,500 inclusive of HST will be recorded for future consideration.

Philp will table an offer to Dan Teh with an opportunity for profit sharing and bonus incentives to consider before the start of Site Plan design work.

Accepted by: ____________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxarchitects.com

DX Strategies Inc.

Item 5 – Residential zoning Bonus
The end development goal for Block 1, 2, 3 is to achieve a certain amount of residential zoning. The corresponding residential bonus would be determined at a later date.

Accepted by: ____________________

C. Architectural Service for Block 1 and 2

Item 1
CXT Architects Inc. to retain the right of first refusal as architect for Block 1 and Block 2 with future investors and partners. If a larger firm is preferred, WZMH in collaboration with CXT Architects Inc will be the alternate.

Accepted by: ____________________

Additional Terms

1. Our fees will be drawn monthly against the deposited quarterly retainer amount outlined in Appendix A-2. If the project is terminated, the fee will be calculated up to the end of the month from the date on which we receive written instructions to stop work by the owner.
2. The fee does not include overseas travel expenses such as flights, accommodation, and meals. The cost will be drawn against an Expense Allowance to be pre-approved by the owner.
3. HST is included in Appendix A-2 Payment Schedule.

Appendices

A-1. Timeline Schedule leading up to MZO.
A-2. Payment Schedule.
A-3. Project Budget Dashboard

Yours very truly,

DX STRATEGIES INC.

____

Dan H.T. Teh Project Manager, Partner, LEED® AP

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

If you agree with the statements in this letter, please sign below and return a copy to us for our file.

Reviewed by:

Mr. Philip Wong
Managing Director
Tung Kee Investment Canada Ltd.

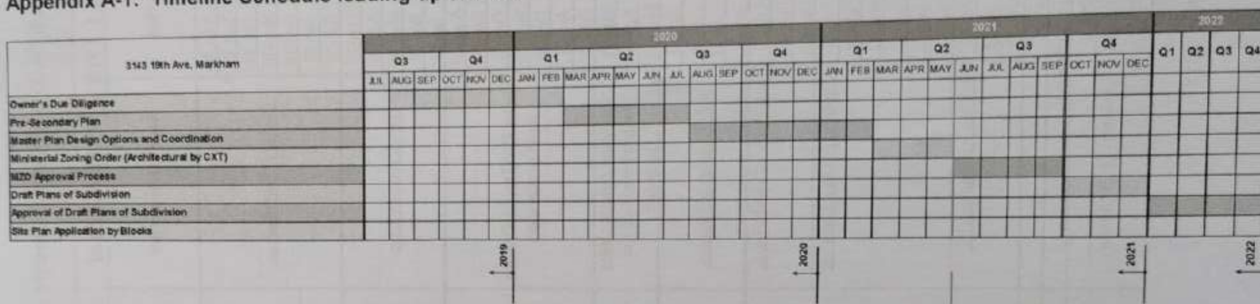
15/8/2021

Date:

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@extarchitects.com

DX Strategies Inc.

Appendix A-1: Timeline Schedule leading up to MZO



Payment Schedule

Payment Progress	Paid Amount: $112,800 / UNPAID / UNPAID Amount: $1,055,420

	Jul 2019	Aug	Sep	Oct	Nov	Dec	Jan 2020	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan 2021	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep 2021 – 2022
Monthly	$22,600.00	$22,600.00	$22,600.00	$22,600.00	$22,600.00	$22,500.00	$22,500.00	$33,900.00	$33,900.00	$33,900.00	$33,900.00	$33,900.00	$62,715.00	$62,715.00	$62,715.00	$62,715.00	$62,715.00	$62,715.00	$62,715.00	$66,105.00	$66,105.00	$66,105.00	$50,850.00	$50,850.00	$50,850.00	$50,850.00	TBD
Quarterly Retainer	$45,200.00		$67,800.00			$78,899.99			$101,700.00			$159,330.00			$188,145.00			$191,635.00			$183,060.00			$152,650.00			
Phases	$157,999.99							$169,500.00					$439,005.00							$198,315.00			$203,400.00				
Total	$1,168,219.99																										

Dated: 9 Aug 2021

DX Strategies Inc.

Appendix A-2: Payment Schedule

3143 19th Ave, Markham			Invoices	Fee Schedule		
Period		Stage Description	Invoice No.	Contract Amount	Contract Amt Incl HST	Total deferred Amount till date (Incl HST)
	Aug-19	Owner's Due Diligence	I-A1901	$ 20,000.00	$ 22,600.00	
	Sep-19		I-A1902	$ 20,000.00	$ 22,600.00	
Q4	Oct-19		I-A1903	$ 20,000.00	$ 22,600.00	
	Nov-19		I-A1904	$ 20,000.00	$ 22,600.00	
	Dec-19		I-A1905	$ 20,000.00	$ 22,600.00	
Q1	Jan-20		I-B1000DX	$ 19,911.50	$ 22,500.00	
	Feb-20			$ 19,911.50	$ 22,500.00	
	Mar-20	Pre-Secondary Plan		$ 30,000.00	$ 33,900.00	
Q2	Apr-20			$ 30,000.00	$ 33,900.00	
	May-20			$ 30,000.00	$ 33,900.00	
	Jun-20			$ 30,000.00	$ 33,900.00	
Q3	Jul-20			$ 30,000.00	$ 33,900.00	
	Aug-20	Master Plan Design Options and Coordination		$ 55,500.00	$ 62,715.00	
	Sep-20			$ 55,500.00	$ 62,715.00	
Q4	Oct-20			$ 55,500.00	$ 62,715.00	
	Nov-20			$ 55,500.00	$ 62,715.00	
	Dec-20			$ 55,500.00	$ 62,715.00	
Q1	Jan-21			$ 55,500.00	$ 62,715.00	
	Feb-21			$ 55,500.00	$ 62,715.00	
	Mar-21	Ministerial Zoning Order Architectural Fee not Included		$ 58,500.00	$ 66,105.00	
Q2	Apr-21			$ 58,500.00	$ 66,105.00	
	May-21			$ 58,500.00	$ 66,105.00	
	Jun-21	MZO Approval Process		$ 45,000.00	$ 50,850.00	
Q3	Jul-21			$ 45,000.00	$ 50,850.00	
	Aug-21			$ 45,000.00	$ 50,850.00	
	Sep-21			$ 45,000.00	$ 50,850.00	$ 1,055,420.00
	Oct-21	Draft Plans of Subdivision		TBD		
Q4	Nov-21					
	Dec-21					
	Jan-22	Approval of Draft Plans of				
Q1	Feb-22					
	Mar-22					
	Apr-22					
Q2	May-22					
	Jun-22					
	Jul-22	Site Plan Application by				
Q3	Aug-22					
	Sep-22					
Unpaid fees					$1,055,420.00	
MZO Bonus (1 Million)					$1,130,000.00	
Total Inc HST					**$2,185,420.00**	
Post MZO / Block 1,2,3 Bonus (1.25 Million) (Details TBC)					$1,412,500.00	

Dated: 9 Aug 2021

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-3: Project Budget Dashboard

Consultants	Contract Date	Estimated Budget	Contract Amt to H2O Approval (Inc. HST)	Retainer Received	Retainer Unpaid	Paid out to Consultants	Contract Amt Due	Mgr Amt due
TOTAL		1,920,356	1,671,024.80	383,941.02	1,026,783.97	322,037.85	[illegible]	466,138.58
Project Management (DX)								
• Project Management Services			1,168,220.00	166,726.39	1,001,493.61	112,800.00	[illegible]	
Architects / Master Plan Design (EXT)								
• Master Plan Design - [illegible]	26-Apr-21		211,875.00	74,531.41		74,531.41	[illegible]	
Planner ([illegible])								
• Planning Services - [illegible]	22-Mar-21		42,375.00	37,500.00	2,976.78	29,523.22	4,875.00	
• MZO Extra Services			8,475.00				8,475.00	
Natural Environmental ([illegible])								
• Phase 1 Pre-Evaluation		9,500						
• [illegible]	7-Apr-21	25,800	44,904.90	8,168.29	-	8,168.29	[illegible]	
• EIS and Implementation		44,000						
• Inspections and Certifications		20,000						
Hydro-G ([illegible])								
• Hydrogeological Assessment	7-Apr-21		59,268.50	10,000.00	-	10,000.00	[illegible]	
• Groundwater Monitoring		10,000						
• Extended monitoring (+2 years)		20,000						
• Hydrogeological Report		10,500						
Geotech ([illegible])								
• Geotechnical		20,000						
• Pre-ESA		3,000						
• Detailed Design Stage 2 Report		10,000						
• Inspections and Certifications		50,000						
Survey ([illegible])								
• Topographic Survey	7-Apr-21	13,000	34,691.00	31,311.87	-	31,311.87	[illegible]	
• First App / LTA		2,200						
• [illegible]	7-Apr-21		8,000		-	-	[illegible]	
• M-Plan		20,000						
• Reference Plans		10,000						
• Registration and Certification		20,000						
Septic ([illegible])								
• [illegible]	4-Dec-20	48,000	50,850.00	17,313.58	17,313.58	17,313.58	[illegible]	
• Preliminary Design, MECP Pre-Con		10,000						
• Detailed Design and Implementation		40,000						
• Inspections and Certifications		10,000						
Civil (Masongsong)								
• Lead Consultant PM		50,000						
• Preliminary Engineering, Interim and Future Ultimate	4-Dec-20	55,000	50,850.00	38,389.38	0.00	38,389.38	[illegible]	
• Private Servicing Costing Comparison (Per Diem Allowance)			11,300.00				[illegible]	
• Draft Plan and ZBA Support		20,000						
• Detailed Design (Municipal)		380,000						
• Inspections and Certifications (Municipal)		330,000						
Transportation (WSP)								
• Preliminary Concept Plan and Studies		45,000						
• TIS		105,000						
• TIS Comments		50,000						
• Draft Plan and Site Plan II TDS		80,000						
Supporting Subconsultants								
• Landscape and Urban Design								
• Fire								
• Electrical								
• Noise		117,000						
• Archaeological (ASI) - Invoice received not approved		23,555.98						
• Phase 1, 2 ESA, RSC								
• Municipal Lawyer								

Dated: 9 Aug 2021

Uis

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxtarchitects.com

This is **Exhibit "E"** referred to

In the Affidavit of Dan Teh

Sworn before me this

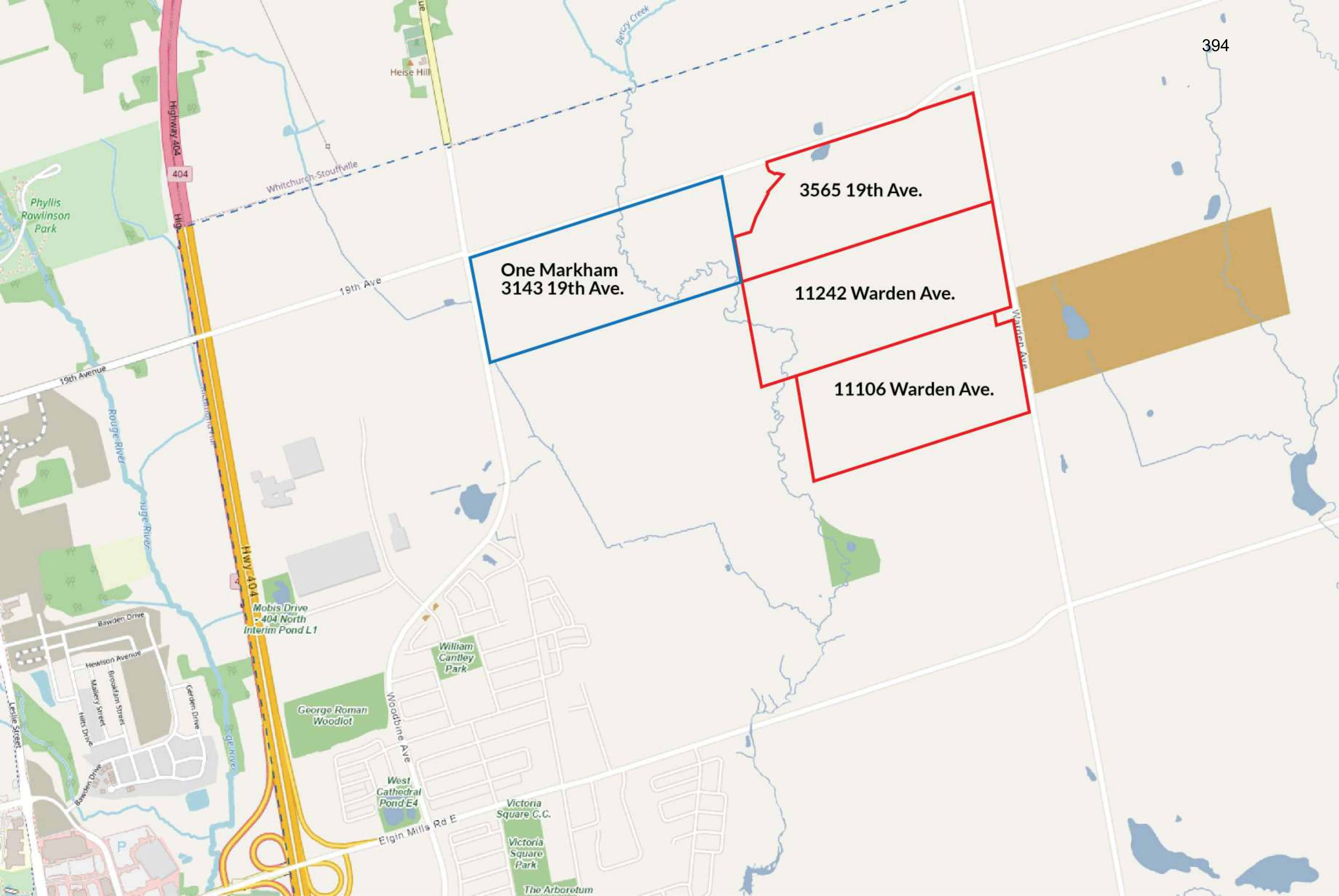
11th Day of November, 2023

____

Justin Chan

Sales History of Designated Employment Lands in Markham

	Address	Land Area (AC)	Land Area (sf)	Date sold	Price	Cost/Acre
1	3565 19TH AVE., MARKHAM, L6C 1L8	90.141 AC	3,926,552 ft²	2017-04-20	$28,000,000.00	$310,624.47
2	11106 WARDEN AVE, MARKHAM, L6C 1N4	83.825 AC	3,651,416 ft²	2016-09-13	$27,000,000.00	$322,099.61
				2005-03-29	$6,800,000.00	$81,121.38
				1992-06-30	$2,500,000.00	$29,824.04
3	11242 WARDEN AVE., MARKHAM, L6C 1N4	98.34 AC	4,283,709 ft²	2019-05-06	$34,300,000.00	$348,789.91
				2003-07-31	$5,100,000.00	$51,860.89
				2003-04-02	$3,900,000.00	$39,658.33

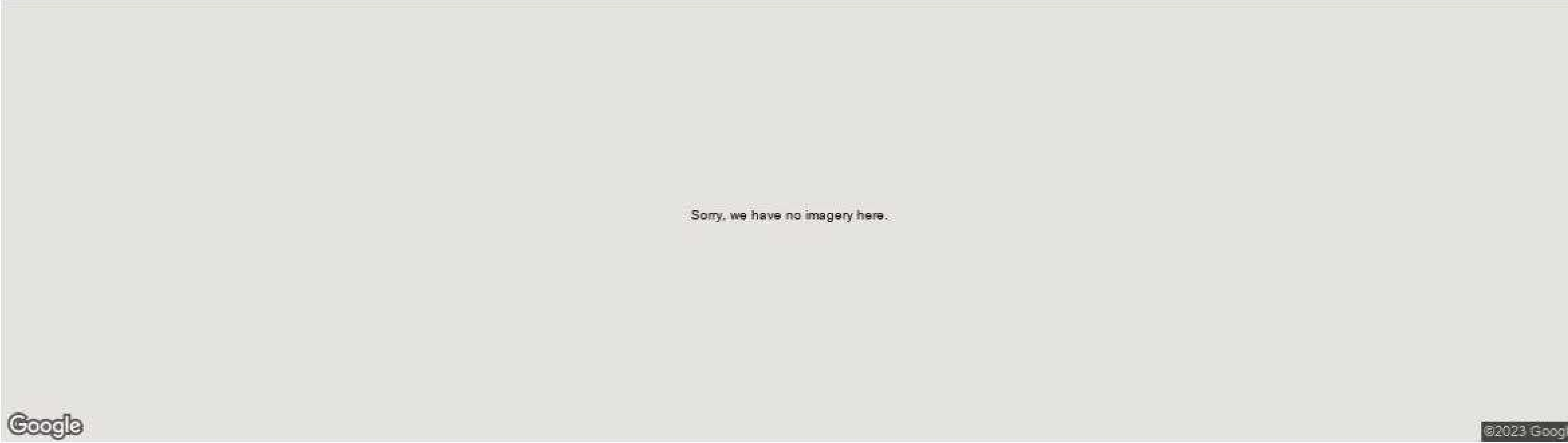

One Markham
3143 19th Ave.
3565 19th Ave.
11242 Warden Ave.
11106 Warden Ave.
Heise Hill
Berczy Creek
Whitchurch-Stouffville
Highway 404
404
Phyllis Rawlinson Park
19th Ave
19th Avenue
Rouge River
Hwy 404
Mobis Drive - 404 North Interim Pond L1
Bawden Drive
Hewison Avenue
Leslie Street
George Roman Woodlot
William Cantley Park
Woodbine Ave
West Cathedral Pond E4
Elgin Mills Rd E
Victoria Square C.C.
Victoria Square Park
The Arboretum
Warden Ave

