



This is the 1st affidavit of
W. Roitman in this case and was
made on March 31, 2022

No. S-222758
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 0989705 B.C.
LTD., ALDERBRIDGE WAY LIMITED PARTNERSHIP, AND ALDERBRIDGE WAY GP LTD.

PETITIONERS

AFFIDAVIT

I, Wesley Roitman, of Suite 300, 162 Cumberland Street, Toronto, Ontario, businessperson,
SWEAR THAT:

I. INTRODUCTION

1. I am the Managing General Partner of Romspen Investment Corporation ("**Romspen**"), the petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. Since beginning its operations in 1966, Romspen has been a leading Canadian non-bank mortgage lender specializing in commercial and industrial real estate mortgages. Romspen provides customized mortgage solutions for term, bridge, and construction financing. Romspen's investments are comprised mostly of commercial and industrial first mortgages on

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properties primarily across Canada and the United States. Romspen presently has approximately \$3.0 billion in aggregate assets under management on behalf of its investors, including individuals, foundations, endowments, and pension plans serving retirees.

3. The respondents, 0989705 B.C. Ltd. ("**098 Ltd**"), Alderbridge Way GP Ltd. ("**Alderbridge GP**"), and Alderbridge Way Limited Partnership ("**Alderbridge LP**") (together, the "**Debtors**"), are the owners of a real estate development on lands located at 7928 Alderbridge Way, 5133/5233/5333 No. 3 Road, Richmond, British Columbia (the "**Project Lands**").

4. The Debtors' development project, known as the "Atmosphere Development", was a seven-tower, mixed-use development planned to encompass an entire city block in downtown Richmond (the "**Project**").

5. The Project was planned to feature over a million square feet of residential, retail and office strata, market rental, and affordable rental space, as well as public areas, with three levels of below-grade parking.

6. Romspen has advanced approximately \$143.6 million in senior mortgage loans to the Debtors in connection with the Project. Notwithstanding this advance, and a further approximate \$120 million in additional mortgage financing from other parties, the construction of the Project currently remains in its preliminary stages with no improvements to, or construction on, to the Project Lands, which remain vacant. To my knowledge, no substantive work beyond excavation, shoring, and dewatering has been undertaken on the Project Lands since approximately March 2020 – when the Debtors first failed to satisfy their obligations to pay interest monthly on Romspen's loans.

7. It is no longer feasible for the Project to be finished as contemplated in the Debtors' development schedule provided to Romspen in connection with the mortgage loans.

8. In addition to significant (e.g. multi-year) construction delays, the Project's financial viability is in question. Most notably:

- (a) the Debtors have been unable to meet their obligations to Romspen since March 2020. As of February 28, 2022, approximately \$175 million (inclusive of accrued interest but not fees and costs) is owed to Romspen. Interest continues to accrue at a rate of approximately \$1.5 million per month;

- (b) it is my understanding based on reports from the Debtors or their agents that as of the summer of 2021 approximately \$60 million was owed to the second ranking secured creditor and that interest on this amount has continued to accrue at approximately \$750,000 per month;
- (c) the Debtors are also in default of their obligations to the third-ranking mortgagee, which debt based on information from the third-ranking mortgagee's counsel totaled approximately \$94 million (inclusive of accrued interest) as of the summer of 2021 with interest continuing to accrue on this debt at a rate of approximately \$1.1 million per month; and
- (d) lien claims with a face value of approximately \$16.8 million have been filed against the Project Lands.

9. As noted above, monthly interest on the debts owing to the three groups of the Debtors' secured creditors is continuing to accrue at a rate of more than \$3,000,000 per month, or approximately \$100,000 per day.

10. Romspen has refrained from exercising its rights under its security for approximately two years to allow the Debtors to pursue potential options for proceeding with, refinancing, obtaining investment in, and/or selling their interest in the Project.

11. The Debtors have not been able to secure a commitment for a sale, refinancing, investment, or other transaction that would address their financial situation.

12. During the two years that Romspen refrained from exercising its rights, the total amount of the Debtors' liability to Romspen increased from approximately \$144.8 million on March 31, 2020, when the Debtors breached their obligation to pay interest monthly in arrears, to approximately \$175 million as of February 28, 2022, with approximately \$1.5 million in interest on Romspen's debt continuing to accrue with each passing month.

13. In these circumstances, after considerable discussion, negotiation and compromise, Romspen has agreed to consent to the Debtors' filing for protection under the *Companies Creditors' Arrangement Act* (the "CCAA"), as is further set out in the Debtors' petition filed with this Court, to provide the Debtors with a structured, Court-supervised framework as they try to address their financial situation.

