

Court File No: CV-25-00738060-00CL

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

**B E T W E E N**

**ROYAL BANK OF CANADA**

**Applicant**

**- and -**

**TUNG AIR TRANSPORT LTD., 2527366 ONTARIO INC.,  
R. LESSARD TRUCKING LIMITED and 1000101395 ONTARIO INC.**

**Respondents**

**APPLICATION UNDER SUBSECTION 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**

**SUPPLEMENTARY AFFIDAVIT OF EKNOOR SINGH TUNG  
(Affirmed April 11, 2025)**

**I, EKNOOR SINGH TUNG, of the City of Brampton, in the Province of Ontario,  
AFFIRM AND SAY:**

1. I am the Vice-President of Operations at Tung Air Transport Ltd. ("**Tung Air**"). I also manage the operations of 2527366 Ontario Inc. ("**252**"), R. Lessard Trucking Limited ("**Lessard**", collectively with Tung Air and 252, the "**Credit Parties**"), and 1000101395 Ontario Inc. ("**100**") (collectively, the "**Respondents**").

2. As such, I have personal knowledge of the matters to which I herein depose. Where I do not have personal knowledge of the matters set out herein, I have advised of the source of my information and, in all such cases, believe it to be true. Where I use "we" or "our", I mean to refer to and state on behalf of the Respondents collectively. Any capitalized terms are defined as set out in the Affidavit of Eknoor Singh Tung, affirmed March 25, 2025.

3. The Respondents have been working diligently with an experienced commercial mortgage broker to obtain sufficient financing to be able to pay RBC all amounts owing pursuant to the Credit Agreements.

4. I received a letter of intent dated April 11, 2025 from my mortgage broker, which sets out the terms upon which Aureus Capital Management ("**Aureus**") is willing to provide the Respondents funding in the sum of \$20,600,000.00 the ("**Aureus LOI**"). Attached to this affidavit as **Exhibit "A"** is the Aureus LOI.

5. I have been advised by my mortgage broker that Aureus has indicated that they will likely need until May 30, 2025 to close the Aureus LOI.

6. The terms are reasonable, agreeable to the Respondents, and we believe that we will be able to successfully close the Aureus LOI by such time, or earlier if possible – if this Court permits the Respondents time to do so.

7. On or about March 13, 2025, msi Spergel Inc. ("**Spergel**") sent the Respondents an email, referring to their appointment as monitor pursuant to the Engagement Letter, and enclosing an Information Request letter dated March 13, 2025. Attached to this affidavit as **Exhibit "B"** are copies of these correspondence.

8. My counsel advises me that they indicated the Respondents' position as to the Engagement Letter, which was that they would be willing to proceed with Spergel proceeding pursuant to the Engagement Letter, if RBC honoured its obligations which were to forbear from bringing the Application.

9. RBC requested a case conference to address enforcement of the Engagement Letter, for which, RBC submitted an aide-mémoire dated March 19, 2025 ("**Aide-Mémoire of RBC**"). Attached to this affidavit as **Exhibit "C"** is the Aide-Mémoire of RBC.

10. The case conference was held on March 21, 2025 before the Honourable Justice Dietrich. I understand from my counsel that RBC did not make any of its submissions included in the Aide-Mémoire of RBC at the case conference as to the enforcement of the Engagement Letter.


11. I affirm to such affidavit for the sole purpose of assisting this Honourable Court in its deliberations on the Application and for no other or improper purpose.

Sworn remotely by Eknoor Singh Tung, as )  
being located in the City of Mississauga in )  
the Province of Ontario, before me at the City )  
of Toronto, in the Province of Ontario, on )  
April 11, 2025, in accordance with O. Reg )  
431/20, Administering Oath or Declaration )  
Remotely. )

Signed by:   
4888AC612BBF4D3...

KISHAN LAKHANI LSO# 78038S

Commissioner for Taking Affidavits

DocuSigned by:   
435C1F166EAB4C0...

EKNOOR SINGH TUNG

This is **Exhibit "A"**  
referred to in the affidavit of  
EKNOOR SINGH TUNG  
affirmed before me this 11<sup>th</sup> day of April, 2025

Signed by:



4888AC642BBF4D3...

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*A Commissioner for taking affidavits*

April 11<sup>th</sup>, 2025

**2527366 ONTARIO INC. &  
R. LESSARD TRUCKING LIMITED**  
C/O SHERWOOD MORTGAGE GROUP  
3000 Langstaff Road, Unit 10  
Concord, ON L4L 4R7

Attention: Anton Farrage

**Re: \$20,600,000 - 1st position, Bridge loan, on the subject properties, municipally located 1244 Kamato Road, Mississauga, ON and 2260 Manning Road, Lakeshore, ON. (collectively the subject Property).**

Dear Sir,

**This is a letter of intent. It is not a commitment to finance. If you wish to proceed further, we require that you execute and return this letter by the Return Date together with the standby deposit. This will enable us to further consider your application, subject to receipt of the due diligence items noted herein. If we issue a commitment to finance, on substantially the same terms as below, your standby deposit is deemed to be earned by us whether or not you choose to accept the commitment. It is credited to fees upon completion of the transaction.**

**TERMS:**

Borrower: **2527366 ONTARIO INC. & R. LESSARD TRUCKING LIMITED.** (collectively the borrower).