Owner Name	Last Sale	Lot Size	
THE CORPORATION OF THE CITY OF MARKHAM	$28,000,000	3,926,552 ft²	9,180 ft
	Apr 20, 2017	Area	Perimeter
		View Measurements	

Legal Description

PART LOT 30, CONCESSION 4 MARKHAM, BEING PARTS 1 & 2 ON PLAN 65R36995 CITY OF MARKHAM

Property Details



Valuation & Sales

Sales History

Sale Date ▼	Sale Amount	Type	Party To	Notes
Apr 20, 2017	$28,000,000	Transfer	THE CORPORATION OF THE CITY OF MARKHAM;	The following PINs were transferred together with the Subject Property : 030550062

GeoWarehouse Address
3565 19TH AVE, MARKHAM, L6C1L8

Ownership Type
Freehold

Registration Type
Certified (Land Titles)

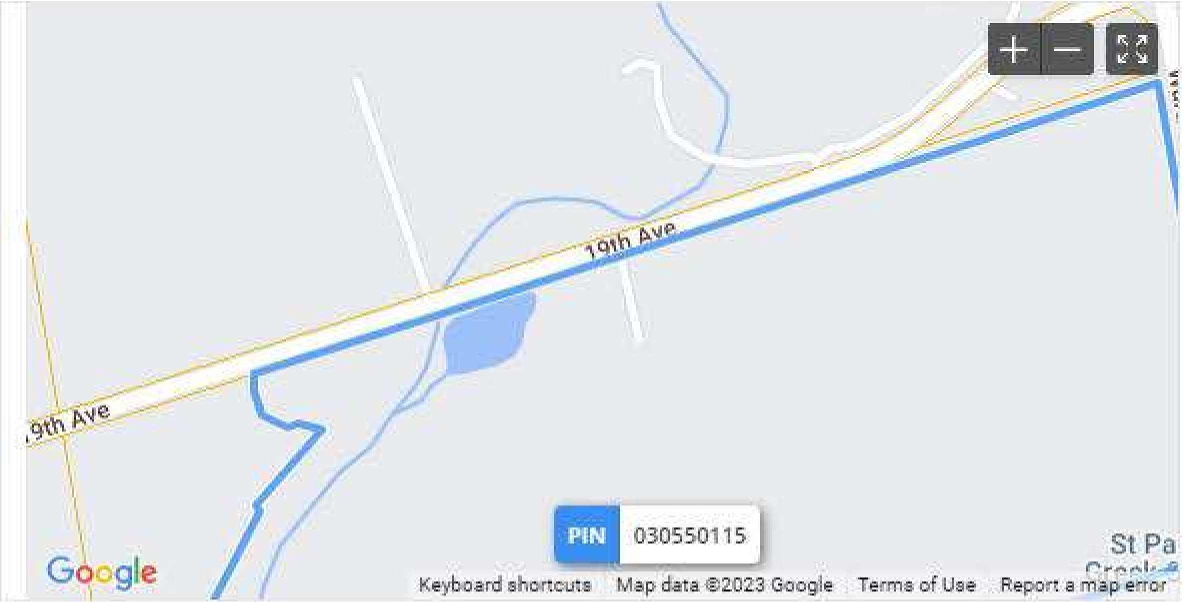
Land Registry Office
York Region (65)

Land Registry Status
Active

PIN
030550115

Owner Names
THE CORPORATION OF THE CITY OF MARKHAM

Property Type
OTHER NON RES



Lot Size

Area: 3,926,552.32 ft² (90.141 ac) **Perimeter:** 9,179.79 ft

Measurements: 7.19 ft x 209.11 ft x 564.46 ft x 3,258.70 ft x 1,328.95 ft x 2,688.21 ft x 50.54 ft x 67.84 ft x 79.66 ft x 28.44 ft x 73.36 ft x 283.66 ft x 16.65 ft x 523.08 ft

11106 Warden Ave, Markham, L6C1N4

Suggest an address correction

Owner Name
THE CORPORATION OF THE CITY OF MARKHAM

Last Sale
$27,000,000
Sep 13, 2016

Lot Size
3,651,416 ft²
Area
8,264 ft
Perimeter

View Measurements

Legal Description
PT LT 28 CON 4 MARKHAM PT 1 65R10397 ; MARKHAM

Property Details

Valuation & Sales

Sales History

Sale Date ▼	Sale Amount	Type	Party To
Sep 13, 2016	$27,000,000	Transfer	THE CORPORATION OF THE CITY OF MARKHAM;
Mar 29, 2005	$6,800,000	Transfer	2064405 ONTARIO LIMITED;
Jun 30, 1992	$2,500,000	Transfer	989983 ONTARIO INC.;

GeoWarehouse Address

11106 WARDEN AVE, MARKHAM, L6C1N4

Ownership Type

Freehold

Registration Type

Certified (Land Titles) 400

Land Registry Office

York Region (65)

Land Registry Status

Active

PIN

030550006

Owner Names

THE CORPORATION OF THE CITY OF MARKHAM

Property Type

FARM

Lot Size

Area: 3,651,416.27 ft² (83.825 ac) **Perimeter:** 8,264.44 ft

Measurements: 2,583.86 ft x 1,323.82 ft x 2,811.95 ft x 1,160.50 ft x 221.59 ft x 165.97 ft

Lot Measurement Accuracy: LOW

11242 Warden Ave, Markham, L6C1N4

Suggest an address correction

Owner Name

THE CORPORATION OF THE CITY OF MARKHAM

Last Sale

$0

Jun 12, 2019

Lot Size

4,283,709 ft² Area

9,167 ft Perimeter

View Measurements

Legal Description

PT LT 29 CON 4 MARKHAM, PARTS 1,2,3,4,5 & 6 65R38384; S/T MA101242, MA41535 SUBJECT TO AN EASEMENT OVER PT 1, ... more

Property Details

Valuation & Sales

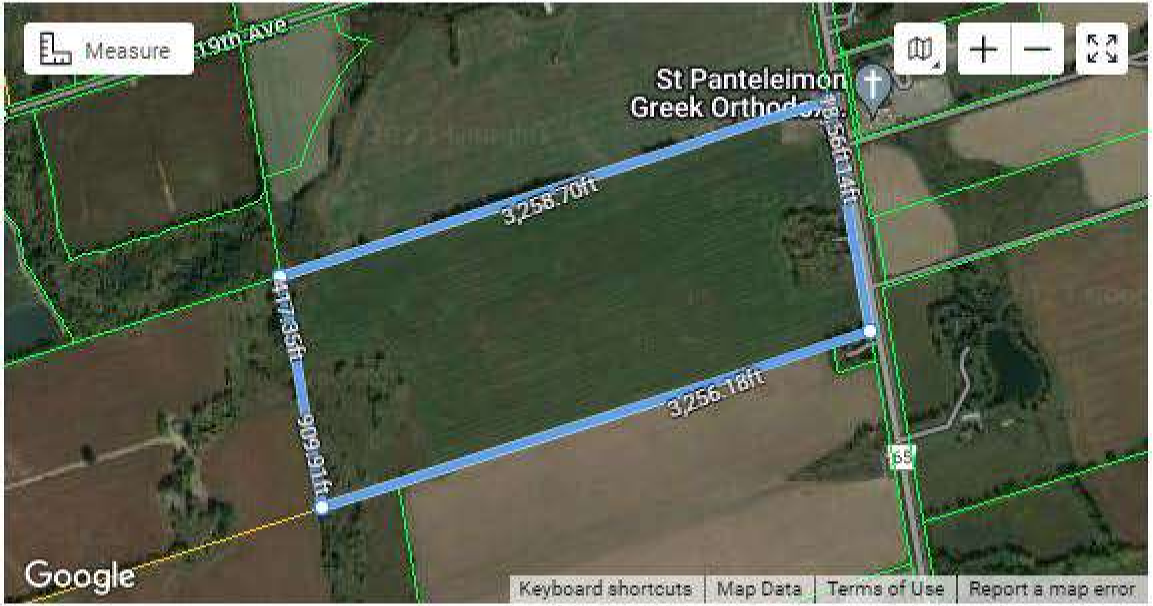
Sales History

Sale Date ▼	Sale Amount	Type	Party To
Jun 12, 2019	$0	Transfer	THE CORPORATION OF THE CITY OF MARKHAM;
May 06, 2019	$34,300,000	Transfer	THE CORPORATION OF THE CITY OF MARKHAM;
Jul 31, 2003	$5,100,000	Transfer	WARDEN MILLS DEVELOPMENTS LIMITED;
Apr 02, 2003	$3,900,000	Transfer	11242 WARDEN AVE. HOLDINGS INC.;
Oct 30, 1979	$2	Transfer	THORNMARK ESTATES LIMITED;

GeoWarehouse Address	Ownership Type	Registration Type
11242 WARDEN AVE, MARKHAM, L6C1N4	Freehold	Certified (Land Titles)

Land Registry Office	Land Registry Status	PIN
York Region (65)	Active	030550004

Owner Names	Property Type
THE CORPORATION OF THE CITY OF MARKHAM	FARM



Lot Size

Area: 4,283,709.28 ft² (98.340 ac) **Perimeter:** 9,166.67 ft

Measurements: 909.91 ft x 3,256.18 ft x 1,309.14 ft x 18.56 ft x 3,258.70 ft x 417.35 ft

Lot Measurement Accuracy: LOW

This is **Exhibit "F"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

FW: Converting outstanding fee to loan

dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Wed 2023-11-08 4:27 PM
To:Justin Chan <jchan@jtcprofcorp.com>

[redacted]

OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: Monday, June 6, 2022 6:28 PM
To: 'Colin Hui' <colinhui@cxtarchitects.com>
Subject: FW: Converting outstanding fee to loan

Colin,
Please review this Loan Agreement that will be triggered in event the studio does not close. It is unlikely but is there to protect DX. I would like oy include DX proposal as part of the email below to Philip.

DRAFT

Hi Philip and Tim,
Please send Appendix A and Appendix C- Promissory note for review. I am attaching Appendix B- DX Management Fee proposal dated 31 May 2022.

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: timothywu@sowcapital.com.hk <timothywu@sowcapital.com.hk>
Sent: Monday, May 30, 2022 8:27 AM
To: dteh@cxtarchitects.com
Cc: philip.wong@sowcapital.com.hk
Subject: RE: Converting outstanding fee to loan

Hi Dan,

Pls ignore the pervious one as it contains some typo. This one should be correct.

Thanks

Tim

From: timothywu@sowcapital.com.hk <timothywu@sowcapital.com.hk>
Sent: Monday, 30 May 2022 8:17 pm
To: dteh@cxtarchitects.com
Cc: philip.wong@sowcapital.com.hk; timothywu@sowcapital.com.hk
Subject: Converting outstanding fee to loan

Hi Dan,

Please see the attached. If ok, please fill in the your correspondence address in the promissory note meanwhile sign the loan agreement and send both back to me for further handling.

Tim

This is **Exhibit "G"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

DX Strategies Inc.

6 June 2022

Mr. Philip Wong
Managing Director

Tung Kee Investment Canada Ltd.
General Partner of Tung Kee Investment Limited Partnership
118 Grey Alder Ave
Richmond Hill, ON L4B 3P9

By electronic mail only <ty69300300@gmail.com>
<philip.wong@sowcapital.com.hk>

RE: 3143 19th Ave, Markham, Ontario (the "Property")
DX Development Management Revised Terms and Fee Proposal

Dear Philip,

I am submitting this amended fee proposal which is based on the proposal you had approved dated 19 July 2021 to reflect all the changes that has transpired.

In recognition of our effort, and to protect my interest as a creditor to the project, I would like to receive an agreement which outlines my positions as creditor against the other mortgagees on title. The agreement should refer to this detailed fee proposal and the amount to be registered will be for the full amount indicated in Item 2, Item 3, and Item 5. Item 4 will be deferred until one of the blocks on the east side of creek is sold.

A. Terms to reflect the revised method of compensation.

The following are the proposed revisions.

Item 1 – Revision of Appendixes
We propose the revised Appendix A-1 and A-2 dated 6 June 2022 to replace the ones in the previous contract dated 11 July 2019.

Appendix A-1: Payment Schedule, dated 6 June 2022
This revised schedule reflects the actual payment received to date, the outstanding amount as of May 2022 and the MZO bonus owed.

Appendix A-2: Project Dashboard of Fees Owed and Upcoming Fees, dated 6 June 2022.
The tables in the appendixes are as follows:
1. Unpaid Consultants - fees owed to consultants till date.
2. Consultant Fees Paid by DX - fees paid to consultants by DX which are to be reimbursed by Tung Kee.
3. Upcoming Consultant Fees.

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Please initial here as well as on the Appendix A-1 and A-2 to show acceptance.

Accepted by: ________________

Item 2 – Payment of Unpaid Fees owed to DX

- The unpaid fees owed as of May 2022 is $1,381,142.50 including HST (Refer to Appendix A-1). Interest calculated at rate of ~~24%~~ 10% per annum commencing 1 ~~July 2022~~ 1. Jan. 2023 will be charged for any unpaid fees.
- Starting July 2022, a fixed monthly rate of $57,912.50 including HST will be charged for services rendered by DX until such time when there is a change in the scope of work and fees approved by owner to either increase or decrease. Interest calculated at 24% per annum, commencing 30 days after the month end will be charged for late payment.
- To date, consultants' fees paid by DX, on behalf of Tung Kee stands at $32,191.89 including HST (refer to appendix A-2, table 2). The amount is to be reimbursed to DX as part of payment and is subject to the same interest payment for unpaid amounts.

This amount is subject to the provision of the Loan Agreement dated 6 June 2022 between DX Strategies (DX) and Tung Kee Investment Canada Limited (TKI).

Accepted by: ________________

Item 3 – MZO Bonus

The MZO Bonus would be $1,130,000 inclusive of HST. This is due 21 days after the closing sale of Block 5 (Part 4 and 5). Refer to Appendix A-1.

This amount is subject to the provision of the Loan Agreement between DX and TKI.

Accepted by: ________________

Item 4 – DX Incentive payment in recognition of payment delay for item 2 and 3, success fee to close land deal on Block 4 and 5

It is mutually agreed that the Incentive payment will be 3% of final cost of land upon closing and or $ 1,130,000 inclusive of H.S.T, whichever is higher in amount. This is due 21 days after closing sale of either Block 4 (Part 6 and 7) or Block 5 (Part 4 and 5) or both.

Accepted by: ________________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Item 5 –Unpaid fees owed to other consultants

Till date, the amount owed to consultants is $292,969.49 including HST (refer to Appendix A-2, table 1). Interest calculated at ~~24%~~ 10% per annum starting end of June 2022.

This amount is subject to the provision of the Loan Agreement between DX and TKI.

Accepted by: ________________

B. Architectural Service for MZO Block 1, 2, 3 and 4
CXT Architects Inc. to retain the right of first refusal as architect for the blocks noted with future investors and partners. If a larger and more specialized firm is required, CXT will perform work in joint venture with firms such as WZMH Architects or Kearns Mancini Architects Inc. of Toronto.

Accepted by:________________

Additional Terms

10%

1. The Client shall pay upon receipt of invoices on account of *DX Strategies Inc's* fee plus applicable taxes. An unpaid invoice shall bear interest calculated monthly at the rate of ~~24%~~ per annum, commencing 30 days after the date that *DX Strategies Inc.* submits the invoice.
2. If the project is terminated, the fee will be calculated up to the end of the month from the date on which we receive written instructions to stop work by the owner.
3. The fee does not include overseas travel expenses such as flights, accommodation, and meals. The cost will be drawn against an Expense Allowance to be pre-approved by the owner.

Appendices

A-1. Payment Schedule.
A-2. Project Dashboard of Fees Owed and Upcoming Fees

Yours very truly,

DX STRATEGIES INC.

Dan H.T. Teh Project Manager, Partner, LEED® AP

DX Strategies Inc.