14. The relief that is being sought by the Debtors with the consent of Romspen, both at their initial hearing for CCAA protection and at the “come-back hearing” (collectively, the “**Consensual CCAA Filing**”), reflects a negotiation and careful balancing of Romspen’s rights as first-ranking secured lender with the Debtors’ desire to attempt to restructure under the CCAA with the benefit of their existing management and advisors.

15. The mechanisms in the Consensual CCAA Filing that have been negotiated and agreed upon to achieve this balance, while ensuring that Romspen’s rights and interests are protected, include the following:

- (a) an Initial Order with enhanced powers provided to the proposed monitor, Alvarez & Marsal Canada Inc. (the “**Monitor**”);
- (b) an interim lending facility that ranks after Romspen in priority;
- (c) a sales investment and solicitation process, prepared in consultation with the Monitor, and to be run by the Monitor, with terms and timelines that are the result of extensive negotiations between the Debtors and Romspen, with the involvement of the Monitor (the “**CCAA SISP**”); and
- (d) an agreed upon termination of the CCAA SISP and an alternative path forward if the CCAA SISP fails.

16. The Consensual CCAA Filing represents a negotiated compromise between Romspen and the Petitioners.

II. THE PROJECT

A. *Ownership Structure*

17. The Project is owned and operated by the Debtors, each of which is a single-project real estate development company, as follows:

- (a) 098 Ltd., a British Columbia corporation incorporated on December 30, 2013, is the nominee legal title holder of the Project Lands. 098 Ltd. has previously conducted business under the names UEM (Canada) Title Company Ltd. (until March 6, 2014) and UEM Sunrise (Canada) Alderbridge Ltd. (until September 29, 2017);

- (b) Alderbridge LP, a British Columbia limited partnership registered on June 5, 2017, and beneficial owner of the Project Lands, is a consortium held by South Street Development Managers Ltd. ("**South Street Ltd.**"), South Street (Alderbridge) Limited Partnership ("**South Street LP**"), Gatland Development Corporation ("**Gatland**"), REV Investments Inc. ("**REV Investments**"), J.V. Driver Investments Inc. ("**J.V Driver**"), G. Wong Holdings Inc. ("**Wong Holdings**"), MNB Enterprises Inc. ("**MNB**"), Chatanooga Investments Ltd. ("**Chatanooga**"), Ken Voth, and R. Jay Management Ltd ("**R. Jay**").; and
- (c) Alderbridge GP, a British Columbia corporation incorporated on June 2, 2017, is the general partner of Alderbridge LP.

18. South Street Ltd., South Street LP, Gatland, REV Investments Inc., REV Investments, REV Holdings Inc., Samuel David Hanson, and Brent Taylor Hanson are guarantors of the Debtors' obligations to Romspen (together, the "**Guarantors**").

A. Project Schedule and Budget

i. Project Schedule

19. The Project, which has not advanced to the stage at which the erection of any of the depicted towers has commenced, was intended to be built and financed in two stages.

20. As of February 2020, the development schedule for the Project provided for a completion date of October 2022 for both Stage 1 and Stage 2.

21. However, as noted above, work on the Project has stagnated since at least March 2020. As a result, based on the Debtors' September 19, 2019 schedule made available to Romspen, a copy of which is attached as **Exhibit "A"** to the Affidavit #1 of Jennifer Alambre sworn on March 31, 2022 (the "**Alambre Affidavit**"), the Project is years behind its initial schedule.

ii. Budget

22. The total Project budget as of February 2020 was \$726 million with a Stage 1 budget of \$605 million and a Stage 2 budget of \$121 million.

23. As of February 2020, the budgeted use of funds in the Stage 1 budget was as follows:

COST	BUDGET
Land	\$128,000,000
Construction	\$274,000,000
Soft Costs	\$45,026,000
Municipal Taxes & Levies	\$45,620,000
Interest Reserve/Financing	\$96,602,000
Contingency	\$15,349,000
TOTAL	\$605,000,000

24. While work on the construction of the Project structures, envelope, and finishes has yet to start, the Debtors are presently indebted to Romspen in the amount of approximately \$175 million with interest accruing on this amount at a rate of approximately \$1.5 million per month. In addition, as noted above, it is my understanding based on information provided by the Debtors or their agents and counsel to the Third Lien Lender, respectively, that as of the summer of 2021 the Debtors were indebted to (a) their Second Lien Lender (as defined below) for approximately \$60 million with interest accruing on this amount at a rate estimated to be approximately \$750,000 every month; (c) their Third Lien Lender (as defined below) for approximately \$94 million with interest accruing on this amount at a rate of approximately \$1.1 million per month; and (d) to seven (7) lien claimants for approximately \$16.8 million.