Security: 1<sup>st</sup> Position Mortgage over the Lands and Buildings located at:  
1244 Kamato Road, Mississauga, Ontario. Described as Single-Tenant Industrial facility, providing GLA of 25,000 SF industrial building, sited on 2.66 acres of land. Estimated Market Value \$ [REDACTED]  
and  
2260 Manning Road, Lakeshore, Ontario. Described 39.401 acres (1,716,304 SF) Industrial Land, Zoning: A and A-5 (Agriculture and Agriculture with Exception 5), with the following improvements: 5,960 SF truck repair shop, 3,200 SF storage building and 1,951 SF residential dwelling. Estimated Market Value \$ [REDACTED]

Additional  
Security: TBD

Guarantors: Joint and Several Corporate and Personal Guarantees of Tung Air Transport Ltd., 1000101395 Ontario Inc., 1000101409 Ontario Inc., Sardara S. Tung, Eknoor Tung & Sukhvinder K. Tung,

Facilities: Total \$20,600,000 Million subject to final verification, including an interest account to a maximum \$1,500,000, to be deducted from the advance.

Type: Industrial Bridge Loan.

Advance Date: On or about TBD, approx. May 2025 provided that such date is subject to the receipt of all due diligence materials listed in Schedule A, or otherwise requested by the Lender or its counsel in the due diligence and closing process, not later than 14 business days prior to such date.

Rate: 9% Fixed Rate , subject to final approval.

Payments: Interest only, compounded and payable monthly, on advanced amount, to be deducted from Interest account until such time as/if it fully utilized.

Taxes: The Lender may require a tax account to be established for realty taxes.

Term: Twelve (12) months

Lender Fees: 2.5% (250 bps) of the authorized loan amount.  
\*Plus legal fees/disbursements and applicable taxes if any, are separate to the lender fees and are on account of the borrower.

Broker Fee: 1% to be deducted at advance, payable to Sherwood Mortgage Group.

Privileges: When not in default, open after six (6) months, on any payment date, upon one month's written notice, and/or payment of six month's interest payment.

Additional Terms: This offer and any Commitment issued pursuant hereto shall be subject to the Lender receiving and being satisfied, in its sole and absolute discretion with all applicable matters as set out in Schedule A attached hereto.  
The Commitment will contain additional terms and provisions enhancing and detailing the essence of the basic terms herein set out and not consistent therewith.

Schedules: Schedule A attached hereto shall form part of this letter of intent.

Exclusivity: Following acceptance of this letter of intent, the Borrower agrees to work exclusively with the Lender for 60 days to finalize and execute the commitment.

Assignment: The Borrowers hereby acknowledge and agree that the Commitment issued pursuant to this Letter of Intent may be assigned, or the loan may be sold or syndicated/secured at any time without further notice or consent, including prior to funding.

**Confidentiality: No terms of the letter of intent shall be disclosed to any third party without the prior written consent of the Lender.**

Return Date: April 17th, 2025, after which it shall have no further effect.  
If you wish to proceed, we require the following by the Return Date:

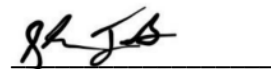
1. Executed copy of this Letter of Intent.
2. Standby deposit of \$20,000 by wire, e-transfer or Direct Deposit, payable to Aureus Capital, C/O 1001029958 Ontario Corporation.

This letter of intent may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. Counterparts may be executed either in original or faxed form.

Yours very truly,

Aureus Capital Management, and/or its affiliates or assignees.

Per:



Steve Fabian

President

Aureus Capital Management

We hereby agree to the above noted terms and submit our standby deposit.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Borrowers:

**2527366 ONTARIO INC.**

**R. LESSARD TRUCKING LIMITED**

Per:

ASO – authority to bind the company

Per:

ASO – authority to bind the company

Guarantor(s):

**Tung Air Transport Ltd.**

**1000101395 Ontario Inc.**

**1000101409 Ontario Inc.**

Per:

ASO – authority to bind the company

Per:

ASO – authority to bind the company

Per:

ASO – authority to bind the company

**Sardara S. Tung**

in a personal capacity

**Eknoor Tung**

in a personal capacity

**Sukhvinder K. Tung,**

in a personal capacity

## SCHEDULE A

### Due Diligence Material (As Applicable)

**As Applicable** – Note: where items have been received by the lender, prior to the LOI, they are subject to confirmation, verification, transmittal, etc. for formal commitment approval.

1. Completed Lender's Application Form from each Borrower and Guarantor.
2. Satisfactory verification of the Borrower's and/or Guarantor's net worth.
3. An inspection of the Properties and an interview with the principals of the Borrowers.
4. Verification of purchase and sales/option agreement(s) satisfactory at the Lenders sole discretion, if applicable.
5. Verification of the use of the Properties and income to be generated, including all leases in place and a certified rent roll.
6. Details of ownership structure including all shareholders and/or beneficial owners of each Borrower and corporate Guarantor setting out the issued shares held by each shareholder.
7. Financial statements from each Borrower and Guarantor for the two most recent full fiscal years and for the fiscal year to date, including FYE 2024.
8. Approved current operating budget for each property to be secured, such budget to include cash flow pro forma statement, indicating estimated timing for receipt of revenue, payment of expenditures, funding sources and repayment schedule for such funding. ( if applicable)
9. All signed and accepted purchase and sale agreements. Confirmation of deposits.
10. Detailed rent roll setting out names of all tenants, amount of space occupied, monthly rent, lease commencement and termination dates, renewal rights and any rental arrears.
11. Most recent site plan and survey for each property to be secured.
12. Most recent environmental site assessment report for each property to be secured, satisfactory to the lender.
13. New or updated appraisals for each property to be secured, from an appraiser approved by the lender.