If you agree with the statements in this letter, please sign below and return a copy to us for our file.

Reviewed by: ____________________________

Mr. Philip Wong
Managing Director
Tung Kee Investment Canada Ltd.

Date: 18-6-2022

Reviewed by: ____________________________

Mr. Tony Yung
Tung Kee Investment Canada Ltd.

Date: ____________________________

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-1: Payment Schedule

3143 19th Ave, Markham			Invoices	Fee Schedule		
Period		Stage Description	Invoice No.	Contract Amount	Contract Amt Incl HST	Total deferred Amount till date (Incl HST)
	Aug-19	Owner's Due Diligence	I-A1901	$ 20,000.00	$ 22,600.00	
	Sep-19		I-A1902	$ 20,000.00	$ 22,600.00	
Q4	Oct-19		I-A1903	$ 20,000.00	$ 22,600.00	
	Nov-19		~~I-A1904, I-A1905~~	$ 20,000.00	$ 22,600.00	
	Dec-19		I-B1009DX	$ 20,000.00	$ 22,600.00	
Q1	Jan-20		I-B1000DX	$ 19,911.50	$ 22,500.00	
	Feb-20			$ 19,911.50	$ 22,500.00	
	Mar-20	Pre-Secondary Plan	I-B1013DX	$ 30,000.00	$ 33,900.00	
Q2	Apr-20		I-B1017DX	$ 30,000.00	$ 33,900.00	
	May-20			$ 30,000.00	$ 33,900.00	
	Jun-20			$ 30,000.00	$ 33,900.00	
Q3	Jul-20			$ 30,000.00	$ 33,900.00	
	Aug-20	Master Plan Design Options and Coordination		$ 55,500.00	$ 62,715.00	
	Sep-20			$ 55,500.00	$ 62,715.00	
Q4	Oct-20			$ 55,500.00	$ 62,715.00	
	Nov-20			$ 55,500.00	$ 62,715.00	
	Dec-20			$ 55,500.00	$ 62,715.00	
Q1	Jan-21			$ 55,500.00	$ 62,715.00	
	Feb-21			$ 55,500.00	$ 62,715.00	
	Mar-21	Ministerial Zoning Order Architectural Fee not Included		$ 58,500.00	$ 66,105.00	
Q2	Apr-21			$ 58,500.00	$ 66,105.00	
	May-21			$ 58,500.00	$ 66,105.00	
	Jun-21	MZO Approval Process (Approved 27 Aug 21) Start of consent to sever		$ 45,000.00	$ 50,850.00	
Q3	Jul-21			$ 45,000.00	$ 50,850.00	
	Aug-21			$ 45,000.00	$ 50,850.00	
	Sep-21			$ 45,000.00	$ 50,850.00	$ 908,520.00
Q4	Oct-21	Consent to sever and block 5 due diligence		$ 58,500.00	$ 66,105.00	
	Nov-21			$ 58,500.00	$ 66,105.00	
	Dec-21			$ 45,000.00	$ 50,850.00	
Q1	Jan-22	Block 5 Site Plan coord		$ 51,250.00	$ 57,912.50	
	Feb-22			$ 51,250.00	$ 57,912.50	
	Mar-22	Secondary plan and Draft plan of subdivision for Block 1 and 2		$ 51,250.00	$ 57,912.50	
Q2	Apr-22			$ 51,250.00	$ 57,912.50	
	May-22			$ 51,250.00	$ 57,912.50	$ 472,622.50
	Jun-22					
Q3	Jul-22					
	Aug-22					
	Sep-22					
Unpaid fees				**$1,381,142.50**		
MZO Bonus (1 Million + HST)				$1,130,000.00		
Total Inc HST				**$2,511,142.50**		

Dated: 6 Jun 2022

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@cxtarchitects.com

DX Strategies Inc.

Appendix A-2: Project Dashboard of Fees Owed and Upcoming Fees

Table 1 **- Unpaid Consultants**

	Unpaid Consultants	
J19750 - One Markham	**$**	**89,318.69**
Beacon	$	24,270.22
Gunnell	$	16,591.79
Masongsong	$	34,849.20
MHBC	$	6,022.67
RPE	$	7,584.81
J21030 - Block 5	**$**	**181,050.80**
Fire cube	$	11,993.54
GHD	$	39,211.00
KMAI	$	13,620.00
LRI	$	3,991.72
Masongsong	$	48,590.00
MHBC	$	355.95
NAK	$	14,125.00
Quasar	$	49,163.59
J22020 - Block 1 & 2	**$**	**22,600.00**
Academy (Ryerson University)	$	22,600.00
Grand Total	**$**	**292,969.49**

Table 2 **- Consultant Fees paid by DX (Tungkee to reim**

	Fees paid by DX (Tungkee to reimburse)	
J19750 - One Markham	**$**	**19,818.39**
Alectra	$	1,300.00
Beacon	$	10,934.64
MHBC	$	5,666.95
Trademark	$	1,916.80
J21030 - Block 5	**$**	**12,373.50**
Transplan	$	7,797.00
NSP	$	4,576.50
Grand Total	**$**	**32,191.89**

Table 3 **- Upcoming Consultant Fees**

	Upcoming Fees (Incl HST)	
J21030 - Block 5		
Fire cube	$	38,856.46
GHD	$	47,026.08
Gunnell	$	51,076.00
KMAI	$	119,780.00
Masongsong	$	7,910.00
NAK	$	70,625.00
NSP	$	62,093.50
Quasar	$	35,586.41
Transplan	$	23,617.00
Wilson Well	$	16,950.00
Grand Total	**$**	**473,520.45**

Great Grand Total (Incl HST) $ **798,681.83**

Dated: 6 Jun 2022

362 Dupont Street, Toronto, ON M5R 1V9 CANADA T: 1.416.585.9950 E: dteh@dxtarchitects.com

This is **Exhibit "H"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

[redacted]

To: dteh <dteh@cxtarchitects.com>
Cc: Tim Wu <timothywu@sowcapital.com.hk>
Subject: Re: Contact information

Dan,

I will make sure all outstanding are paid from land sales.

PW

Sent from my phone

-------- Original message --------
From: dteh <dteh@cxtarchitects.com>
Date: Wed, 16 Nov 2022, 12:32 am
To: philip.wong@sowcapital.com.hk
Cc: Tim Wu <timothywu@sowcapital.com.hk>
Subject: Re: Contact information

> Philip,
> You are owed substantial sum.
> What do you belive the land is worth per acre if there is a foreclosure on the land?
>
> I am not sure we can get $1.5m per acre without the studio.

Dan

Sent from my Galaxy

-------- Original message --------
From: philip.wong@sowcapital.com.hk
Date: 2022-11-15 11:10 a.m. (GMT-05:00)
To: dteh <dteh@cxtarchitects.com>
Cc: Tim Wu <timothywu@sowcapital.com.hk>
Subject: Re: Contact information

Hi Dan,

TK owe me around Cad 11. 5m, among which 8.6m is loan plus interest, 1.8m are 3 years service fee for Tim n I and 1.1m are the service fee re financing.
I have not included any bonus or incentives on my part yet.
Currently my mortgage amount is only USD 5m and I want to increase it up to Cad 11.5m

I suggest that you go after me and register outstanding fee, consultant fee n bonus.

My incentive will go after you.

PW

Sent from my phone

-------- Original message --------
From: dteh <dteh@cxtarchitects.com>
Date: Tue, 15 Nov 2022, 6:50 pm
To: philip.wong@sowcapital.com.hk
Cc: Tim Wu <timothywu@sowcapital.com.hk>
Subject: Re: Contact information

> Hi Philip,
> I had a call with her yesterday to answer a few question. One of them is for her prepare your agreement.
>
> Her immediate comment was potential conflict of interest. One item that came up was -whose loan agreement will be registered ahead on title.
>
> I told her I would like to find out as early as possible and talking about it upfront is best. Easier if we can all agree on it ahead of time. My plan was to send you a draft by Thursday.
>
> I respectfully suggest that you allow me to go ahead based on following priority.
>
> 1. MZO bonus.

2. DX fees earned.
3. Consultants fee owed.

The other comment was that mime is a Promissory note that is registered on title for fees owed. Not a loan.
Your's is a Laon.

Third was name of TKI lawyer. Will it be David Tang?

I will get her to set up a call with you separetely asap. Best if we can come to our own agreement in term of sequence on title before the call as it will remove the largest conflict issue.

Dan

These two items are my largest unsecured exposure.
3. SOW interest up to MZO.
4 Block 3 and 4 incentives.

Your thoughts?

Dan.

Sent from my Galaxy

-------- Original message --------
From: philip.wong@sowcapital.com.hk
Date: 2022-11-15 3:42 a.m. (GMT-05:00)
To: dteh <dteh@cxtarchitects.com>
Cc: Tim Wu <timothywu@sowcapital.com.hk>
Subject: Re: Contact information

Dan,

Can you put me into contact w your lawyer as we need her service as well?

PW

Sent from my phone

-------- Original message --------
From: dteh <dteh@cxtarchitects.com>
Date: Fri, 11 Nov 2022, 6:32 am

To: philip.wong@sowcapital.com.hk
Subject: FW: RE: Contact information

Philip,
Comments from my lawyer on why we need to look at the trust agreement.
Please comment.

Dan

Sent from my Galaxy

-------- Original message --------
From: Jennie Lin <jennie@jplinlaw.com>
Date: 2022-11-10 5:15 p.m. (GMT-05:00)
To: dteh@cxtarchitects.com, Shannon Chen <shannon@jplinlaw.com>
Subject: RE: Contact information

If this is an LP, it's likely that the GP company is holding the property in trust for the LP, so it's likely the partnership agreement that we are looking for.

The GP can only act in accordance with the terms of the partnership agreement, and that is why we would request the agreement – we want to confirm that the GP is acting within its authority, and that it can bind the LP. Essentially, the LP is the true borrower and beneficial owner of the property.

How you'd like to deal with this structure is up to you.

(Jennie) Pei-Chun Lin

PLEASE NOTE OUR NEW ADDRESS BELOW

JP Lin Law Professional Corporation

Barrister & Solicitor

#706 - 3601 Highway 7 East

Markham, Ontario

L3R 0M3

Tel: (905) 604-8188

Fax: (905) 604-9188

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: November 10, 2022 5:07 PM
To: Shannon Chen <shannon@jplinlaw.com>; Jennie Lin <jennie@jplinlaw.com>
Subject: RE: Contact information

Hi Shannon,

I have requested for the trust agreement between GP and LP. Owner of land may not want to disclose this private arrangement between his various companies. If they do not share this agreement, can we proceed to list both companies in the agreement. To be on safe side.

I am not aware that the land is held by a Trust company. This may be recently changed.

Regards,

Dan Teh

OAA, MRAIC, LEED® AP

Principal

CXT Architects Inc.

362 Dupont Street

Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700

Cell: 416.729.1818

www.cxtarchitects.com

From: Shannon Chen <shannon@jplinlaw.com>
Sent: Thursday, November 10, 2022 4:36 PM
To: Jennie Lin <jennie@jplinlaw.com>; dteh@cxtarchitects.com
Subject: RE: Contact information

Hi Dan,

We are reaching out to see if you have an answer to Jennie's email below before we can proceed further.

Should you have any concerns, please do not hesitate to contact us.

Shannon Chen

Law Clerk

PLEASE NOTE OUR NEW ADDRESS BELOW

JP Lin Law Professional Corporation

Barrister & Solicitor

706-3601 Highway 7 East

Markham, ON L3R 0M3

Tel: 905-604-8188 ext. 202

Fax: 1-888-855-8117

From: Jennie Lin <jennie@jplinlaw.com>
Sent: November 3, 2022 12:35 PM
To: dteh@cxtarchitects.com
Cc: Shannon Chen <shannon@jplinlaw.com>
Subject: RE: Contact information

Hi Dan,

When we investigated title, we discovered that one of the property PINs was transferred to Tung Kee Investment Canada Ltd. as trustee for a trust in favour of Tung Kee Investment Limited Partnership.

That means that the LP is the beneficial owner of the property and needs to consent to the charge – we also need a copy of the trust agreement.

Did you know about this, and will this be a problem?

Thanks,

Jennie

(Jennie) Pei-Chun Lin

PLEASE NOTE OUR NEW ADDRESS BELOW

JP Lin Law Professional Corporation

Barrister & Solicitor

#706 - 3601 Highway 7 East

Markham, Ontario

L3R 0M3

Tel: (905) 604-8188

Fax: (905) 604-9188

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: November 2, 2022 5:36 PM
To: Jennie Lin <jennie@jplinlaw.com>
Cc: Shannon Chen <shannon@jplinlaw.com>
Subject: RE: Contact information

Hello Jennie,

Retainer cheque was dropped off with your assistant this afternoon.

Regards,

Dan Teh

OAA, MRAIC, LEED® AP

Principal

CXT Architects Inc.

362 Dupont Street

Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700

Cell: 416.729.1818

www.cxtarchitects.com

From: Jennie Lin <jennie@jplinlaw.com>
Sent: Monday, October 31, 2022 4:14 PM
To: dteh@cxtarchitects.com
Cc: Shannon Chen <shannon@jplinlaw.com>
Subject: RE: Contact information

Hello Dan,

Thanks for this. We will review shortly and let you know what other documents we'll need. We're open from 9:30 to 5:30. Feel free to drop by any time, with 2 pieces of your IDs.

Thank you!

Jennie

(Jennie) Pei-Chun Lin

PLEASE NOTE OUR NEW ADDRESS BELOW

JP Lin Law Professional Corporation

Barrister & Solicitor

#706 - 3601 Highway 7 East

Markham, Ontario

L3R 0M3

Tel: (905) 604-8188

Fax: (905) 604-9188

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: October 31, 2022 11:38 AM
To: Jennie Lin <jennie@jplinlaw.com>
Cc: Shannon Chen <shannon@jplinlaw.com>
Subject: RE: Contact information

Jennie,

Attached is a draft I had prepared to get you started. I will deliver the $500 retainer to you tomorrow morning to your office. Your office is quite close to me. What time are you open?

Regards,

Dan Teh

OAA, MRAIC, LEED® AP

Principal

CXT Architects Inc.

362 Dupont Street

Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700

Cell: 416.729.1818

www.cxtarchitects.com

From: Jennie Lin <jennie@jplinlaw.com>
Sent: Friday, October 28, 2022 5:42 PM
To: dteh@cxtarchitects.com
Cc: Shannon Chen <shannon@jplinlaw.com>
Subject: Contact information

Hello Dan,

It was nice speaking with you. As discussed, I think my firm can help to secure your consulting fees via a registered mortgage. Please provide the details of the loan amounts, payment schedule, interest rates, as well as the legal name of the borrower/client plus the name of the main principal (controlling shareholder) of the corporation.

Please also provide the name of the lender company you will wish to use (unless you are registering in your own name, in which case please provide your legal name)

As discussed, once you have e-transferred a deposit in the amount of $500 to this email address, I can start the documents. When you have the borrower's counsel information, please provide that also.

Thanks,
Jennie

(Jennie) Pei-Chun Lin

PLEASE NOTE OUR NEW ADDRESS BELOW

JP Lin Law Professional Corporation

Barrister & Solicitor

#706 - 3601 Highway 7 East

Markham, Ontario

L3R 0M3

Tel: (905) 604-8188

Fax: (905) 604-9188

This is **Exhibit "I"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

PROMISSORY NOTE

Principal: $4,510,156.63

The undersigned, Tung Kee Investment Canada Ltd. as General Partner of and on behalf of Tung Kee Investment Limited Partnership (the "**Debtor**") and Man Tung Yung, being an individual residing in Richmond Hill, ON (the “**Guarantor**”), hereby promises to pay to, or to the order of DX Strategies Inc. (the "**Creditor**") the principal amount of **FOUR MILLION FIVE HUNDRED TEN THOUSAND ONE HUNDRED FIFTY SIX DOLLARS AND SIXTY THREE CENTS ($4,510,156.63)** in Canadian funds (the "**Principal**") together with interest thereon all in accordance with and subject to the following provisions:

1. **Advance of funds**

The Debtor acknowledges total funds of $4,510,156.63 owed to the Creditor.

Subsequent advance(s) may be made to the Debtor as the Creditor may see fit, and for which the Debtor shall execute separate signed acknowledgement(s) of receipt. The foregoing, plus any subsequent advances, shall form the “**Loan**”.

2. **Purpose of the Loan**

To secure Fees and Bonus Owed to the Creditor Below:

Tranche A:

1) Bonus earned from successful MZO in the sum of $1,130,000.00 inclusive of HST; and

2) Bonus earned from sale of land listed as Part 4 and 5 (Block 5) or Part 6 and 7 (Block 3 and 4) in the sum of $1,130,000.00 inclusive of HST;

Tranche B:

3) Outstanding fees owed to DX Strategies for Project Management services up to end of May 22, 2022 in the sum of $1,381,142.50 inclusive of HST; and

4) Fees owed to DX Strategies Inc. for on-going Project Management services between June and December, 2027 amounted to $405,387.50 inclusive of HST.