25. In other words, the Debtors are presently indebted for a sum in excess of \$325 million (not including property taxes and other potential payables), which is more than 50% of the Project's total Stage 1 budget, without the Debtors having started substantive work on the construction of the Project structures, envelope, and finishes. A further approximately \$3.3 million in interest is accruing on the Debtors' mortgage indebtedness each month.

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C. Project Financing

i. Romspen Credit Agreement

26. Pursuant to a commitment letter dated February 15, 2019 (the "**February 2019 Commitment**"), Romspen committed to provide the Debtors with \$90 million in mortgage financing with respect to the Project to be used for, among other things, payment of the existing mortgages on the Project Lands and to aid with payment of development costs directly related to the Project. The \$90 million in financing provided for by the February 2019 Commitment was subsequently increased to \$95 million (the "**Initial Commitment**") pursuant to a commitment letter dated July 24, 2019 (the "**July 2019 Commitment**"). The Debtors' obligations under the February 2019 Commitment and July 2019 Commitment were guaranteed by the Guarantors.

27. Pursuant to a letter agreement among Romspen, as lender, and the Debtors, as borrower, dated October 11, 2019, Romspen agreed to participate in a proposed syndicated non-revolving construction credit facility (the "**Construction Facility**") in the amount of up to \$422 million (inclusive of the Initial Commitment) (the "**Construction Loan Commitment Amount**") to fund the hard and soft costs of the Project on the terms set out in a Loan Agreement to Amend and Restate Commitment dated November 6, 2019 (the "**Credit Agreement**") among the Debtors, as borrowers, Romspen, as lender, and the Guarantors, as guarantors of the Debtors' obligations. A copy of the Credit Agreement is attached as **Exhibit "B"** to Alambre Affidavit.

28. Pursuant to the terms of the Credit Agreement, Romspen committed to funding up to \$212 million of the \$422 million loan provided the pre-conditions for such advances as set out in the Credit Agreement were met, and to make efforts to seek persons to acquire senior participations in the Construction Facility of up to an additional \$270 million. Under these terms, Romspen was to continue to participate in a junior position of approximately \$152 million upon syndication. The actual balance of Romspen's junior participation was to fluctuate as purchaser deposits in Stage 1 become available and senior participation funds were drawn, but it was never to be less than \$60 million.

29. As the Debtors exceeded the minimum qualified sales conditions in the Credit Agreement, Romspen advanced \$143,616,213.23 to the Debtors in four (4) separate draws under the Construction Facility made between November 25, 2019 and March 17, 2020. The total advances as of March 17, 2020 include cash advances of \$131,984,152.22 and a letter of credit

provided by Romspen in the amount of \$11,632,061.01. The City of Richmond drew down on the letter of credit in two (2) equal draws made in February 2021 and December 2021. An additional \$5,160.01 was advanced to the Debtors in December 2021 to cover bank draw fees.

30. Pursuant to the terms of the Credit Agreement, any proposed drawdown on the Construction Facility after March 31, 2020 was conditional upon Romspen being satisfied that, in the aggregate, participation of persons committed to acquire senior participation rights in the Construction Facility was sufficient to provide the full amount of the Construction Loan Commitment Amount (i.e. \$422 million).

31. The Construction Loan Commitment Amount is to be reduced on a dollar-for-dollar basis for any purchaser deposits ("**Purchaser Deposits**") released to the Debtors in Stage 1 exceeding \$48,701,344 (other than the CIBT Deposits as discussed below). Any use of Purchaser Deposits is to be approved by Romspen prior to such release, with such approval not to be unreasonably withheld or delayed.

32. Based on information provided by the Debtors, Romspen understands that Purchaser Deposits received by the Debtors as of September 30, 2019 total approximately \$25.4 million (not including the CIBT Deposits), including approximately \$7.5 million in deposits with respect to commercial shops and approximately \$17.9 million in deposits with respect to residential units. To Romspen's knowledge the deposit funds are being held in trust by the Debtors' solicitors.

ii. Romspen's Security

33. To secure their obligations under the Credit Agreement, the Debtors granted Romspen security, including among other things, (a) a first-ranking mortgage on the Project Lands and a beneficial charge agreement (the "**Romspen Mortgage**"), assignment of insurance, and environmental indemnity agreement with respect to the Project Lands; and (b) general security agreements in favour of Romspen from each of Alderbridge LP, Alderbridge GP, and 098 Ltd. (the "**Debtor GSAs**"). Copies of the Romspen Mortgage and the Debtor GSAs are attached as **Exhibits "C" to "F"** to the Alambre Affidavit.