14. Most recent engineering/structural, geo-technical, soils, etc. reports, relevant to the development, for each property to be secured, satisfactory to the lender.
15. Copy of registered deed and copy of all registered encumbrances for each property to be secured. Discharge of all encumbrances prior to funding, no subsequent financing permitted.
16. Copy of all security agreements registered pursuant to the Personal Property Security Act against each Borrower and Guarantor.
17. Current property tax assessments and proof of payment of all outstanding realty taxes for each property to be secured.
18. Detailed drawings, plans and architectural renderings for the project ( if applicable).
19. A detailed and complete project budget, development status / planning report as well as municipal draft and site plan approvals, zoning and permits.
20. All other items reasonably requested by Lender's underwriting group, as outlined on its due diligence checklist.

This is **Exhibit "B"**  
referred to in the affidavit of  
EKNOOR SINGH TUNG,  
affirmed before me this 11<sup>th</sup> day of April, 2025

Signed by:



4886AC612BBF4D3...

*A Commissioner for taking affidavits*

**From:** [Mukul Manchanda](#)  
**To:** [Eknoor Singh](#)  
**Cc:** [Kovesdi, Sylvia](#); [Chaudhari, Bhagya](#); [Steve Graff](#); [Shaun Parsons](#); [msimaan@kramersimaan.com](mailto:msimaan@kramersimaan.com); [Paula Amaral](#); [Cassandra Glover](#)  
**Subject:** Re: Tung Air Transport Ltd., et al.  
**Date:** March 13, 2025 5:05:16 PM  
**Attachments:** [image670516.png](#)  
[image775465.png](#)

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Eknoor,

I did not receive a response from you to my below email yet. I want to stress again the importance of moving Spergel's mandate forward in a timely manner.

In the interest of moving our mandate forward I will hold my availability for 10:30am tomorrow as long as I hear from you by 8:00pm tonight.

Trust that you will be able to respond before 8:00pm.

Thanks and look forward to hearing from you.

Best Regards,

**Mukul Manchanda, CPA, CIRP, LIT | Managing Partner**  
**Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees  
200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1  
T: 416-498-4314 | F: 416-498-4314  
[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca) | [www.spergelcorporate.ca](http://www.spergelcorporate.ca)  
**Insolvency • Restructuring • Consulting**



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**From:** Mukul Manchanda <mmanchanda@spergel.ca>

**Sent:** Thursday, March 13, 2025 2:04 PM

**To:** Eknoor Singh <eknoor@tungair.com>

**Cc:** Kovesdi, Sylvia <sylvia.kovesdi@rbc.com>; Chaudhari, Bhagya <bhagya.chaudhari@rbc.com>; Steve Graff <sgraff@airdberlis.com>; Shaun Parsons <sparsons@airdberlis.com>; msimaan@kramersimaan.com <msimaan@kramersimaan.com>; Paula Amaral <pamaral@spergel.ca>; Cassandra Glover <cglover@spergel.ca>

**Subject:** Tung Air Transport Ltd., et al.

Good afternoon Eknoor,

I understand from speaking with RBC's counsel that our engagement is now moving forward. To that effect, enclosed you will find a copy of the fully executed engagement letter for your records.

In addition, enclosed you will find an information request letter outlining the preliminary

information we require to commence our mandate. Given the urgency of this matter and the pending Court hearing in April, please provide this information to us in an expedited manner (in any event by no later than end of day Tuesday March 18, 2025) so we have ample time to review and report properly on the financial affairs of the companies.

Please note that you do not have to wait to send all of the requested information at once and can provide us with information as it becomes available so we can commence our review. For example, information requested with respect to financial statements, corporate tax returns, borrowing base calculation, a/r and a/p schedules, amounts outstanding to owner operators, amounts outstanding to CRA, bank statements etc. should be readily available to you and presumably can be provided without any delay.

In addition, I would like to have an in-person meeting with you and due to the urgent nature of the matter I have made arrangements to change my schedule so I can meet with you at your Mississauga premises tomorrow March 14, 2025 Friday at 10:30am. Please confirm that you are available tomorrow at 10:30am for a meeting.

Look forward to hearing from you and receiving the information and thank you in advance for your anticipated cooperation in this matter.

Best Regards

**Mukul Manchanda**, CPA, CIRP, LIT | **Managing Partner**

**Corporate Restructuring & Insolvency**

msi Spergel inc. | Licensed Insolvency Trustees

200 Yorkland Blvd., Suite 1100, Toronto, ON., M2J 5C1

T: 416-498-4314 | F: 416-498-4314

[mmanchanda@spergel.ca](mailto:mmanchanda@spergel.ca) | [www.spergelcorporate.ca](http://www.spergelcorporate.ca)

**Insolvency • Restructuring • Consulting**



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This is **Exhibit "C"**  
referred to in the affidavit of  
EKNOOR SINGH TUNG,  
affirmed before me this 11<sup>th</sup> day of April, 2025

Signed by:

  
4888AC612BBF4D3...

*A Commissioner for taking affidavits*

Court File No. CV-25-00738060-00CL

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

**B E T W E E N:**

**ROYAL BANK OF CANADA**

Applicant

- and -

**TUNG AIR TRANSPORT LTD., 2527366 ONTARIO INC.,  
R. LESSARD TRUCKING LIMITED and 1000101395 ONTARIO INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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**

**AIDE-MÉMOIRE OF ROYAL BANK OF CANADA  
(returnable Friday March 21, 2025 )**

1. This aide-mémoire is filed by Royal Bank of Canada (“**RBC**”) regarding its request for further direction regarding its receivership application against Tung Air Transport Ltd. (“**Tung Air**”), 2527366 Ontario Inc. (“**252**”), R. Lessard Trucking Limited (“**Lessard**”, and collectively with Tung Air and 252, the “**Debtors**”) and 1000101395 Ontario Inc. (together with the Debtors, the “**Credit Parties**”). Terms not defined herein are defined in the Affidavit of Sylvia Kovesdi dated March 6, 2025.