Tranche C:

5) Outstanding fees owed to consultants up to end of September 2022 in the sum of $431,434.74 refer to Dashboard dated September 20, 2022, in the sum of $431,434.74 + 32,191.89 = $436,626.63 inclusive of HST.

3. **Payments and Maturity Date**

The Debtor shall pay principal and interest only payments as follows:
Tranche A:

1) Due on May 15, 2023: $1,130,000.00 + 84,750.00 (calculated at an interest rate of 15% per annum) = $1,214,750.00; and

2) Due on November 15, 2023: $1,130,000.00 +169,500.00 (calculated at an interest rate of 15% per annum) = $1,299,500.00.

Tranche B: Due on February 15, 2023: $1,786,530.00 + 44,663.25 (calculated at an interest rate of 10% per annum) = $1,831,193.25.

Tranche C: Due on May 15, 2023: $463,626.63 + 23,181.33 (calculated at an interest rate of 10% per annum) = $486,807.96.

4. **<u>Security</u>**

The Debtor and Guarantor agree to execute the following additional security as soon as possible:

(a) A charge against the property at 3143 Nineteenth Avenue, Markham, ON L6C 1L8 being PINs 03055-0377, 03055-0379 and 03055-0380;
(b) General Assignment of Rents against the property at 3143 Nineteenth Avenue, Markham, ON L6C 1L8 being PINs 03055-0377, 03055-0379 and 03055-0380;
(c) Guarantee Agreement from Guarantor and on Charge;
(d) General Security Agreement from the Debtor secured by financing statement under the *Personal Property Security Act*;
(e) Any other documents as may be required by the Creditor to secure the debts owed hereunder.

5. **<u>Prepayment Privilege</u>**

Tranche A:

1). Six (6) months, closed for the principal sum of $1,130,000.00; and
2). Twelve (12) months, closed for the sum of $1,130,000.00, with an option to renew every six (6) months.

Tranche B: Three (3) months, closed for the principal sum of $1,786,530.00.

Tranche C: Six (6) months, closed for the principal sum of $463,626.63.

The Debtor when not in default hereunder, shall have the right at any time, and from time to time, to prepay in whole or in part upon 30 days written notice and upon full payment and all accrued interest and other amounts owing to the Creditor, and upon an additional payment equal to one (1) month interest.

6. **Renewal**

This loan does not automatically renew on its expiry. However, at the expiry of the maturity date, the Creditor (at the Creditor's sole option) may grant the Debtor a term of renewal or extension of this loan on such terms, as the Debtor and Creditor shall agree upon in writing.

7. **Place of Payment**

Payments of interest hereunder shall be made to the Creditor directly or at such other location as the Debtor may be notified in writing by the Creditor.

8. **Interpretation**

(a) The division of this Note into sections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Note.

(b) Words importing the singular number only shall include the plural and vice versa. Words importing the use of any gender shall include all genders.

(c) All dollar amounts expressed herein are expressed in terms of Canadian dollars.

(d) Whenever any payment or any action is required to be made or taken hereunder on a day which is a Saturday, a Sunday or a day upon which the banks are not generally open for business in Toronto, Ontario (such a day is referred to herein as a "**Non-Business Day**" and every day which is not a Non-Business Day is referred to herein as a "**Business Day**"), such payment shall be made and such actions shall be taken, as the case may be, on or before the requisite time on the next Business Day.

(e) This Note shall be governed by and construed and interpreted exclusively in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9. **Default and Acceleration**

The balance of the principal amount then outstanding shall, at the option of the Creditor, immediately become due and payable in each and every one of the following events:

(a) the Debtor fails to make any payment of principal or interest secured hereby when due or payable, whether by acceleration or otherwise, and such non-payment is not cured within two (2) Business Days after that such payment of principal or interest was due or payable;

(b) the Debtor contravenes, or fails to fulfil, in any manner whatsoever any of the covenants or undertakings given by the Debtor to the Creditor with respect to the repayment of the indebtedness hereunder;

(c) the Debtor enters into any business, directly or indirectly, except for those businesses in which the Debtor is engaged on the date of this Note or that are reasonably related thereto;

(d) the bankruptcy or insolvency of the Debtor; the filing against the Debtor of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor; the appointment of a receiver or trustee for the Debtor or for any assets of the Debtor; or the institution by or against the Debtor of any other type of insolvency proceeding under the *Bankruptcy and Insolvency Act* (Canada) or otherwise;

(e) the institution by or against the Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of the Debtor; or

(f) if an execution, sequestration, extent or other process of any court becomes enforceable against the Debtor or if a distress or analogous process is levied upon the assets of the Debtor or any part thereof;

(g) in the event that the Debtor sells, conveys or transfers title to the Property hereby charged to a purchaser, grantee or transferee, then all monies secured hereunder shall forthwith become due and payable;

(h) the Debtor fails to make any tax payment or remit source deductions to CRA when required by *Income Tax Act.*

10. **Due on Sale**

In the event the Chargor sells, conveys or transfers title to the Property hereby charged to a purchaser, grantee or transferee, then all monies secured hereunder shall forthwith become due and payable.

11. **Waiver**

The Debtor and the Guarantor hereby waive demand and presentment for payment, notice of non-payment, protest and notice of protest of this Note.

12. **Rescission of Payments**

If at any time any payment made by the Debtor under this Note is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Debtor or otherwise, the Debtor's obligation to make such payment shall be reinstated as though such payment had not been made.

13. **Further Assurances**

The Debtor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such other acts, agreements, instruments and assurances in law as the Creditor or the Creditor's counsel shall reasonably require for the better accomplishing and effectuating of the intentions and provisions of this Note.

14. **Electronic Delivery**

Delivery of an executed counterpart of a signature page to this Note by facsimile or in electronic (such as "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Note.

FOR VALUE RECEIVED

Executed this day of November, 2022.

Tung Kee Investment Canada Ltd. as General Partner of and on behalf of Tung Kee Investment Limited Partnership

Per: ________________________________
Man Tung Yung, President

I have authority to bind the corporation

_________________________ Witness

____________________________ Man Tung Yung, as Guarantor

Promisory Note by Jennie- 3143 Nineteenth Avenue, Markham

dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Wed 2023-11-08 4:41 PM
To:Justin Chan <jchan@jtcprofcorp.com>

1 attachments (96 KB)
Promissory Note.pdf;

[redacted]

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: Thursday, November 24, 2022 9:35 AM
To: 'philip.wong@sowcapital.com.hk' <philip.wong@sowcapital.com.hk>
Subject: FW: 3143 Nineteenth Avenue, Markham

Philip,
Attached is draft copy of the Promissory Note that the lawyer will be registering on title. The amount includes HST. I have assumed that David Tang will be the lawyer representing the Tung Kee. Jennie is fine in representing you as long as you and I agree on priority of position. I agree with you that you will take the position ahead of me based on the loan you have extended (about 11 million) and I will take the position ahead of your bonuses and incentives.

Please send me an email to confirm the amount from your side and I will ask for her to arrange a Zoom call with you next. This has taken much longer as I have been distracted by Block 3 and 4.

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street

Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

This is **Exhibit "J"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

2:00 436 62%

Philip Wong
10:55 a.m.

6:10 a.m.

Hi David, since I have assigned 14% of SOW Ontario mortgage amount to Miller Thomson, SOW Ontario has to increase additional 10m to replace the 14%, cover my additional loan to Tung Kee and also cover Dan Teh plus consultants. Can you send me the appropriate documents so that I can handle execution. Let me know if there is any problem.

6:10 a.m.

Dan, Sent u the above copies Fyi will chase

Message

This is **Exhibit "K"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

2:00 438 63%

Philip Wong
10:55 a.m.

January 28, 2023

To: Davi... and 1 other

SOW Ontario
Mon, 9 Jan 2023, 10:19 pm

Dear David,

Please provide me document for signing so that an additional Cad 10m can be registered as mortgage to cover the 14% assigned to Miller Thomson, my additional loan provided by SOW related company.

6:09 a.m.

72 kB

Message

This is **Exhibit "L"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

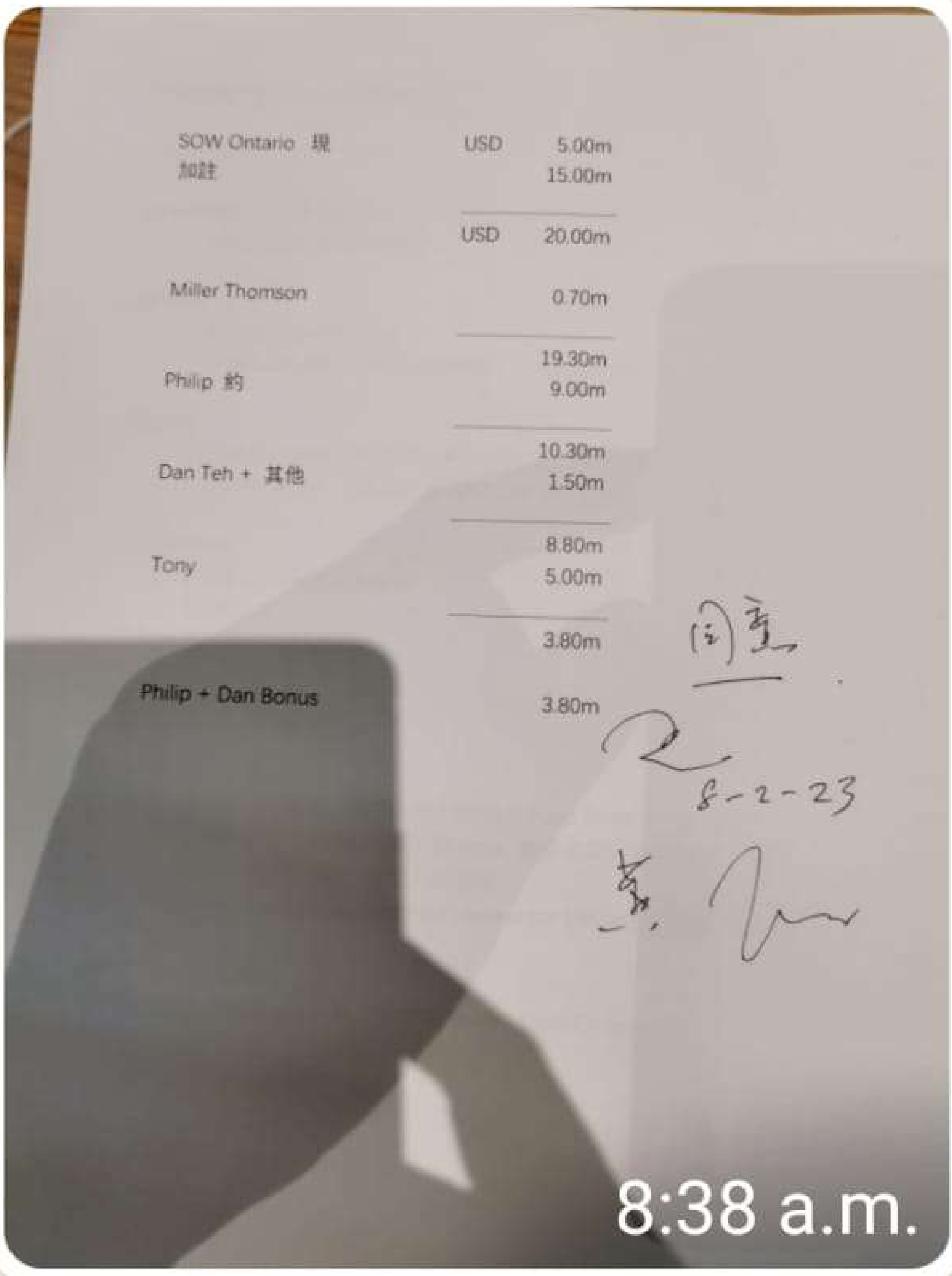
Justin Chan

4:26 53%

Philip Wong
4:24 p.m.

Ok 7:53 p.m.

February 8, 2023



SOW Ontario 現 加註	USD	5.00m
		15.00m
	USD	20.00m
Miller Thomson		0.70m
		19.30m
Philip 約		9.00m
		10.30m
Dan Teh + 其他		1.50m
		8.80m
Tony		5.00m
		3.80m
Philip + Dan Bonus		3.80m

同意

8-2-23

8:38 a.m.

My fees to get MZO approved should come ahead of Tony 10.3m. This is months of work that crate value for all

Message

SOW Ontario 現	USD	5.00m
加註		15.00m
	USD	20.00m
Miller Thomson		0.70m
		19.30m
Philip 約		9.00m
		10.30m
Dan Teh + 其他		1.50m
		8.80m
Tony		5.00m
		3.80m
Philip + Dan Bonus		3.80m

同意

8-2-23

This is **Exhibit "M"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

Justin Chan

Email to Philip seeking clarification on their calculations as shown in new mortgage'

dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Mon 2023-11-06 2:51 PM
To:Justin Chan <jchan@jtcprofcorp.com>

1 attachments (206 KB)
20230214_164216.pdf;

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON   M5R 1V9   Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: Wednesday, February 15, 2023 9:30 PM
To: 'philip.wong@sowcapital.com.hk' <philip.wong@sowcapital.com.hk>
Subject: Emailing 20230214_164216.pdf

Philip,
I would like to review the schedule of payment priority that you signed with Tony. I am not clear how you both arrived at the numbers.

As we had discussed, the amount owed to consultants is best paid up outside the agreement as they have not agreed to coming under this loan agreement. They reserve the right to lien if not paid and this can hold up the sale of land. We need to be clear on when this will be paid. If it has to be in the loan agreement, the work should enjoy the same right as Miller Thomson who is also a consultant.

I have the following sum owed that was agreed and signed by both you and Tony.

1. DX fees earned up to May 2022, as consultants to be paid outside of loan agreement, is **$1,381,142.50** inclusive of HST. If it is under Loan agreement, it should have same priority as Miler Thomson.
2. MZO Bonus for **$1,130,000** inclusive of HST. This should be paid up ahead of Tony's new debt.
3. Recognition of payment delay and success to close Block 3 and 4 for **$1,130,000** inclusive of HST. This will be at end.
4. Amount owed to consultants up to 20 September 2022, some paid by DX on behalf of Tung Kee, to keep them working. $ 425,557.10 +$42,837.90=**$468,394.10 excluding HST.**
5. Commission fee from sale land due to our effort should be 1.3% as we worked hard to secure the buyers, not real estate agent. We split 50/50.

I hope to work with you to arrive at an acceptable agreement. It should be noted that Leeli's offer has a clause to make sure work done is paid in full to consutants. I am certain someone had mentioned our lack of payment. Perhaps we make payment to consultants a condition of all closing to protect consultants.

Let's find a quite hour over the next few days to discuss this.

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: philip.wong@sowcapital.com.hk <philip.wong@sowcapital.com.hk>
Sent: Wednesday, February 15, 2023 5:29 AM
To: dteh <dteh@cxtarchitects.com>
Cc: timothy wu <timothywu@sowcapital.com.hk>
Subject: Emailing 20230214_164216.pdf

Hi Dan,

Can you check if your lawyer can register this for SOW Ontario?

PW

Sent from my phone

This is **Exhibit "N"** referred to

In the Affidavit of Dan Teh

Sworn before me this

11th Day of November, 2023

____

Justin Chan

CHARGE/MORTGAGE AMENDMENT AGREEMENT

THIS **CHARGE/MORTGAGE AMENDMENT AGREEMENT** is effective this 1st day of February, 2023.

BETWEEN:

SOW CAPITAL ONTARIO LIMITED

(collectively referred to as the "Chargee/Mortgagee")

OF THE FIRST PART

TUNG KEE INVESTMENT CANADA LTD.

(collectively referred to as the "Chargor/Mortgagor")

OF THE SECOND PART

WHEREAS by a Charge/Mortgage of Land registered in the Land Registry Office for the Land Titles Division of York on the 26th day of March, 2020 as Instrument Number YR3083072, the Chargor/Mortgagor, did charge the land bearing the PIN Numbers: 03055-0002 LT and described as 3143 19th Avenue, Markham, Ontario in favour of the Chargee/Mortgagee and Jiayi International Investments Ltd. and which Charge was secured by a Notice of Assignment of Rent – General registered as Instrument No. YR3083073, as assigned by Instrument Nos. YR3247258 on May 7, 2021, and which Charge/Mortgage was transferred to the Chargee by Transfers of Charge receipted as Instrument No. YR3247257 on May 7, 2021, Instrument No. YR3300382 on August 18, 2021, and Instrument No. YR3373218 on January 27, 2022 (the "**Previous Charge**").