34. The Guarantors have executed guarantees (the "**Guarantees**") in favour of Romspen in connection with the Debtors' obligations under the Credit Agreement. The

Guarantors' obligations under the Guarantees are secured by general security agreements granted by each of the Guarantors.

35. The Debtors, the Guarantors, and their respective shareholders and unitholders (as applicable) have granted to Romspen additional security in the form of subordination, pledge, and other agreements as contemplated by Article 12 of the Credit Agreement.

iii. The Second-Ranking Mortgage

36. The Debtors have obtained a loan or credit facility from 1185678 B.C. Ltd. (the "**Second Lien Lender**") in the maximum principal amount of \$60 million, which loan or credit facility is secured by, among other things, a mortgage (the "**Second Lien Mortgage**") on the Project Lands in the amount of \$60 million.

37. The Second Lien Lender is an agent for a group of investors including R. Jay, J.V. Driver, MNB, Wong Holdings, Gatland, REV Investments, Voth Developments Ltd., Inland Consulting Ltd., Dennis Schwab, Lesley Schwab, and South Street LP. (collectively, the "**2MLs**").

38. There exists an overlap between the 2MLs, the unitholders of Alderbridge LP (one of the Debtors), and certain of the Guarantors of the Debtors' obligations to Romspen. Namely, the 2MLs (other than Voth Developments Ltd., Inland Consulting Ltd., and Dennis and Lesley Schwab) are unitholders of Alderbridge LP. Gatland, REV Investments, and South Street LP are Guarantors of the Debtors' obligations to Romspen. Gatland and REV Investments are also shareholders in Alderbridge GP, one of the Debtors.

39. Pursuant to a Subordination and Standstill Agreement between Romspen and the Second Lien Lender dated for reference October 31, 2019 (the "**Second Lien Standstill**"), the Second Lien Lender has agreed to subordinate and postpone its loan and the security therefor, including the Second Lien Mortgage, in favour of Romspen. A copy of the Second Lien Standstill is attached as **Exhibit "G"** to the Alambre Affidavit.

iv. The Third-Ranking Mortgage

40. Prior to Romspen's involvement with the Project, the Debtors had entered into a Purchase and Development Agreement (the "**CIBT PDA**") with an affiliate of CIBT Education Group, Inc., GEC (Richmond) GP Inc. ("**CIBT**").

41. The CIBT PDA gives CIBT the ability to acquire Towers D, G and 6,631 square feet of retail space for a discounted purchase price in return for CIBT releasing its \$60 million deposit (the "**CIBT Deposit**") into the Project.

42. The CIBT Deposit is secured by, among other things, a mortgage (the "**Third Lien Mortgage**") on the Project Lands in the amount of \$60 million.

43. Pursuant to a Subordination and Standstill Agreement between Romspen and the CIBT dated for reference October 31, 2019 (the "**Third Lien Standstill**"), CIBT has agreed to subordinate and postpone its loan and the security therefor, including the Third Lien Mortgage, in favour of Romspen. A copy of the Third Lien Standstill is attached as **Exhibit "H"** to the Alambre Affidavit.

III. THE DEBTORS' INSOLVENCY

A. Lack of Investor Interest in the Project

44. It was a condition for any drawdown on the Construction Facility proposed to be made after March 31, 2020 that Romspen be satisfied that, in the aggregate, participation of other persons (i.e. other lenders) committed to acquire senior participation rights in the Construction Facility was sufficient to provide the full amount of the Construction Loan Commitment Amount of \$422 million. This was essentially a "syndication" condition.

45. Romspen was unsuccessful in obtaining commitments from other lenders to participate in the Construction Facility to meet the senior participation requirements contemplated by the Credit Agreement and was accordingly unable to syndicate the loan. As a result, on March 31, 2020, Romspen wrote to the Debtors to advise that it could not waive the conditions for continued funding in the Credit Agreement regarding participations in the Construction Facility. Given this lack of participation by other lenders, and as permitted by the Credit Agreement, in March 2020 Romspen suspended further draws and advances. A copy of Romspen's letter to the Debtors dated March 31, 2020 regarding the foregoing is attached as **Exhibit "I"** to the Alambre Affidavit.

46. At or about this time, the Debtors breached their obligations under the Credit Agreement by, among other things, failing to pay interest in arrears contrary to section 8.01(1)(a) of the Credit Agreement.