2. Following an attendance before Justice Conway on March 12, 2025, RBC and the Credit Parties timetabled a receivership application over the assets, undertakings and properties of the Credit Parties.

3. As set out in the Kovesdi Affidavit, numerous significant defaults by the Debtors, including several payment and reporting defaults, were identified by RBC (collectively, the “**Defaults**”). A list of the Defaults is set out as Schedule “A” to this Aide Memoire.

4. Notwithstanding that RBC was advised by the Credit Parties’ counsel that there are no additional accounts opened at other financial institutions, transaction volumes have sharply dropped. If the Debtors have not opened new accounts elsewhere, this sharp decrease in transaction volume suggests that the going-concern business may be imperiled. If the Debtors have opened new accounts elsewhere, then the Debtors have breached their contractual obligations to RBC.

5. The sharp decline in transaction volumes and the significant reporting Defaults suggests RBC’s collateral is being eroded. Prior to service of this Application, RBC and the Debtors executed an agreement appointing msi Spergel Inc. (“**Spergel**”) as a reporting monitor of the Debtors’ business and operations, as part of an indulgence to forbear on these enforcement proceedings. This engagement was revoked by RBC after the Debtors’ repeated failure to respond to RBC.

6. During the previous attendance before Justice Conway, the Debtors (having subsequently signed the appointment letter after the time to do so had expired) offered that the signed appointment Spergel would be effective. Notwithstanding that the engagement was revoked, RBC understood based on submissions by counsel that Spergel would monitor the Debtors’ affairs during the period in which the Debtors would respond to the application. In contemplation of this appointment, the Endorsement of Justice Conway (as attached hereto as Schedule “B”) states “If RBC proceeds to put a private monitor in place, it is expected that all parties and their counsel will cooperate during this interim period.”

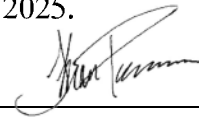
7. On March 13, 2025, Spergel sent an information request to the Debtors, which is attached hereto as Schedule “C”.

8. Following the hearing, the Debtors have changed course, stating that the engagement of Spergel is no longer valid and their agreement to the engagement was contingent upon adjourning the application *sine die*. They state that they will provide the requested documents (but did not provide a timeline for doing so) but there is an outright rejection of Spergel’s engagement as a monitor.

9. This is not the cooperation identified in the Endorsement of Justice Conway nor what was represented to be the position of the Debtors at the hearing before Justice Conway. Ultimately, much of this information (which is to be provided by the Debtors under the Credit Agreements) was promised to be provided by previous counsel months ago, and now the Debtors are dragging their feet in providing any basic reporting to RBC.

10. In light of this failure, RBC is looking for this Court’s advice and direction in requiring the Debtors to follow through on their obligations and provide the appointment of Spergel as a monitor pursuant to the terms previous agreed upon. If the court is not prepared to give judicial recognition to the monitorship, the Bank will move immediately for the appointment of an interim receiver and the notice of motion for same is attached hereto as Schedule “D”.

All of which is respectfully submitted, this 19th day of March, 2025.



---

**per AIRD & BERLIS LLP**



## **Schedule “A”**

### **The “Defaults”**

#### Tung Air

- (a) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (b) Failure to pay all sums of money when due:
  - (i) Current account (03032-1010420) is in daily unauthorized excess, and is at a negative balance of \$41,821.11 as of December 19, 2024;
  - (ii) Current account (03252-1041565) is in daily unauthorized excess, and is at a negative balance of \$30,603.76 as of December 19, 2024;
- (c) Failure to immediately advise the Lender of any event that constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the Tung Air Credit Agreement or any Security or an Event of Default therein (each as defined in the Tung Air Credit Agreement);
- (d) Notwithstanding that a material adverse change in the financial condition of Tung Air had taken place, Tung Air failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;

- (e) Failure to file and pay all material taxes. Property taxes are in arrears to the extent of \$133,077.63 for a portion of 2023 and 2024 in respect of the company's head office at the Kamato Road Property as of December 19, 2024;
- (f) Failure to keep Tung Air's assets fully insured; and
- (g) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (k) in the Tung Air Credit Agreement) within 90-days of fiscal year end on September 30.

252

- (h) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (i) Failure to pay all sums of money when due:
  - (i) The current account (03252-1043546) has been overdrawn since November 2024, and is at a negative balance of \$316,424.28 as at December 19, 2024;
  - (ii) Facility #1, a non-revolving credit facility in the original amount of \$13,597,000, is delinquent as 252 has failed to make principal and interest payments for over 120 days as at December 19, 2024;
- (j) Failure to immediately advise the Lender of any event that constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the 252 Credit Agreement or any Security or an Event of Default therein (each as defined in the 252 Credit Agreement);

- (k) A material adverse change in the financial condition has taken place, yet 252 failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;
- (l) Failure to file and pay all material taxes. Property taxes are in \$133,077.63 arrears for a portion of 2023 and 2024 in respect of the Kamato Road Property;
- (m) Failure to keep 252's assets fully insured; and
- (n) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (d) in the 252 Credit Agreement) within 90-days of fiscal year end on September 30.