AND WHEREAS the Previous Charge was registered in order to secure payment of the principal sum of Five Million Dollars ($5,000,000.00) USD with interest as set out upon the terms therein mentioned;

AND WHEREAS the charged lands described in the Previous Charge were split into two parcels by a transfer registered as Instrument YR3412266, being PINs 03055-0376(LT) and 03055-0379(LT);

AND WHEREAS by inadvertance, the Previous Charge was discharged from the whole of PIN 03055-0376(LT) instead of a partial discharge of Part Lot 30 Concession 4 designated as Part 3, Plan 65R39839, City of Markham, which lands were conveyed to the Corporation of the City of Markham pursuant to a Transfer registered as Instrument No. YR3463030 following which a further Charge/Mortgage of Land was registered in the Land Registry Office for the Land Titles

65606539.3

Division of York on the 30th day of August, 2022 as Instrument Number YR3470731 (the "**Supplementary Charge**") over PIN 03055-0376(LT) as supplementary security for the Previous Charge;

AND WHEREAS PIN 03055-0376 (LT) was further split into three parcels, being PINs 03055-0380 (LT), 03055-0378 (LT) and 03055-0377(LT), so the Supplementary Charge remains registered against 03055-0380 (LT) and 03055-0379 (LT), PIN 03055-0378(LT) having been conveyed to the Corporation of the City of Markham;

AND WHEREAS the Previous Charge remains registered on PIN 03055-0377(LT), continues to be valid, enforceable and in full force and effect as from the date of initial registration, and the obligations under the Supplementary Charge are equivalent to the obligations under the Previous Charge and any payment made under the Supplementary Charge shall also be considered a payment under the Previous Charge.

AND WHEREAS the Chargor/Mortgagor and the Chargee/Mortgagee wish to amend the Previous Charge and the Supplementary Charge (the "Charges"), as set out herein;

NOW THIS AGREEMENT WITNESSETH THAT, in consideration of the mutual covenants herein contained, the sum of TWO ($2.00) Dollars paid by each party to the other and other good and valuable consideration (the receipt, adequacy and sufficiency of which is hereby acknowledged), the parties hereto do hereby covenant and agree as follows:

1. The parties hereto acknowledge and declare the foregoing recitals are true and correct both in substance and in fact.

2. All of the parties, namely the Chargee/Mortgagee and Chargor/Mortgagor, have agreed the principal amount secured under both Charges shall be increased by Fifteen Million Dollars ($15,000,000.00) USD to the amount of Twenty Million Dollars ($20,000,000.00) USD.

3. The Charges, as amended herein, are hereby deemed to be a charge in the prescribed form for the purposes of the Land Registration Reform Act ("LRRA"), and, without limiting the foregoing, is deemed to include the implied covenants by the Chargor/Mortgagor, for the Chargor/Mortgagor and the Chargor's/Mortgagor's successors, with the Chargee's/Mortgagee's and the Chargee's/Mortgagee's successors and assigns, as set out in section 7 of the LRRA.

4. In all other respects the parties confirm that the terms, covenants and conditions in the Charges remain unchanged, and in full force and effect. The Charges constituted hereby, as amended, are and shall for all purposes be deemed to be a consolidation of the Charges. While the amended Charges shall supersede the original Previous Charge and Supplementary Charge upon submission hereof for electronic registration, the herein

Agreement merely amends the original Previous Charge and the original Supplementary Charge and does not constitute or result in a novation or rescission of the original Previous Charge or Supplementary Charge, or any security or any other document, agreement or instrument issued in connection therewith. Time is of the essence.

5. This Agreement shall be deemed to have been made and shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada, as the case may be.

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

7. This Agreement may be executed in several counterparts and when executed by all parties hereto, each counterpart so executed shall be deemed to be an original and all such counterparts together shall constitute the whole Agreement herein and shall be one and the same instrument. In addition, the parties agree that a facsimile or electronically signed copy of this Agreement shall be acceptable in lieu of an original.

8. This Agreement and the terms hereof shall constitute the entire agreement between the parties hereto with respect to all the matters herein and this Agreement shall not be amended, qualified or altered except by a memorandum in writing signed by all of the parties hereto and any amendment, alteration or qualification hereof shall be null and void and shall not be binding upon any party who has not given his consent in writing as aforesaid.

9. Each of the parties hereto hereby covenants and agrees to execute and deliver such further and other papers, agreements, assurances, undertakings, acknowledgments or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to satisfy the spirit of this Agreement and to give full force and effect to this Agreement and every part hereof.

[Signature page follows]

IN WITNESS WHEREOF the corporate parties have hereto caused to be affixed the signatures of their proper signing officers duly authorized in that behalf as of the date first above written.

SOW CAPITAL ONTARIO LIMITED

Per: ___________________________
Name:
Title:
I have authority to bind the corporation.

TUNG KEE INVESTMENT CANADA LTD.

Per: ___________________________
Name:
Title:
I have authority to bind the corporation.

FW: Promissory Note Feb 28-23.pdf

dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Wed 2023-11-08 4:50 PM
To:Justin Chan <jchan@jtcprofcorp.com>

1 attachments (167 KB)
Promissory Note Feb 28-23.pdf;

[redacted]

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

www.cxtarchitects.com

From: dteh@cxtarchitects.com <dteh@cxtarchitects.com>
Sent: Monday, March 6, 2023 8:15 AM
To: 'philip.wong@sowcapital.com.hk' <philip.wong@sowcapital.com.hk>
Cc: 'Yvonne Lai' <yvonnelai18@hotmail.com>; 'ty69300300@gmail.com' <ty69300300@gmail.com>
Subject: Promissory Note Feb 28-23.pdf

Philip,
My lawyer's advise is to get owner's permission for me to register the PN. She does not recommend going under SOW as it will have lots of potential for unwanted conflict. I will wait for a week for sign-back. After that date, I will assume that Tony is not agreeable and I will have to protect my interest through the Construction Lien Act mechanism. I have been very patient being the fist on the job to help Tony create significant value for the land and watching the many lenders, who does not add value, dwindle the value away in interest charges.

Regards,

Dan Teh
OAA, MRAIC, LEED® AP
Principal

CXT Architects Inc.
362 Dupont Street
Toronto, ON M5R 1V9 Canada

Office: 416.585.9950 ext 700
Cell: 416.729.1818

M

CONSTRUCTION LIEN LEGAL BRIEF

Capitalized terms herein are the same as defined in the cover letter dated November 10, 2023.

<u>ISSUES</u>

1. DX Strategies improved the Property and meets the definition as set out in s. 1 of the *CLA*.

2. The construction lien registered by DX Strategies should have priority over certain other mortgagees where it cannot be proven that moneys advanced to Tung Kee were specifically not for the purpose of the improvement of the land or to pay for trades and professionals to that end to the extent of the statutory holdback amount of 10% (s. 22(1) of the *CLA*).

3. Sow was effectively served a written notice of lien as early as August 9, 2019 and late as June 6, 2022 as per s. 78(6)(b) of the *CLA*.

4. Moneys that were advanced while Phillip Wong was a director of Tung Kee cannot rank ahead of creditors such as DX Strategies because a conflict of interest existed at the time.

<u>GENERAL PRINCIPLES OF LAW AND ARGUMENT</u>

<u>*Section 1 of the CLA – Definition of "Improvement"*</u>

5. On January 22, 2019, Cushman & Wakefield appraised the Property (the "**First Cushman Report**") to be worth $130,060,000 and at page 34 of that report, it is reported that the Property is, at the time of the report, mostly zoned "Agriculture One (A1)" and partly zoned "Open Space One (O1)", according to By-Law 304-87 as amended. The determination of planning and zoning was beyond the scope of this appraisal.[1]

6. DX Strategies first formalized its work efforts on the Property on July 5, 2019 in an executed proposal letter agreed to by the Respondents (the "**Proposal**") which was addressed to Tony Yung of Tung Kee, c/o Sow.[2]

---

[1] Responding Motion Record at page 34 of Tab A.
[2] Affidavit of Dan Teh, sworn October 5, 2023 (the "**October Teh Affidavit**") at para. 3 and Exhibit "A".

7. DX Strategies did work to significantly improve the value of the land from November 11, 2020 to March 7, 2023 for which it invoiced a total of $4,653,028.11 for project management, architectural services and other consultants' fees that remains unpaid (the "**Lien Amount**").[3]

8. On July 19, 2021, Dan Teh ("**Teh**") of DX Strategies sent a letter to Phillip Wong (who is also a director of Sow) ("**Wong**"), in his then capacity as Managing Director and General Partner of the defendant Tung Kee Investment Canada Ltd., outlining the significant efforts that were put into the MZO Vision Document that was submitted to the City of Markham on May 15, 2021.[4]

9. On August 9, 2021, Teh updated his July 19, 2021 letter to Wong who, on August 15, 2021, executed revised terms that were agreed to in the Proposal and acknowledged the significant work that DX Strategies accomplished with respect to the subject land, especially with respect to the MZO application that resulted in a highly successful city council voting of 12-1 in support of it.[5]

10. Through the approved MZO, the Property was rezoned from Agricultural and Private park to Business Employment with special provision for Film Studio, hotel suites with full kitchen to cater to out of town crews, restaurants and retail etc.[6]

11. In March of 2022, DX Strategies was instrumental in obtaining the commitment from Alectra to provide 20MW power to meet the required power demand load, which included Teh's direct involvement to secure the City of Markham's commitment.[7]

12. This included the installation of new hydro poles along 19th Avenue inside of sensitive land and this work can only be done within a very narrow window each year to minimize disruption to wildlife habitat.[8]

[3] October Teh Affidavit at para. 4.
[4] October Teh Affidavit at para. 5 and Exhibit "B".
[5] October Teh Affidavit at para. 6-7 and Exhibit "C".
[6] October Teh Affidavit at para. 8.
[7] October Teh Affidavit at para. 9.
[8] October Teh Affidavit at para. 10.

13. The result of these efforts means that at any point in time, when the studio is ready to be built, this will ensure that the studio's design and permit approval can be obtained within one year as planned, as all necessary zoning and permissions have now been secured.[9]

14. Without Teh's direct involvement, the City of Markham would not have been given the necessary documents and applications to secure this commitment, especially during the height of the COVID-19 travel restrictions that kept Wong and studio executives from travelling into Canada.[10]

15. DX Strategies also helped obtained special permission to allow the buffer land adjacent to protected green land to be kept in private ownership, valuable for user such as studio requiring security and privacy.[11]

16. The ultimate owner of the land will benefit from the work done: the land can be developed with the planned buildings occupied in 2 years. This reduces the normal process/building time which will require the city to commence Secondary Plan and servicing studies which will likely take 5-8 years.[12]

17. On June 6, 2022, Teh sent a letter to Wong in his capacity as Managing Director of Tung Kee Investment Canada Ltd., via Wong's email at phillip.wong@sowcapital.com.hk, requesting to amend the fee proposal that was approved in his July 19, 2021 letter to reflect changes and successes, including the MZO Bonus that became owing at that time.[13]

18. The second paragraph of Teh's June 6, 2022 letter included a recognition of effort and an agreement to protect the interests of DX Strategies as a creditor ranking ahead of other mortgagees on title (the "**Sow Protection**").

19. All of the above letters were either addressed directly to Sow or were sent to Wong's Sow email at phillip.wong@sowcapital.com.hk, especially Teh's June 6, 2022 letter.

---

[9] October Teh Affidavit at para. 11.
[10] October Teh Affidavit at para. 12.
[11] October Teh Affidavit at para. 13.
[12] October Teh Affidavit at para. 14.
[13] October Teh Affidavit at para. 15.

20. The Report to Development Services Committee dated July 8, 2021, with specific lot area and gross floor area were based largely on the master plan design as shown on DX Strategies' drawings at pages 16 and 17 of that Report in Figures 7 and 8 respectively.[14]

21. On September 27, 2023, Cushman & Wakefield appraised the Property (the "**Second Cushman Report**") to be worth $141,880,000 and at s. 4.3.4 identified Ontario Regulation 599/21 and enumerated the benefits through commercial uses and permitted uses that came therefrom.[15]

22. On October 4, 2023, The Globe and Mail published an article (the "**Globe Article**") about the zoning of the Property reporting on how the zoning for commercial uses increases the value of the land and used my drawing as the artwork for the piece.[16]

23. On July 17, 2023, Wagner Andrews Kovacs prepared an appraisal of the Property (the "**Wagner Report**") for $62,350,000 that included Ontario Regulation 599/21 that was filed with the Registrar on August 27, 2021 in its appraisal.[17]

24. On July 25, 2023, Avison Young appraised the Property (the "**Avison Report**") for $63,200,000 and recognized the value of the improvements that DX Strategies made to the Property: "Parts of the lands zoned "Business Park" will allow for a wide range of employment uses within these areas."[18]

25. The Avison Report also included Ontario Regulation 599/21 that was filed with the Registrar on August 27, 2021 in its appraisal.[19]

26. Section 1 of the *CLA* defines improvement as including any works on the land that is essential to the normal or intended use of the land.

[14] October Teh Affidavit at para. 16.
[15] Responding Motion Record at page 33 of Tab B.
[16] October Teh Affidavit at para. 17.
[17] Motion Record of Sow Capital at page 161.
[18] Motion Record of Sow Capital at page 94.
[19] Motion Record of Sow Capital at page 95

27. The intended use of the land is for the building of a film studio for which the MZO is required to re-zone the land from Agriculture and Open Space for which is only reserved for farm land and green space.

28. Furthermore, It is clear that general public opinion and all parties agree that there has been value added through the successful MZO application:

(a) The Globe Article stated, “What’s clear is the land is worth more now that it’s zoned for commercial uses than it was before the MZO was approved. Indeed, in the marketing materials for the sale Romspen suggested the MZO allows almost any commercial use”;[20]

(b) Romspen uses the re-zoning through the MZO as a selling point in its Marketing Brochures;[21]

(c) Tung Kee relies on the Second Cushman Report that includes the successful MZO application and that is $14,820,000 higher than the First Cushman Report that dates before the MZO (the “**Cushman Difference**”); and

(d) Sow relies on the Avison Report and the Wagner Report.

29. The majority of the Cushman Difference, if not the entire amount, is attributable solely to DX Strategies’ efforts and work with respect to the MZO application.

30. If it were not for the successful MZO application, this land would still be sitting with an agricultural zoning that would require another party like DX Strategies to complete similar services and to make similar representations to the City of Markham.

31. The Cushman Difference is an accurate representation that the value of the improvement made by DX Strategies is, in the very least, equivalent to the Lien Amount, being only approximately a third of the Cushman Difference.

---

[20] October Teh Affidavit, at page 3/4 of Exhibit “F”.

[21] Motion Record of the Applicant, Exhibit “B”.

32. Furthermore, both the Proposal and the MZO pre-date the Romspen Loan.

33. DX Strategies has held an interest in being paid since before Romspen held any interest or charge over the Property and therefore deserves to have its construction lien properly deemed as preceding the Romspen Loan.

34. The operation of Romspen being first ranking ahead of all other mortgagees would logically mean that no other mortgagee could argue that it had a mortgage that precedes when the DX Strategies lien first arose, i.e. when DX first started work on the Property in 2019.

35. DX Strategies improved the Property and began doing so before any of the mortgagees in these proceedings advanced any moneys.

Section 22(1) – Basic Holdback

36. Section 22(1) of the Construction Lien Act stipulates that "Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court)."

37. Tung Kee did not hold back any amounts as the owner and payer for DX's improvement to the Property, to satisfy the statutory 10 per cent holdback (the "Holdback Amount"); or if it did, there is no evidence of it.

38. DX takes the position that the Holdback Amount ranks ahead of all mortgagees in these proceedings, unless a mortgagee's advances of money have been specifically restricted from being used for the improvement of the Property, because DX's lien first arose latest in or around July 5, 2019.

39. At the time that the July 5, 2019 letter was sent, Dan Teh was in the process of forming a Development Management company which would handle the One Markham project exclusively.

DX was incorporated less than three months after this on September 12, 2019. It was created to handle this project exclusively due to the amount of time required, specifically Dan Teh's time to perform non-traditional architectural related services. This contract was signed back on December 4, 2020 and by this time DX had been in existence for over 15 months.

Section 78(6)(b) – General Priority Against Subsequent Mortgages

40. Section 78(1) of the *Construction Lien Act*, R.S.O. 1990 c. C.30 (the "***CLA***") states:

> Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises.

41. Section 78(6) of the *CLA* sets out an exception where a construction lien claimant will have priority over a subsequent mortgage where prior to the time when the advance was made, the person making the advance received written notice of a lien.

42. Section 1 of the *CLA* defines "written notice of a lien" as including any written notice given by a person having a lien that identifies the payer, identifies the premises and that states the amount that the person has not been paid and is owed to the person by the payer.