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47. Notwithstanding the Debtors having breached their obligations under the Credit Agreement as of March 2020, some two (2) years ago, Romspen did not initiate enforcement proceedings at that time. Romspen instead emphasized in its March 31, 2020 letter that it was prepared to discuss with the Debtors ways to manage through the disruptions associated with the COVID-19 pandemic, including by continuing to look for other lenders or investors to participate in the Construction Facility. However, while it was prepared to engage in such discussions, Romspen specifically advised the Debtors that it would be necessary for the Debtors to raise additional equity or look for other sources of capital.

C. *The Debtors' Continuing Defaults under the Credit Agreement*

48. In the approximate one-year period between March 2020 and February 2021, the Debtors were not able refinance, obtain investment in, and/or sell their interest in the Project to be able to meet their obligation to Romspen or their other creditors.

49. On February 17, 2021, after refraining doing so for nearly a year, Romspen sent a default letter to the Debtors and Guarantors setting out the following defaults under the Credit Agreement:

- (a) a breach of Section 8.01(1)(a) of the Loan Agreement, which requires the Debtors to pay interest computed as provided in Article 5 of the Credit Agreement monthly in arrears. Presently, interest from March 1, 2020 to February 28, 2022 is in arrears, which totals approximately \$31.6 million, with further interest accruing at a rate of approximately \$1.5 million per month;
- (b) a breach of Section 11.01(m) of the Credit Agreement, which requires the Debtors to maintain all realty taxes current. As of February 17, 2021, the 2020 property taxes in respect of the Project Lands were in arrears in the amount of \$824,272.39 and interest to February 10, 2021 in the amount of \$5,046.13 had accrued;
- (c) a breach of Section 11.01(w) of the Credit Agreement, which requires the Debtors to, among other things, manage the development and Construction of, and operate, the Project in accordance with the Project Budget and the Construction Schedule (each as defined in the Credit Agreement), and, subject to *Force*

Majeure, to not abandon (for a single period of 20 days or more), and to ensure that there is no abandonment of, the Project; and

- (d) a breach of Section 11.01(aa) of the Credit Agreement, which requires the Debtors to, among other things, always maintain Borrower's Equity (as defined in the Credit Agreement).

50. A copy of Romspen's February 17, 2021 default notice (the "**Default Notice**") letter is attached as **Exhibit "J"** to the Alambre Affidavit.

51. In addition to the above defaults, the Default Notice advised the Debtors that Romspen was requiring them to release, discharge, or vacate from title the claims of lien made against the Project Lands under the *Builders Lien Act* (British Columbia). As of the date of the Default Notice there were nine (9) such liens that were registered between August 13, 2020 and December 11, 2020. As of the date of this affidavit, an additional six (6) liens were registered against the Project Lands. The Debtors' failure to release, discharge, or vacate these liens, which have a face value of approximately \$16.8 million, is an event of default under section 13.01(1)(s) of the Credit Agreement. A copy of each of these liens is attached as **Exhibit "K"** to the Alambre Affidavit.

52. On February 22, 2021, approximately one year after the Debtors' breach of their obligations to pay interest under the Credit Agreement, Romspen issued a demand (the "**Demand**") with respect to the Credit Agreement, declaring the entire amount owing under the Credit Agreement as of February 10, 2021, being the sum of \$157,885,389.55 (the "**Indebtedness**"), to be immediately due and owing. Concurrently with its demand, Romspen issued a Notice of Intention to Enforce Security (the "**Enforcement Notice**") issued to the Borrower and the Guarantors pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Copies of the Demand and Enforcement Notice are attached to the Alambre Affidavit as **Exhibits "L"** and "**M"** respectively.

53. Between March 31, 2020, being the date of the Debtors' initial breach of the Credit Agreement, and February 17, 2021, being the date of Romspen's Default Notice, approximately \$14.5 million in interest accrued and was not paid. Between March 1, 2020 and February 28, 2022, approximately \$31.6 million in interest accrued and has not been paid.

54. On June 9, 2021, CIBT's counsel sent to 098 Ltd. a notice of default and a notice of intention to enforce security prescribed by section 244 of the BIA. CIBT's default letter advised that the total amount owing under the Third Lien Mortgage as of June 8, 2021 was \$94,107,754.14 with interest continuing to accrue on this amount at a rate of approximately \$1.1 million per month. A copy of CIBT's counsel's default letter is attached as **Exhibit "N"** to the Alambre Affidavit.