Lessard

- (o) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (p) Failure to pay all sums of money when due:
  - (i) the current account (03252-1000298) has been overdrawn since August 2024, and is at a negative balance of \$55,012.34 as at December 19, 2024;
  - (ii) Facility #1, a revolving credit facility in the original amount of \$300,000, is delinquent as Lessard has failed make interest payments for over 120 days as at December 19, 2024;

- (iii) Facility #2, a non-revolving credit facility in the original \$2,600,000, is delinquent as Lessard has failed to make principal and interest payments over 120 days as at December 19, 2024;
- (q) Failure to immediately advise the Lender of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the Lessard Credit Agreement or any Security or an Event of Default therein (each as defined in the Lessard Credit Agreement);
- (r) A material adverse change in the financial condition has taken place, yet Lessard failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;
- (s) Failure to keep Lessard's assets fully insured;
- (t) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (g) in the Lessard Credit Agreement) within 90-days of fiscal year end September 30; and
- (u) Breach of the general covenant not to grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of the Lender's secured properties without the Lender's prior written consent by allowing subsequent charges on the Manning Road Property.

**Schedule “B”**

Endorsement of Justice Conway dated March 12, 2025

*[Attached Hereto]*



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:** CV-25-00738060-00CL

**DATE:** March 12<sup>th</sup> 2025

**NO. ON LIST:** 03

**TITLE OF PROCEEDING:** ROYAL BANK OF CANADA vs TUNG AIR TRANSPORT LTD. INC.et al  
**BEFORE:** JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Shaun Parsons	CSL for Royal Bank of Canada	sparsons@airdberlis.com
Steven Graff	CSL for Royal Bank of Canada	sgraff@airdberlis.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Kishan Lakhani	CSL for Respondents	klakhani@kramersimaan.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] RBC brings this application for the appointment of a receiver. Mr. Lakhani was just **G2** retained by the Respondents and has requested an adjournment to respond to the application.
- [2] RBC is resistant to an adjournment. However, if I grant one, Mr. Graff has indicated that his client will be appointing a private monitor (not a court officer) during the interim period to obtain information and reporting from the Respondents.
- [3] Given Mr. Lakhani's recent retainer and the request to respond, I am granting an adjournment to **April 14, 2025 at 10 a.m. for 90 minutes starting at 10 a.m. (by Zoom, any judge, confirmed with the CL office)**. The timetable (agreed by counsel) is as follows:
- a. Responding record to be delivered by March 21
  - b. Reply by March 26
  - c. Cross-examinations, if any, by March 28
  - d. RBC factum by April 4
  - e. Respondents' factum by April 11.
- [4] If RBC proceeds to put a private monitor in place, it is expected that all parties and their counsel will cooperate during this interim period.



**Schedule “C”**

Information Request of Spergel

*[Attached Hereto]*





**SPERGEL**

**msi Spergel inc.**, Licensed Insolvency Trustees  
Head Office: 200 Yorkland Blvd., Suite 1100  
Toronto, ON M2J 5C1  
T: 416 497 1660 • F: 416 494 7199  
[www.spergelcorporate.ca](http://www.spergelcorporate.ca)

March 13, 2025

**Via Email to:** [eknoor@tungair.com](mailto:eknoor@tungair.com)

TUNG AIR TRANSPORT LTD et al.  
1244 Kamato Rd.  
Mississauga, ON, L4W 1Y1

**Re: TUNG AIR TRANSPORT LTD., 1000101395 ONTARIO INC., 1000101409 ONTARIO INC., 1000257738 ONTARIO INC., 1000380926 ONTARIO INC., 2527366 ONTARIO INC., R. LESSARD TRUCKING LIMITED and TUNG AIR TIRE & SERVICES INC., (collectively the “Companies”)**

Dear Sir,

In connection with msi Spergel inc.'s (“**MSI**”) appointment by the Royal Bank of Canada (the “**Bank**”) to review the financial performance of the Companies and to evaluate the Bank's security position, we are requesting the following documentation, as it relates to the Companies, in order to commence our review and fulfill our mandate:

1. Externally prepared financial statements for the last three years including copies of the corporate tax returns. In the event externally prepared statements are not available for a given fiscal year, please provide internally prepared financial statements for that fiscal year;
2. Internally prepared financial statements on a monthly basis for the current fiscal year in both pdf and excel format;
3. Aged accounts receivable listing for the last twelve months in both pdf and excel format;
4. Copies of borrowing base calculations along with supporting documents submitted to the Bank for the last twelve months;
5. Bank statements for the last twelve months;
6. Copies of all loan and lease documents;
7. Copy of lease agreement for the premises along with status of payment of rent;
8. Aged accounts payable listing for last six months in both pdf and excel format;

Barrie 705 722 5090 • Brampton 905 874 4905 • Downsview 416 633 1444 • Hamilton 905 527 2227 • London 519 902 2722 • Mississauga 905 602 4143  
Oshawa 905 721 8251 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Toronto 416 778 8813 • Vaughan 647 288 7636  
Saskatchewan 306 341 1660 • British Columbia 604 365 74 34

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9. Information with respect to amounts outstanding to owner operators by job in both pdf and excel format;
10. Information with respect to any repair and/or storage invoices outstanding;
11. A fully integrated forecast for a 12-month period in excel format, if one is available along with documents supporting the assumptions underlying the forecast;
12. A 13-week cash flow forecast in excel format;
13. Fixed asset continuity schedule;
14. Details of any other assets including intellectual property, tax credits etc:
15. Monthly HST filing reports, if the Companies is required to report monthly, for the current calendar year and proof of payment of same;
16. Notice of assessment received from Canada Revenue Agency ("**CRA**") in relation to the HST filings and amounts outstanding and paid and a printout from the myCRA Business website showing the current amount outstanding with respect to HST;
17. Monthly source deduction filings and proof of payment of same;
18. Most recent source deduction statement received from CRA and a printout from the myCRA Business website showing the current amount outstanding with respect to source deductions;
19. Information with respect to any property taxes outstanding in relation to the real properties;
20. Copies of recent appraisals with respect to the real properties;
21. Copies of recent environmental report with respect to the real properties;
22. Proof corporate taxes are filed and paid up-to-date in relation to the Companies;
23. Number of employees on payroll;
24. How is the payroll managed, internally or externally? and
25. Amounts outstanding to employees broken into the following: a) wages; b) vacation pay; c) bonuses; d) commissions; e) termination pay; and f) severance pay.