43. The August 9, 2021 letter that was executed on August 15, 2021[22] (the "**First Lien Notice**") contains the following elements to satisfy being deemed a notice of lien under s. 78(6) of the *CLA*:

(a) Identifies the payer;

(b) Identifies the Property;

(c) States in Appendix A-2 the amounts that DX has not been paid and is owed by Tung Kee:

[22] Cover letter, Attachment "C1".

(i) Unpaid Fees of $1,055,420 (inclusive of HST),

(ii) MZO Bonus of $1,300,000 (inclusive of HST) and

(iii) Post MZO/Block 1,2,3 Bonus of $1,412,500.

44. The June 6, 2022 letter that was executed on June 18, 2022[23] (the "**Second Lien Notice**") contains the following elements to satisfy being deemed a notice of lien under s. 78(6) of the *CLA*:

(a) Identifies the payer;

(b) Identifies the Property;

(c) States in Appendix A-2 the amounts that DX has not been paid and is owed by Tung Kee:

(i) Unpaid Fees of $1,055,420 (inclusive of HST),

(ii) MZO Bonus of $1,300,000 (inclusive of HST) and

(iii) Post MZO/Block 1,2,3 Bonus of $1,412,500; and

(d) The Sow Protection: "I would like to receive an agreement which outlines my positions as creditor against the other mortgagees on title. The agreement should refer to this detailed fee proposal and the amount to be registered will be for the full amount indicated in Item 2, Item 3 and Item 5. Item 4 will be deferred until one of the blocks on the east side of the creek is sold."

45. Both the First Lien Notice and the Second Lien Notice qualify as a written notice of lien in the total amount of $3,597,920 for unpaid fees and deferred payments with respect to both the MZO Bonus and the MZO/Block 1,2,3 Bonus.

---

[23] Cover letter, Attachment "D".

46. Furthermore, the Sow Protection given on June 6, 2022 predates the registration on title of Sow's last-ranking mortgage on August 30, 2022.

47. On June 18, 2022, the Sow Protection was signed by both Tung Kee and the director of Sow, Wong, including the initialing of the first page that contained the Sow Protection and the last two pages that contain the updated payment schedule, unpaid fees and MZO Bonus.

48. It is unclear when the advance of the original $5,000,000 USD was made by Sow to Tung Kee; however, if it predates August 9, 2021, Sow will have priority over DX Strategies for the first $5,000,000 USD with respect to whatever amount claimed by Sow as fifth mortgagee.

49. In the absence of proof of when the first $5,000,000 USD was advanced to Tung Kee by Sow, the date of the advance should be deemed the date of the registration of the charge, i.e. August 30, 2022, in which case, both the First Lien Notice and the Second Lien Notice predate the advance and DX Strategies would rank ahead of Sow for the first $5,000,000 USD with respect to Sow as fifth mortgagee.

50. As of November 15, 2022, Phillip Wong of Sow admitted that there was only some $8.6 million CAD was owing with respect to the loan to Tung Kee and that the rest of the 11.5 million CAD at that time was outstanding service fees. Clearly, at this point in time, which is after the First Lien Notice and the Second Lien Notice, only the $5 million USD can be evidenced as being "advanced" to Tung Kee.[24]

51. The outstanding fees were never "advanced" to Tung Kee and should only receive priority over DX Strategies' construction lien if it were legitimately registered as the same and where the priorities of the same class of construction liens were applied as per s. 80 of the *CLA*.

52. The Charge/Mortgage Amendment Agreement executed on February 1, 2023, and registered as a notice on April 5, 2023 (with registration number YR3538687), specifically states

[24] November Teh Affidavit, at para. 20.

that the charges with respect to Sow "shall be increased by Fifteen Million Dollars ($15,000,000) USD to the amount of Twenty Million Dollars ($20,000,000.00) USD."[25]

53. Outstanding fees to Sow are not "advances" of moneys and the proper registration of such amounts should have been through a construction lien like DX Strategies as a creditor whose services improved the Property.

Conflict of Interest

54. As of November 2, 2023, Phillip Wong was a director Sow since December 24, 2019.[26]

55. As of November 2, 2023, Phillip Wong was a director of Tung Kee since August 30, 2019.[27]

56. Section 1 of the *CLA* defines "owner" as including any person having an interest in a premises at whose request and with whose privity or consent an improvement is made to the premises but does not include a home buyer.

57. Phillip Wong had an interest in the property, as he had been advancing money to it personally through Sow.[28]

58. Phillip Wong also has signing authority to instruct consultants like Dan Teh with respect to the Property and this is evidenced by his former position as Managing Director and by his signatures on all of the contracts.[29]

59. Phillip admitted that he personally advanced to and is personally owed the money by Tung Kee.[30]

---

[25] Attachment "N" to Cover Letter.
[26] November Teh Affidavit, at para. 6.
[27] November Teh Affidavit, at para. 5.
[28]November Teh Affidavit, at para. 27, Exhibit "L".
[29] Attachments "A", "B", "C1" and "D" to the cover letter.
[30] November Teh Affidavit, at paras. 22 and 24; Exhibits "J", "K" and "L".

60. Phillip lent the money to Tung Kee as a director and should not be able to re-characterize that personal loan as one from an apparently quasi-arms-length corporate entity like Sow. The only relevant amount for this argument relates to the original $5 million USD that is registered for Sow because, as shown above, all other amounts were either never "advanced" or if they were, they came after the written notice of lien.

61. Therefore, the $5,000,000 USD charge that Sow Registered on March 26, 2020, being registered while Phillip was a director of both Sow and of Tung Kee, should rank behind DX Strategies because it is a personal loan from a director that is being disguised as an arms-length loan from Sow (the "**Directorship Conflict**").

Conclusion

62. Not only has DX Strategies' first lien arose before the Romspen Loan, DX Strategies has also improved the Property by at least the amount of the Lien Amount.

63. With respect to the statutory 10% holdback, DX has priority over any mortgagees in these proceedings whose loan/mortgage agreements/commitments do not include any clause that restricts moneys advanced from being used to improve the Property.

64. Any sale proceeds of the Property should first pay into court and to the credit of the action bearing Court File No. CV-23-2703-0000 with the Newmarket Registry the Holdback Amount of $465,302.81 with respect to the statutory 10% holdback.

65. DX Strategies has priority over any amounts that were advanced by Sow up to the remaining 90% of the Lien Amount ($4,187,715.30) because of the Directorship Conflict.

66. In the alternative, where the Directorship Conflict does not apply to the distribution of sale proceeds of the Property and where Sow shows that it advanced part or all of the $5,000,000 USD before the First Lien Notice or the Second Lien Notice, DX Strategies has priority over any amounts that were advanced by Sow after the $5,000,000 USD originally registered by Sow by

operation of the written notice of lien to the extent that those advances are properly evidenced as actual transfers of moneys and not just registrations of debt such as Sow's outstanding invoices.

November 11, 2023

Justin T. Chan
Lawyer for the Lien Claimant, DX Strategies Inc.

LEGISLATION

***Construction Lien Act*, R.S.O. 1990, c. C.30**

Improvements

"**improvement**" means, in respect of any land,

(a) any alteration, addition or repair to the land,

(b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or

(c) the complete or partial demolition or removal of any building, structure or works on the land; ("améliorations")

Owner

"**owner**" means any person, including the Crown, having an interest in a premises at whose request and,

(a) upon whose credit, or

(b) on whose behalf, or

(c) with whose privity or consent, or

(d) for whose direct benefit,

an improvement is made to the premises but does not include a home buyer; ("propriétaire")

Holdbacks
Basic holdback

22. (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired as provided in Part V, or have been satisfied, discharged or provided for under section 44 (payment into court). R.S.O. 1990, c. C.30, s. 22 (1).

Priority over mortgages, etc.

78. (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises. R.S.O. 1990, c. C.30, s. 78 (1).

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered. R.S.O. 1990, c. C.30, s. 78 (2).

Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

(a) the actual value of the premises at the time when the first lien arose; and

(b) the total of all amounts that prior to that time were,

(i) advanced in the case of a mortgage, and

(ii) advanced or secured in the case of a conveyance or other agreement. R.S.O. 1990, c. C.30, s. 78 (3).

Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (4).

Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV. R.S.O. 1990, c. C.30, s. 78 (5).

General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien. R.S.O. 1990, c. C.30, s. 78 (6).

Advances to trustee under Part IX

(7) Despite anything in this Act, where an amount is advanced to a trustee appointed under Part IX as a result of the exercise of any powers conferred upon the trustee under that Part,

(a) the interest in the premises acquired by the person making the advance takes priority, to the extent of the advance, over every lien existing at the date of the trustee's appointment; and

(b) the amount received is not subject to any lien existing at the date of the trustee's appointment. R.S.O. 1990, c. C.30, s. 78 (7).

Where postponement

(8) Despite subsections (4) and (6), where a preserved or perfected lien is postponed in favour of the interest of some other person in the premises, that person shall enjoy priority in accordance with the postponement over,

(a) the postponed lien; and

(b) where an advance is made, any unpreserved lien in respect of which no written notice has been received by the person in whose favour the postponement is made at the time of the advance,

but nothing in this subsection affects the priority of the liens under subsections (2) and (5). R.S.O. 1990, c. C.30, s. 78 (8).

Saving

(9) Subsections (2) and (5) do not apply in respect of a mortgage that was registered prior to the 2nd day of April, 1983. R.S.O. 1990, c. C.30, s. 78 (9).

Financial guarantee bond

(10) A purchaser who takes title from a mortgagee takes title to the premises free of the priority of the liens created by subsections (2) and (5) where,

(a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance; or

(b) a letter of credit or a guarantee from a bank listed in Schedule I or II to the *Bank Act* (Canada),

in a form prescribed is registered on the title to the premises, and, upon registration, the security of the bond, letter of crdit or the guarantee takes the place of the priority created by those subsections, and persons who have proved liens have a right of action against the surety on the bond or guarantee or the issuer of the letter of credit. R.S.O. 1990, c. C.30, s. 78 (10); 1997, c. 19, s. 30.

Home buyer's mortgage

(11) Subsections (2) and (5) do not apply to a mortgage given or assumed by a home buyer. R.S.O. 1990, c. C.30, s. 78 (11).

N

CHARGE/MORTGAGE AMENDMENT AGREEMENT

THIS **CHARGE/MORTGAGE AMENDMENT AGREEMENT** is effective this 1st day of February, 2023.

BETWEEN:

SOW CAPITAL ONTARIO LIMITED

(collectively referred to as the "Chargee/Mortgagee")

OF THE FIRST PART

TUNG KEE INVESTMENT CANADA LTD.

(collectively referred to as the "Chargor/Mortgagor")

OF THE SECOND PART

WHEREAS by a Charge/Mortgage of Land registered in the Land Registry Office for the Land Titles Division of York on the 26th day of March, 2020 as Instrument Number YR3083072, the Chargor/Mortgagor, did charge the land bearing the PIN Numbers: 03055-0002 LT and described as 3143 19th Avenue, Markham, Ontario in favour of the Chargee/Mortgagee and Jiayi International Investments Ltd. and which Charge was secured by a Notice of Assignment of Rent – General registered as Instrument No. YR3083073, as assigned by Instrument Nos. YR3247258 on May 7, 2021, and which Charge/Mortgage was transferred to the Chargee by Transfers of Charge receipted as Instrument No. YR3247257 on May 7, 2021, Instrument No. YR3300382 on August 18, 2021, and Instrument No. YR3373218 on January 27, 2022 (the "**Previous Charge**").

AND WHEREAS the Previous Charge was registered in order to secure payment of the principal sum of Five Million Dollars ($5,000,000.00) USD with interest as set out upon the terms therein mentioned;

AND WHEREAS the charged lands described in the Previous Charge were split into two parcels by a transfer registered as Instrument YR3412266, being PINs 03055-0376(LT) and 03055-0379(LT);

AND WHEREAS by inadvertance, the Previous Charge was discharged from the whole of PIN 03055-0376(LT) instead of a partial discharge of Part Lot 30 Concession 4 designated as Part 3, Plan 65R39839, City of Markham, which lands were conveyed to the Corporation of the City of Markham pursuant to a Transfer registered as Instrument No. YR3463030 following which a further Charge/Mortgage of Land was registered in the Land Registry Office for the Land Titles

Division of York on the 30th day of August, 2022 as Instrument Number YR3470731 (the "**Supplementary Charge**") over PIN 03055-0376(LT) as supplementary security for the Previous Charge;

AND WHEREAS PIN 03055-0376 (LT) was further split into three parcels, being PINs 03055-0380 (LT), 03055-0378 (LT) and 03055-0377(LT), so the Supplementary Charge remains registered against 03055-0380 (LT) and 03055-0379 (LT), PIN 03055-0378(LT) having been conveyed to the Corporation of the City of Markham;

AND WHEREAS the Previous Charge remains registered on PIN 03055-0377(LT), continues to be valid, enforceable and in full force and effect as from the date of initial registration, and the obligations under the Supplementary Charge are equivalent to the obligations under the Previous Charge and any payment made under the Supplementary Charge shall also be considered a payment under the Previous Charge.

AND WHEREAS the Chargor/Mortgagor and the Chargee/Mortgagee wish to amend the Previous Charge and the Supplementary Charge (the "Charges"), as set out herein;

NOW THIS AGREEMENT WITNESSETH THAT, in consideration of the mutual covenants herein contained, the sum of TWO ($2.00) Dollars paid by each party to the other and other good and valuable consideration (the receipt, adequacy and sufficiency of which is hereby acknowledged), the parties hereto do hereby covenant and agree as follows:

1. The parties hereto acknowledge and declare the foregoing recitals are true and correct both in substance and in fact.

2. All of the parties, namely the Chargee/Mortgagee and Chargor/Mortgagor, have agreed the principal amount secured under both Charges shall be increased by Fifteen Million Dollars ($15,000,000.00) USD to the amount of Twenty Million Dollars ($20,000,000.00) USD.

3. The Charges, as amended herein, are hereby deemed to be a charge in the prescribed form for the purposes of the Land Registration Reform Act ("LRRA"), and, without limiting the foregoing, is deemed to include the implied covenants by the Chargor/Mortgagor, for the Chargor/Mortgagor and the Chargor's/Mortgagor's successors, with the Chargee's/Mortgagee's and the Chargee's/Mortgagee's successors and assigns, as set out in section 7 of the LRRA.

4. In all other respects the parties confirm that the terms, covenants and conditions in the Charges remain unchanged, and in full force and effect. The Charges constituted hereby, as amended, are and shall for all purposes be deemed to be a consolidation of the Charges. While the amended Charges shall supersede the original Previous Charge and Supplementary Charge upon submission hereof for electronic registration, the herein

Agreement merely amends the original Previous Charge and the original Supplementary Charge and does not constitute or result in a novation or rescission of the original Previous Charge or Supplementary Charge, or any security or any other document, agreement or instrument issued in connection therewith. Time is of the essence.

5. This Agreement shall be deemed to have been made and shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada, as the case may be.

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

7. This Agreement may be executed in several counterparts and when executed by all parties hereto, each counterpart so executed shall be deemed to be an original and all such counterparts together shall constitute the whole Agreement herein and shall be one and the same instrument. In addition, the parties agree that a facsimile or electronically signed copy of this Agreement shall be acceptable in lieu of an original.

8. This Agreement and the terms hereof shall constitute the entire agreement between the parties hereto with respect to all the matters herein and this Agreement shall not be amended, qualified or altered except by a memorandum in writing signed by all of the parties hereto and any amendment, alteration or qualification hereof shall be null and void and shall not be binding upon any party who has not given his consent in writing as aforesaid.

9. Each of the parties hereto hereby covenants and agrees to execute and deliver such further and other papers, agreements, assurances, undertakings, acknowledgments or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to satisfy the spirit of this Agreement and to give full force and effect to this Agreement and every part hereof.

[Signature page follows]

IN WITNESS WHEREOF the corporate parties have hereto caused to be affixed the signatures of their proper signing officers duly authorized in that behalf as of the date first above written.

SOW CAPITAL ONTARIO LIMITED

Per: ____________________
Name:
Title:
I have authority to bind the corporation.

TUNG KEE INVESTMENT CANADA LTD.

Per: ____________________
Name:
Title:
I have authority to bind the corporation.