55. On the same day, CIBT's counsel wrote to (a) Romspen pursuant to the Third Lien Standstill to give the required 90 days' written notice of its intention to commence an "Enforcement Action" (as defined in the Third Lien Standstill") under the Third Lien Mortgage; and (b) the Second Lien Lender pursuant to a subordination and standstill agreement among those parties to give notice of CIBT's intention to commence an enforcement action under the Third Lien Mortgage. Copies of CIBT's counsel's letters to Romspen and the Second Lien Lender are attached to the Alambre Affidavit as **Exhibits "O"** and **"P"** respectively.

IV. The Debtors' Continued Restructuring Efforts

56. Notwithstanding the breaches and defaults under the Credit Agreement, and delivery of the Demand and Enforcement Notice, Romspen refrained from taking active enforcement steps so as to provide the Debtors with additional time to find a solution to their financial difficulties. Unfortunately, during the last two (2) years the Debtors' efforts have to date been unsuccessful.

A. Commencement of the Debtors' SISP

57. On May 19, 2021, counsel to the Debtors wrote to counsel to Romspen to advise that the Debtors were commencing a sale and investment solicitation process (the **"Debtors' SISP"**) to solicit offers from individuals interested in purchasing the assets and undertakings of, or refinancing, investing, or participating in the business of the Debtors.

58. To this end, the Debtors advised that they had engaged Cushman & Wakefield Structured Finance UL (**"Cushman"**) to work with the Debtors and Alvarez & Marsal Canada Inc. (**"A&M"**) (which had previously been engaged by the Debtors) to finalize the offering and other marketing materials for the Project in the hopes of going to market the week of May 24, 2021.

59. In connection with the proposed Debtors' SISP, the Debtors provided to Romspen a "power point" overview prepared by A&M setting out details of the Debtors' SISP process and

timelines. The Debtors' SISP contemplated the selection of a successful bid, and the closing of a transaction, by the end of August 2021.

60. While Rompsen expressed some concerns with the Debtors' SISP and whether it would lead to a transaction, Rompsen recognized that the Debtors' had retained professional parties to assist in the process and that the plan was to consummate a transaction on the timeline set out above. Rompsen refrained from taking enforcement steps during the Debtors' SISP.

B. The Debtors' SISP Did Not Result in a Transaction

61. In summary, the Debtors' SISP, carried out by the Debtors with the assistance of Cushman and A&M in mid-2021, involved among other things:

- (a) preparation by Cushman of the Cushman Teaser and its distribution to potentially interested parties;
- (b) the development and maintenance of a "data room" (the "**Debtors' Data Room**") containing documents necessary for a interested party to evaluate the opportunity presented by the Debtors' SISP, including the Debtors' financials and key construction, marketing, sales tax, survey, environmental, geotechnical, permitting, planning, and architectural documents;
- (c) the delivery of non-disclosure agreements ("**NDAs**") to thirty-one (31) interested parties and the execution of NDAs with seventeen (17) of them;
- (d) the delivery of marketing materials with respect to the Project, including the Cushman OM, and the granting of access to the Debtors' Data Room to the seventeen (17) parties who signed NDAs; and
- (e) the holding of seven (7) management calls.

62. The Debtors ultimately elected to pursue a transaction which contemplated an equity restructuring of the Debtors as set out in a non-binding term sheet (the "**Restructuring LOI**").

63. The Debtors negotiated with the counterparty who submitted the non-binding Restructuring LOI for a number of months starting in the summer of 2021 and into January 2022.

64. On January 21, 2022, Romspen was advised that the prospective acquiror had not waived the mutual tax and other conditions and instead proposed to the Debtors an entirely new transaction structure for the sale of the Debtors' interest in the Project at a materially reduced purchase price. At this time the negotiations ceased with that party.

V. THE CONSENSUAL CCAA FILING

65. Unfortunately, and notwithstanding the two-year grace period granted by Romspen during which the Debtors have been afforded the opportunity to pursue the Debtors' SISP with the benefit of their own advisors, on their own timelines, and based on the value that they ascribe to the Project, the Debtors' efforts to find a solution to their financial difficulties have not come to fruition.

66. The Debtors are clearly insolvent and an insolvency filing is needed. As noted at the outset of this affidavit, Romspen and the Debtors have worked very hard for a long time in an effort to find a consensual path forward. These discussions have included direct discussions among the parties, discussions among counsel and the involvement of A&M and its counsel. Compromises have been made to achieve a path forward, on a consensual basis, that has various inter-connected parts, all of which is to the benefit of all stakeholders.