Please be advised that the above list is non-exhaustive as we may require further information as we progress with our review.

Should you have any questions or concerns please do not hesitate to contact the undersigned.

**msi Spergel inc.,**

Per:



Mukul Manchanda, CPA, CIRP, LIT  
Managing Partner

Cc: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)  
[sparsons@airdberlis.com](mailto:sparsons@airdberlis.com)  
[msimaan@kramersimaan.com](mailto:msimaan@kramersimaan.com)  
[sylvia.kovesdi@rbc.com](mailto:sylvia.kovesdi@rbc.com)  
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**Schedule “D”**

Draft Notice of Motion

*[Attached Hereto]*

Court File No. CV-25-00738060-00CL

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

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

- and -

**TUNG AIR TRANSPORT LTD., 2527366 ONTARIO INC.,  
R. LESSARD TRUCKING LIMITED and 1000101395 ONTARIO INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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**

**NOTICE OF MOTION**


Royal Bank of Canada (“**RBC**”) will make a motion to a judge presiding over the Commercial List on <\*>day, March <\*>, 2025 at <\*> a.m/p.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is *(insert one of on consent, unopposed or made without notice)*;
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- X By video conference.

at the following location: *By Zoom details to be provided by the Court*

**THE MOTION IS FOR AN ORDER**, among other things:

1. If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
2. Appointing msi Spergel (“**Spergel**”) as interim receiver over the property, assets and undertaking of Tung Air Transport Ltd. (“**Tung Air**”), 2527366 Ontario Inc. (“**252**”), R. Lessard Trucking Limited (“**Lessard**”, and collectively with Tung Air and 252, the “**Debtors**”) and 1000101395 Ontario Inc. (the “**Secured Guarantor**”, and together with the Debtors, the “**Credit Parties**”) pursuant to Section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) with such powers and responsibilities as set out in the draft order attached as Tab  to this Motion Record; and
3. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background and the Credit Party Receivership Proceedings***

4. The Credit Parties are privately held and incorporated under the Ontario *Business Corporations Act*, with a registered head offices in Mississauga and Brampton, Ontario;
5. The Debtors’ collectively operate business providing international trucking across North America, logistics and warehouse services;
6. 252 is the registered owner of the real property at the address municipally known as 1244 Kamato Road, Mississauga, Ontario (the “**Kamato Road Property**”);

7. Lessard and the Secured Guarantor are the registered owners of the real property municipally known as 2260 Manning Road, Windsor, Ontario that has a single municipal address but is covered by two PINs (the “**Manning Road Property**”, and together with Kamato Road Property, the “**Real Properties**”). Lessard is the registered owner of one of the two PINs and the other is owned by the Secured Guarantor;

8. The Debtors are indebted to RBC in connection with certain credit facilities made available pursuant to and under the terms of the following Credit Agreements: (i) the Credit Agreement dated May 16, 2023, as between the Lender and Tung Air (“**Tung Air Credit Agreement**”); (ii) the Credit Agreement dated May 16, 2023, as amended on May 16, 2024, as between the Lender and 252 (the “**252 Credit Agreement**”); and (iii) the Credit Agreement dated May 16, 2023, as amended on June 27, 2024, as between the Lender and Lessard (the “**Lessard Credit Agreement**” and collectively, the “**Credit Agreements**”).

9. Each of the Debtors cross-guaranteed the obligations of the others pursuant to a series of Guarantee and Postponement of Claim agreements (collectively, the “**Debtor Cross-Guarantees**”). Further, the obligations of the Debtors are guaranteed by the Secured Guarantor pursuant to Guarantee and Postponement of Claim agreements dated May 30, 2023 regarding the obligations of Tung Air, 252, and Lessard (collectively, the “**Guarantees**”);

10. As security for the Debtors’ obligations to RBC, the Credit Parties provided security in favour of RBC (the “**Security**”), including, without limitation: (i) the general security agreement by Tung Air in favour of RBC dated May 30, 2023; (ii) the general security agreement by 252 in favour of RBC dated May 30, 2023, (iii) the general security agreement by Lessard in favour of RBC dated September 14, 2022, and (iv) the general security agreement by the Secured Guarantor

in favour of RBC dated May 30, 2023; registration in respect of which was made under the *Personal Property Security Act* (Ontario);

11. Additionally, RBC has security over the Real Properties: (i) the Kamato Road Property is subject to a charge in favour of the Lender in the amount of \$18,040,000, (ii) over the portion of the Manning Road Property owned by Lessard, a charge in the amount of \$10,600,000 in favour of the Lender is registered, and (iii) over the portion of the Manning Road Property owned by the Secured Guarantor, a charge in the amount of \$1,100,000 in favour of the Lender is registered;

12. The following amounts are due and owing by the Debtors to RBC for principal and interest as of January 9, 2025 (plus legal expenses and accruing interest, collectively, the “**Indebtedness**”): (i) \$1,595,068.35 in respect of Tung Air, (ii) \$13,643,746.94 in respect of 252, and (iii) \$2,793,188.23 in respect of Lessard;