65606539.3

Properties

PIN	03055 - 0380 LT
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
Address	MARKHAM
PIN	03055 - 0379 LT
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
Address	MARKHAM

Consideration

Consideration $2.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name	TUNG KEE INVESTMENT CANADA LTD.
Address for Service	118 Grey Alder Avenue Richmond Hill, Ontario L4B 3P9

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Party To(s) — *Capacity* — *Share*

Name	SOW CAPITAL ONTARIO LIMITED
Address for Service	650 - 999 West Broadway Vancouver, BC V5Z 1K3

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, YR3470731 registered on 2022/08/30 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)YR3470731, YR3470732, YR3505559 and YR3513701

Signed By

Michele Da Costa	900-3 Robert Speck Pkwy Mississauga L4Z 2G5	acting for Applicant(s)	Signed	2023 04 05

Tel 905-276-9111

Fax 905-276-2298

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

KEYSER MASON BALL LLP	900-3 Robert Speck Pkwy Mississauga L4Z 2G5	2023 04 05

Tel 905-276-9111

Fax 905-276-2298

Fees/Taxes/Payment

Statutory Registration Fee $69.00

Fees/Taxes/Payment

Total Paid	$69.00

File Number

Applicant Client File Number :	26042-2 - GB

Appendix “R”

LRO # 65 **Construction Lien** **Receipted as YR3541410** on 2023 04 14 at 16:45

The applicant(s) hereby applies to the Land Registrar. yyyy mm dd

Properties

PIN	03055 - 0379 LT
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
Address	MARKHAM
PIN	03055 - 0380 LT
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
Address	MARKHAM
PIN	03055 - 0377 LT
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
Address	MARKHAM

Consideration

Consideration $4,653,028.11

Claimant(s)

Name	DX STRATEGIES INC.
Address for Service	362 Dupont Street, Toronto, ON M5R 1V9

I am the lien claimant and the facts stated in the claim for lien are true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner Tung Kee Investment Canada Ltd., 118 Grey Alder Avenue, Richmond Hill, ON L4B 3P9 Name and address of person to whom lien claimant supplied services or materials TUNG KEE INVESTMENT CANADA INC. of 118 Grey Alder Ave, Richmond Hill, Ontario, Canada, L4B 3P9 Time within which services or materials were supplied from 2020/11/07 to 2022/03/07 Short description of services or materials that have been supplied Project management and architectural services Contract price or subcontract price $5,497,562.43 Amount claimed as owing in respect of services or materials that have been supplied $4,653,028.11

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Pei-Chun Lin	#706 - 3601 Highway 7 East Markham L3R 0M3	acting for Applicant(s)	Signed	2023 04 14

Tel 905-604-8188

Fax 905-604-9188

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

JP LIN LAW PROFESSIONAL CORPORATION	#706 - 3601 Highway 7 East Markham L3R 0M3	2023 04 14

Tel 905-604-8188

Fax 905-604-9188

Fees/Taxes/Payment

Statutory Registration Fee	$69.00
Total Paid	$69.00

File Number

Claimant Client File Number : 22-4816

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

In the Matter of the Construction Lien Act, R.S.O. 1990, c. C.30

B E T W E E N:

DX STRATEGIES INC.

Plaintiff

-and-

TUNG KEE INVESTMENT CANADA LTD.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU

WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date .... Issued by...
Local registrar

Address of court office: 50 Eagle Street West
Newmarket, Ontario
L3Y 6B1

TO: **TUNG KEE INVESTMENT CANADA LTD.**
118 Grey Alder Ave.
Richmond Hill, Ontario
L4B 3P9

Defendant

CLAIM

1. The plaintiff claim against the defendant is as follows:

    a. Damages as against the defendant in the sum of $4,610,190.21 for unpaid invoices;

    b. Pre-judgment and post-judgment interest pursuant to the Courts of Justice Act, R.S.O. 1990, c.C.43, as amended;

    c. The plaintiff's costs of this action on the partial indemnity scale; and

    d. Such further and other relief as this Honourable Court may deem just and the circumstances require.

The Parties

2. The plaintiff DX Strategies Inc. ("**DX Strategies**") is a consulting company specializing in project management of large scale construction.

3. The land known as 3143 19th Avenue, Markham, Ontario, L6C 1L8, with PIN 03055-0379 (the "**Property**") was transferred to the defendant Tung Kee Investment Canada Ltd. ("**Tung Kee**") on March 22, 2022.

4. SOW Capital Ontario Limited ("**SOW Capital**") holds a mortgage in fifth position on the Property.

5. CXT Architects Inc. ("**CXT Architects**") is an architectural company based in Toronto, Ontario that initiated a proposal letter to SOW Capital regarding the project that forms the subject matter of this litigation and that is further detailed below.

6. DX Strategies was incorporated provincially in the Province of Ontario on September 12, 2019 to appease the principal of Tung Kee, Tony Tung ("**Tony**"), to show that there was a separation of the scope of any work from Patrick T.Y. Chan, a principal of CXT Architects.

7. CXT Architects is a subcontractor under DX Strategies for a material times and purposes.

8. Romspen Investment Corporation ("**Romspen**") is a secured creditor intending to enforce its security on the Property and has commenced Power of Sale Proceedings against Tung Kee.

Background

9. On July 5, 2019, CXT Architects sent a letter to SOW Capital proposing the provision of development management services and local representation of the group of owners of the Property (the "**Services**").

10. This July 5, 2019 letter outlined the Project Team, a Project Update, Assumptions, Scope of Services and Management Fees (including a Timeline and Payment Schedule).

11. On July 11, 2019, CXT Architects sent a similar letter to the July 5, 2019 letter to SOW Capital updating the Timeline and Payment Schedule.

12. On July 19, 2021, DX Strategies sent a letter to Tung Kee that briefly outlined the successful efforts that DX Strategies had expended into the Property up until that point and that detailed a revision to the payment schedule, replacing the Payment Schedule set out in the July 11, 2019 letter, to more accurately and fairly reflect the type of efforts that would be necessary moving forward with respect to the Property.

13. On August 9, 2021, DX Strategies sent a further letter with the same terms to reflect the revised method of compensation as the July 19, 2021 letter, except this time outlining the successful city council vote of 12-1 in support of the application with respect to the Property that was essentially the fruit of the sole labour of DX Strategies and its subcontractors, especially CXT Architects for its design work.

14. At this point, Tung Kee was struggling to pay invoices from DX Strategies as they came due; however, DX Strategies wanted to work with Tung Kee to ensure that the project with respect to the Property would be completed as promised, which includes constructing a major film studio in City of Markham, by Tung Kee Investment Canada to City of Markham's council who were very supportive of the development as apparent in their vote of support. Significant goodwill would have been lost if the project halted at this stage.

15. Accordingly, the August 9, 2021 letter specifically set out five revisions to compensation:

    a. A revised Appendix to replace the July 19, 2021 one to better reflect the actual payment received up until August 9, 2021;

    b. Payment of unpaid fees;

c. MZO Bonus of the Property to reflect the efforts of DX Strategies in securing a successful zoning change of the land from farming land to industrial usage to be paid upon successful sale of Block 5;

d. Post MZO Bonus with respect to Blocks 1, 2 and 3 of the Property to reflect the efforts of DX Strategies in securing a successful zoning change of the land from farming land to industrial usage; and

e. A residential zoning bonus with respect to Blocks 1, 2 and 3 (the "**Residential Zoning Bonus**") to address the housing demand within walkable distant to the film studio.

16. On August 15, 2021, Tung Kee agreed to and executed the terms of the August 9, 2021 letter (the "**Agreement**").

17. On June 6, 2022, DX Strategies sent a letter to Tung Kee to further revise the terms of compensation in recognition of DX Strategies' continued effort in the Property and also to protect DX Strategies' interest in the Property as a creditor (the "**Revised Terms**").

18. On June 18, 2022, Tung Kee agreed to, and executed the Revised Terms.

19. As of April 10, 2023, Tung Kee has only paid $844,534.32 toward fees that were invoiced for work done by DX Strategies and its subcontractors and has fallen behind on payments according to the Revised Terms.

20. On April 10, 2023, DX Strategies invoiced Tung Kee for services rendered under the Agreement in Invoice No. I-B2016DX (the "**Invoice**") for $4,610,190.21, broken down into:

a. DX Project Management Fees for Jun 2020 to Mar 2023 (the "**Project Management Fees**");

b. MZO Bonus (the "**MZO Bonus**");

c. Fees owed to consultants (the "**Consultant Fees**"); and

d. DX incentive payment in recognition of payment delay, success fee in selling either Block 3 and 4 OR Block 5 (the "**Incentive Payment**").

21. Previously unpaid invoices prior to the Invoice amount to $42,837.90:

a. 13 Feb 2022 I-B2002DX $1,300.00

b. 23 Feb 2022 I-B2001DX $1,916.80

c. 26 May 2022 I-B2008DX $4,576.50

d. 27 Sep 2022 I-B2013DX $10,646.01

e. 17 Mar 2023 I-B2005DX $10,934.64

f. 22 Mar 2023 I-B2006DX $7,797.00

g. 31 Mar 2023 I-B2007DX $5,666.95

22. The Project Management Fees due and owing are based on amounts agreed to and accordingly set out in Appendix A-1 to the Revised Terms and on other services rendered by DX Strategies with respect to the Property up to March 31, 2023.

23. The value of the services and work done by DX Strategies and its subcontractors was always recognized in every letter sent from DX Strategies to Tung Kee and were never disputed.

24. On April 8, 2023, DX Strategies was made aware of Romspen's Power of Sale proceedings and this prompted DX Strategies to inquire about who is owed what with respect to the Property.

25. On April 10, 2023, Kelvin Ng of SOW Capital, sent an email to DX Strategies attaching a "revised Outstanding Liability table" that detailed generally who is owed what with respect to the Property and in this table, it is shown that "Development Consultants Fees" are estimated at $4,650,000.

26. On April 14, 2023, DX Strategies sent a letter to Tung Kee to amend the Revised Terms, amending the terms of payment for the MZO Bonus and the Incentive Payment (the "**Amendment**").

27. Shortly after that, in a phone call between DX Strategies and Tung Kee, Tung Kee expressed its refusal to execute the Amendment.

28. DX Strategies ceased providing services to Tung Kee with respect to the Property on March 7, 2023 due to Tung Kee's growing financial problems.

29. On or around March 31, 2023, DX Strategies terminated the Agreement due to non-payment of the Invoice.

30. On May 9, 2023, Dan Teh, on behalf of DX Strategies, spoke with Tony regarding Tung Kee's intention to pursue different legal remedies with respect to the Property against Element, the film studio with respect to Block 5 of the Property, and Romspen (the "**Tung Kee Claims**").

31. On May 10, 2023, DX Strategies confirmed in an email that it would support the Tung Kee Claims and also that on the May 9, 2023 phone, Tony specifically requested for the issuance of the Invoice.

32. DX Strategies May 10, 2023 email further clarified that DX Strategies was in the position of a consultant whose work has significantly improved the value of the Property with Tung Kee as owner benefiting and not as a lender to Tung Kee.

33. On May 13, 2023, DX Strategies provided a breakdown of the Invoice to Tung Kee at the request of Tung Kee.

34. On May 18, 2023, Tung Kee acknowledged the Invoice and specifically requested that the Invoice be broken into four different invoices.

35. Per conversations between DX Strategies and Tung Kee, this was to help them break down the amounts that relate to the film studio that was to be built on Block 5 of the Property and the option, in the future, for the film studio to acquire Blocks 3 and 4 of the Property.

36. The Residential Zoning Bonus never became due because of the Power of Sale started by Romspen that halted any further opportunity to add value to the land through further planning and development.

37. On May 22, 2023, Tung Kee requested a breakdown of only one of the four newly broken down invoices (Invoice I-B2017DX).

38. On May 23, 2023, DX Strategies gave Tung Kee a breakdown of Invoice I-B2017DX as requested.

39. On May 26, 2023, Tung Kee requested that the breakdown of Invoice I-B2017DX be directly included in the invoice instead of it being in an attachment thereto.

40. On May 30, 2023, Tung Kee stated that the reason for the breakdown to be included in Invoice I-B2017DX was to deal with Element (referred to therein as "Studio").

41. On June 1, 2023, DX Strategies provided Tung Kee with the updated Invoice I-B2017DX that included the breakdown as requested by Tung Kee on May 22, 2023.

42. Tung Kee never denied or disputed any of the invoices sent to them by DX Strategies.

43. Tung Kee always acknowledged and accepted all invoices sent to them by DX Strategies.

44. The plaintiff DX Strategies Inc. claims as against the defendant Tung Kee Investments Canada Ltd. damages for unpaid invoices in the amount of $4,653,028.11 with respect to the Agreement as amended by the Revised Terms.

45. The plaintiff asks that this action be tried in Toronto, Ontario.

June 16, 2021

JUSTIN T. CHAN PROFESSIONAL CORPORATION
Barrister and Solicitor
390 Bay Street, Suite 300
Toronto, Ontario
M5H 2Y2

Justin Chan
LSO No.: 63970M

telephone: (416) 867-2565
facsimile: (416) 867-2566

Lawyer for the plaintiff

Court File No.:

DX STRATEGIES INC. – Plaintiff – **v.** **TUNG KEE INVESTMENT CANADA LTD.** – Defendant –

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT NEWMARKET)

STATEMENT OF CLAIM

JUSTIN T. CHAN PROFESSIONAL CORPORATION
Barrister and Solicitor
390 Bay Street, Suite 300
Toronto, Ontario
M5H 2Y2

JUSTIN T. CHAN
LSO No.: 63970M

Telephone: (416) 867-2565
Facsimile: (416) 867-2566

LAWYER FOR THE PLAINTIFF

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

In the Matter of the Construction Lien Act, R.S.O. 1990, c. C.30

B E T W E E N:

DX STRATEGIES INC.

Plaintiff

-and-

TUNG KEE INVESTMENT CANADA LTD.

Defendant

CERTIFICATE OF ACTION

UNDER SECTION 36 OF THE ACT

I certify that an action has been commenced in the Superior Court of Justice under the Construction Lien Act between the above named parties in respect of the premises described in Schedule A to this certificate, and relating to the claim for lien bearing the following registration number: YR3541410.

Date: _June 16, 2023__

Issued by: ___________________________
Local Registrar

Address of Court Office:
50 Eagle Street West
Newmarket, Ontario
L3Y 6B1

Court File No.:

DX STRATEGIES INC. – Plaintiff – **v.** **TUNG KEE INVESTMENT CANADA LTD.** – Defendant –

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT NEWMARKET)

CERTIFICATE OF ACTION

JUSTIN T. CHAN PROFESSIONAL CORPORATION
Barrister and Solicitor
390 Bay Street, Suite 300
Toronto, Ontario
M5H 2Y2

JUSTIN T. CHAN
LSO No.: 63970M

Telephone: (416) 867-2565
Facsimile: (416) 867-2566

LAWYERS FOR THE PLAINTIFF

Appendix “S”

Blaney McMurtry LLP
Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
T 416-593-1221
W Blaney.com

Chad Kopach
D: 416-593-2985 F: 416-594-5095
ckopach@blaney.com

November 24, 2023

BY EMAIL

Justin T. Chan
390 Bay Street, Suite 300
Toronto, ON M5H 2Y2

Dear Mr. Chan:

Re: Romspen v Tung Kee - DX Strategies Inc. Lien and Priority Claim

This email is further to your letter dated November 11, 2023 (the "**November 11 Letter**", attached at **Tab 1**) and the enclosures thereto, including the affidavit of Dan Teh sworn November 11, 2023 (the "**Teh Affidavit**", **Tab 2**), and the "Construction Lien Legal Brief" dated November 11, 2023 (**Tab 3**). It is also further to your email dated November 17, 2023, which enclosed (a) the claim for lien (the "**Claim for Lien**", **Tab 4**) and (b) certificate of action (the "**Certificate of Action**", **Tab 5**) of your client, DX Strategies Inc. ("**DX**"), both of which were registered on title to the properties bearing PINs 03055-0379, 03055-0380 and 03055-0377 (collectively, the "**Property**"), along with (c) DX's statement of claim issued June 16, 2023 (the "**Statement of Claim**", **Tab 6**).

The purpose of your correspondence, as per your November 11 Letter, was to provide "documentation proving quantum, timeliness of supply, and confirmation of the services/materials supplied by DX are lienable pursuant to the terms of the *Construction Lien Act* [sic]". Your correspondence also purports to provide the basis for your client's priority claim over the first-ranking mortgage of Romspen Investment Corporation ("**Romspen**"), and over the fifth-ranking mortgage of SOW Capital Ontario Ltd. ("**SOW**").

There are significant concerns with many facets of DX's claim, and this letter sets out the Receiver's analysis of the material you have provided in support thereof.

Summary of the Claim and the Receiver's Conclusion

DX asserts that it completed its contract (the "**DX Contract**") with the Property owner Tung Kee Investment Canada Inc. ("**Tung Kee**"). The Claim for Lien indicates that the last date of supply by DX was March 7, 2022, but the document was not registered (and the lien not purportedly preserved) until April 14, 2023. The lien was purportedly perfected upon the issuance of the Statement of Claim and registration of the Certificate of Action on June 16, 2023.