67. In the circumstances, Romspen's support for the Consensual CCAA Filing, including (a) the ranking of the interim lending facility after Romspen, (b) the granting of enhanced powers to the Monitor, (c) a CCAA SISP run by the Monitor with well-defined timelines, consultation rights, and consent rights, and (d) an agreed upon termination of the CCAA SISP and alternative path forward if the CCAA SISP fails, is the result of extensive negotiations to achieve a careful balancing of various parties' rights including those of Romspen as first-ranking secured lender with the Debtors' desire to attempt to effect a sale and/or restructuring under the CCAA with the benefit of their existing management and advisors.

VIII. CONCLUSION

68. For the reasons set out above, Romspen supports the Debtors obtaining CCAA protection based on the negotiated terms of the Consensual CCAA Filing.

69. I have reviewed the Notice to the Profession, Public and the Media RE: Affidavits for use in Court Proceedings, dated March 27, 2020, by Direction of Chief Justice C.E. Hinkson

LMR

(the "Direction"). I was not physically present before the commissioner, but I was linked with the commissioner utilizing video technology and we followed the process for remote commissioning of affidavits as set out in the Direction.

SWORN BEFORE ME VIA MICROSOFT)
TEAMS at Vancouver, British Columbia on)
March 31, 2022)
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)



A Commissioner for taking Affidavits for
British Columbia

Wesley Roitman

ALISON BURNS
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This is the 1st affidavit of
W. Roitman in this case and was
made on March 31, 2022

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PETITIONERS

AFFIDAVIT

I, Wesley Roitman, of Suite 300, 162 Cumberland Street, Toronto, Ontario, businessperson,
SWEAR THAT:

I. INTRODUCTION

1. I am the Managing General Partner of Romspen Investment Corporation ("Romspen"), the petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this affidavit except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

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properties primarily across Canada and the United States. Romspen presently has approximately \$3.0 billion in aggregate assets under management on behalf of its investors, including individuals, foundations, endowments, and pension plans serving retirees.

3. The respondents, 0989705 B.C. Ltd. ("**098 Ltd**"), Alderbridge Way GP Ltd. ("**Alderbridge GP**"), and Alderbridge Way Limited Partnership ("**Alderbridge LP**") (together, the "**Debtors**"), are the owners of a real estate development on lands located at 7928 Alderbridge Way, 5133/5233/5333 No. 3 Road, Richmond, British Columbia (the "**Project Lands**").

4. The Debtors' development project, known as the "Atmosphere Development", was a seven-tower, mixed-use development planned to encompass an entire city block in downtown Richmond (the "**Project**").

5. The Project was planned to feature over a million square feet of residential, retail and office strata, market rental, and affordable rental space, as well as public areas, with three levels of below-grade parking.

6. Romspen has advanced approximately \$143.6 million in senior mortgage loans to the Debtors in connection with the Project. Notwithstanding this advance, and a further approximate \$120 million in additional mortgage financing from other parties, the construction of the Project currently remains in its preliminary stages with no improvements to, or construction on, to the Project Lands, which remain vacant. To my knowledge, no substantive work beyond excavation, shoring, and dewatering has been undertaken on the Project Lands since approximately March 2020 – when the Debtors first failed to satisfy their obligations to pay interest monthly on Romspen's loans.

7. It is no longer feasible for the Project to be finished as contemplated in the Debtors' development schedule provided to Romspen in connection with the mortgage loans.

8. In addition to significant (e.g. multi-year) construction delays, the Project's financial viability is in question. Most notably:

- (a) the Debtors have been unable to meet their obligations to Romspen since March 2020. As of February 28, 2022, approximately \$175 million (inclusive of accrued interest but not fees and costs) is owed to Romspen. Interest continues to accrue at a rate of approximately \$1.5 million per month;

- (b) it is my understanding based on reports from the Debtors or their agents that as of the summer of 2021 approximately \$60 million was owed to the second ranking secured creditor and that interest on this amount has continued to accrue at approximately \$750,000 per month;
- (c) the Debtors are also in default of their obligations to the third-ranking mortgagee, which debt based on information from the third-ranking mortgagee's counsel totaled approximately \$94 million (inclusive of accrued interest) as of the summer of 2021 with interest continuing to accrue on this debt at a rate of approximately \$1.1 million per month; and
- (d) lien claims with a face value of approximately \$16.8 million have been filed against the Project Lands.

9. As noted above, monthly interest on the debts owing to the three groups of the Debtors' secured creditors is continuing to accrue at a rate of more than \$3,000,000 per month, or approximately \$100,000 per day.

10. Romspen has refrained from exercising its rights under its security for approximately two years to allow the Debtors to pursue potential options for proceeding with, refinancing, obtaining investment in, and/or selling their interest in the Project.

11. The Debtors have not been able to secure a commitment for a sale, refinancing, investment, or other transaction that would address their financial situation.