13. Pursuant to the Debtor Cross-Guarantees and the Guarantees, each of the Credit Parties have guaranteed virtually all of the Indebtedness of each of the other Debtors;

#### ***Defaults of the Debtors***

14. The Debtors have each failed to uphold their respective obligations under the Credit Agreements.

#### **Tung Air**

15. Tung Air is in default of its obligations under the Tung Air Credit Agreement, as a result of the failure to observe one or more covenants, terms or conditions contained in the Tung Air Credit Agreement, including, without limitation, the:



- (a) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (b) Failure to pay all sums of money when due:
  - (i) Current account (03032-1010420) is in daily unauthorized excess, and is at a negative balance of \$41,821.11 as of December 19, 2024;
  - (ii) Current account (03252-1041565) is in daily unauthorized excess, and is at a negative balance of \$30,603.76 as of December 19, 2024;
- (c) Failure to immediately advise the Lender of any event that constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the Tung Air Credit Agreement or any Security or an Event of Default therein (each as defined in the Tung Air Credit Agreement);
- (d) Notwithstanding that a material adverse change in the financial condition of Tung Air had taken place, Tung Air failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;
- (e) Failure to file and pay all material taxes. Property taxes are in arrears to the extent of \$133,077.63 for a portion of 2023 and 2024 in respect of the company's head office at the Kamato Road Property as of December 19, 2024;
- (f) Failure to keep Tung Air's assets fully insured; and

- (g) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (k) in the Tung Air Credit Agreement) within 90-days of fiscal year end on September 30.

(collectively, the “**Tung Air Defaults**”).

252

16. 252 is in default of its obligations under the 252 Credit Agreement, as a result of failure to observe one or more covenants, terms or conditions contained in the 252 Credit Agreement, including, without limitation, the:

- (a) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (b) Failure to pay all sums of money when due:
  - (i) The current account (03252-1043546) has been overdrawn since November 2024, and is at a negative balance of \$316,424.28 as at December 19, 2024;
  - (ii) Facility #1, a non-revolving credit facility in the original amount of \$13,597,000, is delinquent as 252 has failed to make principal and interest payments for over 120 days as at December 19, 2024;
- (c) Failure to immediately advise the Lender of any event that constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the 252 Credit Agreement or any Security or an Event of Default therein (each as defined in the 252 Credit Agreement);

- (d) A material adverse change in the financial condition has taken place, yet 252 failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;
- (e) Failure to file and pay all material taxes. Property taxes are in \$133,077.63 arrears for a portion of 2023 and 2024 in respect of the Kamato Road Property;
- (f) Failure to keep 252's assets fully insured; and
- (g) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (d) in the 252 Credit Agreement) within 90-days of fiscal year end on September 30.

(collectively, the “**252 Defaults**”).

Lessard

17. Lessard is in default of its obligations under the Lessard Credit Agreement, as a result of the failure to observe one or more covenants, terms or conditions contained in the Lessard Credit Agreement, including, without limitation, the:

- (a) Failure to maintain, on a consolidated basis, a Fixed Charge Coverage of not less than 1.10:1 for fiscal 2023;
- (b) Failure to pay all sums of money when due:
  - (i) the current account (03252-1000298) has been overdrawn since August 2024, and is at a negative balance of \$55,012.34 as at December 19, 2024;

- (ii) Facility #1, a revolving credit facility in the original amount of \$300,000, is delinquent as Lessard has failed make interest payments for over 120 days as at December 19, 2024;
  - (iii) Facility #2, a non-revolving credit facility in the original \$2,600,000, is delinquent as Lessard has failed to make principal and interest payments over 120 days as at December 19, 2024;
- (c) Failure to immediately advise the Lender of any event which constitutes or which, with notice, lapse of time or both, would constitute a breach of any covenant or other term or condition of the Lessard Credit Agreement or any Security or an Event of Default therein (each as defined in the Lessard Credit Agreement);
- (d) A material adverse change in the financial condition has taken place, yet Lessard failed to immediately advise the Lender of any unfavourable change in its financial position which may adversely affect its ability to pay or perform its obligations;
- (e) Failure to keep Lessard's assets fully insured;
- (f) Failure to deliver the 2023 and 2024 year-end financial reporting package (pursuant to the Reporting Requirement subsections (a) through (g) in the Lessard Credit Agreement) within 90-days of fiscal year end September 30; and
- (g) Breach of the general covenant not to grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of the Lender's secured properties without the Lender's prior written consent by allowing subsequent charges on the Manning Road Property.

(together with the Tung Air Defaults and the 252 Defaults, the “**Defaults**”).

***Concerns regarding Erosion of Collateral***

18. To begin, the principal of the Debtors had requested that RBC open new accounts to manage certain pre-paid expenses. The requested restructuring of the Debtors’ accounts is concerning regarding the Debtors’ ability to operate their business as a going-concern and suggests that intention of the Debtors is to fulfill certain expenses at the risk of other creditors;

19. Notwithstanding that RBC was advised by the Credit Parties’ counsel that there are no additional accounts opened at other financial institutions, transaction volumes have sharply dropped. If the Debtors have not opened new accounts elsewhere, this sharp decrease in transaction volume suggests that the going-concern business may be imperiled. If the Debtors have opened new accounts elsewhere, then the Debtors have breached their contractual obligations to RBC;

20. The sharp decline in transaction volumes and the significant reporting Defaults suggests RBC’s collateral is being eroded;

21. Further, since the issuance of demand letters by RBC, the Debtors have not had the capital in their accounts to operate in the ordinary course. Cheques are returned daily due to insufficient funds in the Debtors’ accounts and transaction volumes have declined in the new year;

***Lack of Visibility Regarding Status of Collateral***

22. RBC does not have visibility into the Debtors’ cash flows and satisfaction of priority payables to ensure that its security position is not being eroded;

23. The Lender had requested that the Debtors acknowledge and agree to the retention of Spergel as a consultant to, among other things, review the books and records of the Debtors.