DX is seeking priority over Romspen's first-ranking mortgage in the event it was a building mortgage. DX is seeking priority over SOW's fifth-ranking mortgage on the basis that DX gave SOW written notice of its lien on August 9, 2021, and on the basis of a "directorship conflict" (that is, one of Tung Kee's directors has a similar name to one of SOW's directors).

DX has produced various iterations of what it says is the DX Contract, and four invoices in support of the quantum of its claim.

The Receiver's position is that, on its face, the Claim for Lien was registered out of time. DX had 45 days from the date it completed its contract to register the Claim for Lien. It was more than a year late in doing so. If "2022" in the Claim for Lien was an error that is capable of being corrected, then the last date on which DX had to perfect its lien was June 6, 2023, but in that event it was still 10 days late in purporting to perfect its lien. In addition, the Statement of Claim has serious deficiencies. The pleading alleges breach of the DX Contract by Tung Kee, but does not reference the Claim for Lien, nor does it seek to enforce any lien rights against the Property.

The Statement of Claim also does not name either Romspen or SOW as defendants, and does not allege that DX has a lien that takes priority over any mortgage registered over the subject Property. The documentation delivered by DX's lawyer acknowledges that where any mortgage funds were not intended by the mortgagee to be used for construction, DX does not have a "building mortgage" priority claim over that mortgage. The only mortgage specifically referenced as being subject to a building mortgage priority is that of Romspen, but Romspen's commitment letter has a representation and warranty from Tung Kee that confirms the funds were not to be used for construction.

With regards to the priority claim over the SOW mortgage, the document that DX asserts was a written notice of lien from DX to SOW makes no mention of DX having a lien, and there is no evidence when it was given to SOW, if at all. It is not likely to be found to be a written notice of lien. Finally (vis-à-vis the priority claim over SOW's mortgage), a "directorship conflict" is not a basis for a lien claimant to assert a priority claim over a mortgage under the *Construction Act*.

Even if DX had a properly perfected lien claim, and had a legal basis for a priority claim against Romspen and/or SOW, DX has not made full production of its contract with Tung Kee, there is a lack of particularity of the work that DX says it performed in respect of the improvement to the Property, and DX has produced next to no evidence to back up the work it says it performed. As well, counsel for SOW has raised questions regarding when the work was performed (including if it was performed at all), and whether some of the work performed was not for Tung Kee, but for a third party potential purchaser.

Timeliness

The most significant issues are with respect to timeliness in preservation and perfection. DX's position is that it entered into the DX Contract with the owner of the Property, Tung Kee, and that it has completed its work under the DX Contract (per para 16 of the Teh Affidavit at Tab 2). As is further discussed below under "Quantum and Timeliness", the terms of the DX Contract are difficult to decipher based on the documents produced to date.

DX's Claim for Lien (Tab 4) indicates that DX supplied services from "2020/11/07 to 2022/03/07". The timelines for expiry of construction liens following completion of a contract are dictated by section 31 of the *Construction Act*, and the timeline to preserve a lien by registration was changed on July 1, 2018 (from 45 days to 60 days). None of the material referenced above addresses the version of the *Construction Act* that your client says applies (more on this below), but DX's Claim for Lien was registered on April 14, 2023, well out of time regardless as to which version applies based on a completion date of March 7, 2022 (the "**Lien Preservation Error**").

That said, in the event the Lien Preservation Error is capable of correction, it is important for the balance of the analysis to review which version of the *Construction Act* applies. Based on the material produced by DX, the pre-July 1, 2018 version of the *Construction Act* applies. The relevant transition provision is section 87.3, which reads as follows:

Transition

Continued application of *Construction Lien Act* and regulations

87.3 (1) This Act and the regulations, as they read on June 29, 2018, continue to apply with respect to an improvement if,

(a) a contract for the improvement was entered into before July 1, 2018;

(b) a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises; or

(c) in the case of a premises that is subject to a leasehold interest that was first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before the day subsection 19 (1) of Schedule 8 to the *Restoring Trust, Transparency and Accountability Act, 2018* came into force. 2018, c. 17, Sched. 8, s. 19 (1).

Same

(2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into. 2018, c. 17, Sched. 8, s. 19 (1).

In the Teh Affidavit, Daniel Teh confirms that he started planning work on the Property "in or around August 2014" (para 3). The exhibits attached to the Teh Affidavit indicate that the work performed in 2014 and 2015 was pursuant to a contract between the owner Tung Kee and CXT Architects Inc. ("**CXT**"), not DX (which did not exist until the fall of 2019). The fact that the work under this prior contract was done by CXT and not DX is of no consequence to the transition analysis, because the provision applies if "a contract" was entered into before July 1, 2018, meaning any contract (i.e. including the contract between the Owner and CXT) and not the contract that is the subject of a claim for lien (i.e. the DX Contract).

The net effect of all this is because CXT was retained to perform work back in 2014/2015 in respect of the same improvement that DX's lien relates to, the section 87.3(1) transition provision makes the "old version" of the *Construction Act* applicable to all liens (among other things) that relate to the subject improvement. This interpretation (and effect) has been confirmed in *Crosslinx Transit Solutions Constructors v. Form & Build Supply (Toronto) Inc.*, 2021 ONSC 3396 (CanLII).

Given that the "old" Construction Act timelines apply, and DX had 45 days to preserve its lien and a further 45 days to perfect, even if the Lien Preservation Error can be corrected - from March 7, 2022 to March 7, 2023 (which is by no means certain) - then this means that the last date to preserve DX's lien was April 21, 2023 (45 days from March 7, 2023 – DX met this deadline). DX's lien therefore had to be perfected by commencing an action to enforce the lien and registering a certificate of action on title to the Property within the next 45 days, which period expired on June 6, 2023.

Unfortunately, while DX did issue a Statement of Claim, and issued and registered the Certificate of Action on title to the Property, it did not do so until June 16, 2023. This was 10 days out of time (if the date of last supply in the Claim for Lien can be corrected), based on the version of the *Construction Act* applicable to DX's work (the "**First Lien Perfection Error**").

As well, the contents of the Statement of Claim itself raised significant questions. As noted above, to perfect a lien, an action has to be commenced "to enforce the lien". In the usual course, this is done by, among other things, alleging in the body of the pleading that the claimant has a lien pursuant to the *Construction Act*, and in the prayer for relief seeking the enforcement of the lien as against the subject property and/or any security posted into court as security for the lien (among other things).

DX's Statement of Claim alleges a contract between DX and the Tung Kee (among other things), but makes no reference to DX having a lien over the Property, and does not seek to enforce the lien as against the Property. In fact, the only place the word "lien" appears in the pleading is in the style of cause, where the old name of the "*Construction Lien Act*" is used. In the circumstances, as drafted the Statement of Claim does not appear to be "an action to enforce the lien" as required by s.36(3)(a) of the *Construction Act* (the "**Second Lien Perfection Error**").

It may be possible to correct the Second Lien Perfection Error, though a review of the caselaw indicates no similar circumstances where an amendment has been sought. It is not, however, possible to relieve against a missed deadline to perfect (i.e. the First Lien Perfection Error).

Quantum and Lienability

The Claim for Lien indicates that DX's lien is for $4,653,028.11. The Statement of Claim indicates that the claimed amount is pursuant to an "Agreement", but references an execution date of August 9, 2021. It is unclear when DX (or, rather a predecessor, given its incorporation date) first entered into a contract with Tung Kee, but based on paragraph 9 of the Teh Affidavit, the date was likely prior to July 5, 2019 (the paragraph references sending a "new contract dated July 5, 2019", which presupposes an existing contract in place prior to July 5, 2019).

The first available version of what appears to be the DX Contract is dated July 5, 2019, and while it was not attached as an exhibit to the Teh Affidavit, was included as an attachment to your November 11 Letter (Tab A to that document, which is attached at Tab 1). This document describes development management services that will be supplied for a fixed fee of $1,300,000 plus HST "over the duration of 42 months". It is also on CXT's letterhead, not DX's.

The next version of what appears to be the DX Contract is dated July 19, 2021 (Tab B to your November 11 Letter –Tab 1 hereto). This document indicates "unpaid fees" of $527,630, and introduces the concept of an "MZO Bonus" of $1,130,000 inclusive of HST, as well as a "Post MZO/Block 1,2,3 Bonus" of $1,412,500 inclusive of HST. It is not clear what additional services beyond those referenced in the July 5, 2019 DX Contract justified these bonuses of over $2.5M.

A further version of the DX Contract is dated August 9, 2021 (Tab C to your November 11 Letter – Tab 1 hereto). Despite being only approximately 3 weeks later than the prior document, the "unpaid fees" in this DX Contract appear to be $1,306,858.38 ($466,138.38 plus $840,720). This DX Contract also references the MZO Bonus and Post MZO Bonus in the same amounts ($1.13M and $1.4125M).

The last version of the DX Contract is dated June 6, 2022 (Tab D to your November 11 Letter – Tab 1 hereto). The unpaid fees are set out as $1,381,142.50 including HST, a fixed monthly rate of $57,912.50 including HST is referenced, and there are references to consultants' fees of $325,161.38 including HST ($32,191.89 plus $292,969.49). This document continues to reference to an MZO Bonus in the amount of $1.13M. The reference to a Post MZO Bonus is removed, but in its place is an "incentive payment in recognition of payment delay" in the amount of "3% of final cost of land upon closing and or $1,130,000 inclusive of HST, whichever is higher in amount".

Counsel for SOW has raised as an issue whether DX performed all of its services for Tung Kee, and alleges that some were performed for a potential purchaser of the Property. In order to be in a position to properly analyse the contractual relationship at issue between the Owner and DX (or a third party and DX), all copies of the DX Contract need to be produced.

It appears that several iterations of invoices were prepared starting at Tab E to your November 11 Letter (Tab 1 hereto), but it is not possible to determine what work was done or services paid by DX in respect of several of the invoices that would constitute a lienable supply.

For example, the Tab J invoice dated May 18, 2023 in the amount of $1,130,000 states that it is in respect of "professional services rendered", but also that it is a "DX incentive payment in recognition of payment delay". On its face, the invoice does not appear to relate to "supply of services" as defined under the *Construction Act* (which is important, as a lien only arises in respect of the price of services or materials), but rather appears to be more in the nature of interest given what appears to be non-payment from the Owner since the inception of the DX Contract (whatever date that may be).

Similarly, the Tab H invoice also dated May 18, 2023, and also in the amount of $1,130,000 references obtaining a ministerial zoning order, but on its face indicates it is a "bonus", or a success fee in respect of this result (i.e. the MZO Bonus that was not originally referenced in the contract documents, but made its first appearance in the July 19, 2021 version). It is questionable whether this relates to the supply of services as well.

The Tab G invoice and Tab I invoice, again both dated May 18, 2023, and in the amounts of $1,960,267.50 and $389,922.71, respectively, may be in respect of lienable supply of services, but the description of the work performed is lacking. The Tab G invoice consists of six enumerated sentences on less than half of page that purports to describe the services supplied. The Tab I invoice simply states "fees owed to consultants". These invoices are insufficiently particularized, and the Teh Affidavit does not attempt to describe the work purportedly done by DX, or by its subcontractors.

As noted above, counsel for SOW has raised as an issue that some of the work that purports to be the basis of the invoices was performed for a third party. SOW's counsel also alleges that some of the work invoiced was not actually done (work on part of the Property described as "Block 1 & 2", which appears to be included in the $1,130,000 "bonus" invoice discussed above).

In order to properly analyse whether the work purportedly done as set out in the invoices was (a) actually done, and (b) is lienable, DX will need to produce backup documents to support the amounts claimed.

Priority Claims

It is unclear what mortgages DX claims priority over, and what is the basis for any claim.

In the material that accompanied your November 11 Letter, DX has only specifically alleged priority over the first-ranking charge of Romspen, and fifth-ranking charge of SOW, though there are inconsistencies in the material that DX has delivered regarding whether DX is actually seeking priority over the Romspen mortgage.

In your November 11 letter, you state that DX is making a priority claim for 10% of its lien "against any mortgagees that have not specifically set out in their respective loan agreements that those advances of money were not supposed to be used to improve the land". As I understand this allegation, DX is asserting priority over any mortgage that was taken with the intention of financing the improvement to the Property pursuant to section 78(2) of the *Construction Act* (which provides for a priority claim over building mortgages, but limited to deficiencies in holdbacks that were to be maintained by an owner). I further understand that DX acknowledges it does not have a "building mortgage" priority claim over the Romspen charge, given that in the commitment letter for Romspen's loan (Romspen Application Record dated August 18, 2023, page 46 – reproduced at **Tab 7**) there is a representation and warranty from Tung Kee that "no portion of the Loan will be used for the supply of any services or for the erection, installation, addition, removal, construction, renovation, alteration, or repair to the Property or to any building, structure or works thereon."

However, in DX's "Construction Lien Legal Brief" (Tab 3), at para 33, DX states that it "deserves to have its construction lien properly deemed as preceding the Romspen Loan" because DX "held an interest in being paid since before Romspen held any interest or charge over the Property", though the "Legal Brief" does not set out a legal basis for this position.

At paragraph 38 of the "Construction Lien Legal Brief", DX states that it "takes the position that the Holdback Amount ranks ahead of all mortgages in these proceedings, unless a mortgagee's advances of money have been specifically restricted from being used for the improvement of the Property, because DX's lien first arose latest in or around July 5, 2019". This is not a properly articulated priority claim, and the date of when DX's lien is alleged to have first arose ("July 2019") is confusing, given DX's acknowledgment in its Statement of Claim that DX was only incorporated on September 12, 2019.

The claim against SOW alleges that DX gave a written notice of lien to SOW on August 9, 2021, and that SOW may have advanced only "the original $5,000,000 USD" prior to August 9, 2021 ("Construction Lien Legal Brief" para 43 to 49). DX relies on section 78(6) of the *Construction Act*, which, among other things, affords a lien claimant priority over any advances made where the person who made the advance "had received written notice of a lien".

DX will need to particularize what part of SOW's mortgage it is seeking priority over. As well, the document that DX relies on in this regard is the version of the DX Contract dated August 9, 2021 (see your November 11 Letter at Tab 1 hereto, and specifically Tab C thereto), which from a plain reading does not appear to state that DX has a lien. As well, it is not clear that this August 9, 2021 document was provided to SOW. Only a photograph of a hard copy of the letter has been produced. The photographed document indicates that it was sent to two email addresses, ty69300300@gmail.com and Philip.wong@sowcapital.com.hk, but there is no evidence it was actually sent to the "sowcapital" email address.

Your client's brief also seems to assert a priority over SOW's fifth ranking mortgage based on "conflict of interest", pursuant to an allegation that the "Philip Wong" who is an officer and director of Tung Kee is the same "Philip Kun To Wong" who is an officer and director of SOW. It is not clear that these two individuals are the same person, but in any event the resultant relationship, which DX has characterized as a "Directorship Conflict" is not a basis for a lien claimant to advance a priority claim under the *Construction Act*.

More fundamentally, DX has failed to name any of the mortgagees as defendant parties to the Statement of Claim. The pleading references both Romspen and SOW as secured creditors, but makes no claim to priority over their respective mortgages, let alone alleging a legal basis for any such claim (the "**Priority Claim Perfection Error**").

I expect that the net effect of one or all of the Lien Preservation Error, the First Lien Perfection Error, the Second Lien Perfection Error, and the Priority Claim Perfection Error, will be to invalidate the DX Claim for Lien and in any event the DX priority claim. What will be left will be an unsecured claim for some amount of the approximately $4.6 million claimed by DX.

However, I am available to discuss the above, and any additional documentation/information DX may have that it has not yet produced.

Yours very truly,

Blaney McMurtry LLP

Chad Kopach
CK/kv

Encl.

Appendix “T”

ERNST & YOUNG INC.
Court appointed Receiver and Manager of
Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership
STATEMENT OF RECEIPTS AND DISBURSEMENTS
For the period October 19, 2023 to November 30, 2023

		October 19, 2023 to November 30, 2023
Receipts:		
Sale Proceeds	$	68,001,312.05
Total Receipts	$	68,001,312.05
Disbursements:		
Distribution to Romspen	$	33,787,897.39
Distribution to Amber Mortgage		9,087,542.27
Real Estate Commissions		1,360,000.00
Amber - Final Payout Amount		984,797.75
Romspen - Final Payout Amount		268,410.50
HST Paid		193,783.09
Legal Fees		76,232.50
Receiver and Manager Fees		53,995.00
Property Taxes		6,058.87
Legal Disbursements		827.85
Insurance		550.00
Registration Fees		75.30
Bank Charges		34.00
Total Disbursements	$	45,820,204.52
Excess Receipts over Disbursements	$	22,181,107.53

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

MOTION RECORD OF THE RECEIVER
(Returnable December 5, 2023)

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
Email: egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
Email: ckopach@blaney.com

Lawyers for the Court-appointed Receiver,
Ernst & Young Inc.