Initially in December, 2025, the Debtors were asked to engage Spergel immediately; then they were given a deadline of December 27, 2024, which was later extended to January 9, 2025. The Debtors did not execute Spergel's engagement by January 9, 2025;

24. Following the retention of the Debtors' second set of counsel, the Debtors provided the executed retainer letter in respect of Spergel on January 31, 2025, 35 days following the initial deadline to provide the executed agreement;

25. Prior to service of the Application in which this interim motion is brought, the Debtors executed an agreement appointing msi Spergel Inc. ("**Spergel**") as a monitor reporting on the Debtors' business and operations. This engagement was revoked by RBC after the Debtors' repeated failure to respond to RBC;

***The Appointment of an Interim Receiver is Just and Convenient***

26. RBC is concerned that the Credit Parties have and continue to take actions which may negatively impact the ability of RBC from realizing on their collateral, including, but not limited to, the following concerns:

- (a) transaction volumes in the Debtors' RBC accounts have sharply dropped and RBC does not have visibility on how the Debtors are continuing ongoing operations as cheques are being denied;
- (b) RBC does not have visibility, as there is no information that has been provided to RBC, into the Credit Parties' cash flows and satisfaction of priority payables to ensure that its security position was not being eroded; and

(c) the Credit Parties are now on their third set of counsel, the prior two exiting these proceedings without notice to RBC;

27. Lastly, RBC does not believe that the appointment of Spergel as interim receiver is prejudicial to the Credit Parties. As set out in the proposed interim receivership Order, the powers of the proposed interim receiver will be restricted to a requirement for the Credit Parties to provide full disclosure, monitoring assets, receivables, accounts or otherwise, and those powers necessary to ensure that the Credit Parties do not inappropriately dissipate funds;

28. Therefore, RBC recommends that the Court issue an order appointing Spergel as interim receiver of the property, assets and undertaking of the Credit Parties. pending the outcome of the impending receivership application;

### **Other Grounds**

29. Rules 1.04 and 11 of the *Rules of Civil Procedure* (Ontario);

30. Section 46 of the BIA; and

31. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

1. Affidavit of Sylvia Kovesdi dated March 6, 2025;

2. Affidavit of Sylvia Kovesdi dated March <\*>, 2025;

3. A consent to act as Interim Receiver executed by Spergel; and

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

March , 2025

**AIRD & BERLIS LLP**

Barristers & Solicitors

Brookfield Place

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*Lawyers for Royal Bank of Canada*



**ROYAL BANK OF CANADA**

- and -

**TUNG AIR TRANSPORT LTD. et al**

Applicant

Respondents

Court File No. CV-25-00738060-00CL

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b>  Proceedings commenced at Toronto	
<b>NOTICE OF MOTION</b>	
<b>AIRD &amp; BERLIS LLP</b> Barristers and Solicitors Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9  <b>Steve Graff (LSO#: 31871V)</b> Tel: (416) 865-7726 Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a>  <b>Shaun Parsons (LSO # 81240A)</b> Tel: (416) 637-7982 Email: <a href="mailto:sparsons@airdberlis.com">sparsons@airdberlis.com</a>  Lawyers for Royal Bank of Canada	

- and -

**TUNG AIR TRANSPORT LTD. et al**

Applicant

Respondent

Court File No. CV-25-00738060-00CL

	<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p><b>(COMMERCIAL LIST)</b></p> <p><b>Proceedings commenced at Toronto</b></p>
	<p><b>AIDE-MÉMOIRE</b></p>
	<p><b>AIRD &amp; BERLIS LLP</b></p> <p>Barristers and Solicitors</p> <p>Brookfield Place</p> <p>181 Bay Street, Suite 1800</p> <p>Toronto, ON M5J 2T9</p> <p><b>Steve Graff (LSO # 31871V)</b></p> <p>Tel: (416) 865-7726</p> <p>Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a></p> <p><b>Shaun Parsons (LSO # 81240A)</b></p> <p>Tel: (416) 637-7982</p> <p>Email: <a href="mailto:sparsons@airdberlis.com">sparsons@airdberlis.com</a></p> <p><i>Lawyers for Royal Bank of Canada</i></p>

**ROYAL BANK OF CANADA**  
Applicant

-and-

**TUNG AIR TRANSPORT LTD. et al.**  
Respondents

Court File No. CV-25-00738060-00CL

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<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b></p> <p>Proceeding commenced at TORONTO</p>	<hr/>
<p><b>SUPPLEMENTARY AFFIDAVIT OF EKNOOR SINGH TUNG</b> (Affirmed April 11, 2025)</p>	<hr/>
<p><b>KRAMER SIMAAN DHILLON LLP</b> Litigation Counsel 120 Adelaide Street West, Suite 2100 Toronto, Ontario M5H 1T1</p> <p><b>Micheal Simaan (#41396A)</b> <a href="mailto:msimaan@kramersimaan.com">msimaan@kramersimaan.com</a> Telephone: (416) 601-6820 Facsimile: (416) 601-0712</p> <p>Lawyers for the Respondent, Tung Air Transport Ltd.</p>	<hr/>