12. During the two years that Romspen refrained from exercising its rights, the total amount of the Debtors' liability to Romspen increased from approximately \$144.8 million on March 31, 2020, when the Debtors breached their obligation to pay interest monthly in arrears, to approximately \$175 million as of February 28, 2022, with approximately \$1.5 million in interest on Romspen's debt continuing to accrue with each passing month.

13. In these circumstances, after considerable discussion, negotiation and compromise, Romspen has agreed to consent to the Debtors' filing for protection under the *Companies Creditors' Arrangement Act* (the "CCAA"), as is further set out in the Debtors' petition filed with this Court, to provide the Debtors with a structured, Court-supervised framework as they try to address their financial situation.

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14. The relief that is being sought by the Debtors with the consent of Romspen, both at their initial hearing for CCAA protection and at the "come-back hearing" (collectively, the "Consensual CCAA Filing"), reflects a negotiation and careful balancing of Romspen's rights as first-ranking secured lender with the Debtors' desire to attempt to restructure under the CCAA with the benefit of their existing management and advisors.

15. The mechanisms in the Consensual CCAA Filing that have been negotiated and agreed upon to achieve this balance, while ensuring that Romspen's rights and interests are protected, include the following:

- (a) an Initial Order with enhanced powers provided to the proposed monitor, Alvarez & Marsal Canada Inc. (the "Monitor");
- (b) an interim lending facility that ranks after Romspen in priority;
- (c) a sales investment and solicitation process, prepared in consultation with the Monitor, and to be run by the Monitor, with terms and timelines that are the result of extensive negotiations between the Debtors and Romspen, with the involvement of the Monitor (the "CCAA SISF"); and
- (d) an agreed upon termination of the CCAA SISF and an alternative path forward if the CCAA SISF fails.

16. The Consensual CCAA Filing represents a negotiated compromise between Romspen and the Petitioners.

II. THE PROJECT

A. Ownership Structure

17. The Project is owned and operated by the Debtors, each of which is a single-project real estate development company, as follows:

- (a) 098 Ltd., a British Columbia corporation incorporated on December 30, 2013, is the nominee legal title holder of the Project Lands. 098 Ltd. has previously conducted business under the names UEM (Canada) Title Company Ltd. (until March 6, 2014) and UEM Sunrise (Canada) Alderbridge Ltd. (until September 29, 2017);

- (b) Alderbridge LP, a British Columbia limited partnership registered on June 5, 2017, and beneficial owner of the Project Lands, is a consortium held by South Street Development Managers Ltd. ("**South Street Ltd.**"), South Street (Alderbridge) Limited Partnership ("**South Street LP**"), Gatland Development Corporation ("**Gatland**"), REV Investments Inc. ("**REV Investments**"), J.V. Driver Investments Inc. ("**J.V Driver**"), G. Wong Holdings Inc. ("**Wong Holdings**"), MNB Enterprises Inc. ("**MNB**"), Chatanooga Investments Ltd. ("**Chatanooga**"), Ken Voth, and R. Jay Management Ltd ("**R. Jay**").; and
- (c) Alderbridge GP, a British Columbia corporation incorporated on June 2, 2017, is the general partner of Alderbridge LP.

18. South Street Ltd., South Street LP, Gatland, REV Investments Inc., REV Investments, REV Holdings Inc., Samuel David Hanson, and Brent Taylor Hanson are guarantors of the Debtors' obligations to Romspen (together, the "**Guarantors**").

A. Project Schedule and Budget

i. Project Schedule

19. The Project, which has not advanced to the stage at which the erection of any of the depicted towers has commenced, was intended to be built and financed in two stages.

20. As of February 2020, the development schedule for the Project provided for a completion date of October 2022 for both Stage 1 and Stage 2.

21. However, as noted above, work on the Project has stagnated since at least March 2020. As a result, based on the Debtors' September 19, 2019 schedule made available to Romspen, a copy of which is attached as **Exhibit "A"** to the Affidavit #1 of Jennifer Alambre sworn on March 31, 2022 (the "**Alambre Affidavit**"), the Project is years behind its initial schedule.

ii. Budget

22. The total Project budget as of February 2020 was \$726 million with a Stage 1 budget of \$605 million and a Stage 2 budget of \$121 million.

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23. As of February 2020, the budgeted use of funds in the Stage 1 budget was as follows:

COST	BUDGET
Land	\$128,000,000
Construction	\$274,000,000
Soft Costs	\$45,026,000
Municipal Taxes & Levies	\$45,620,000
Interest Reserve/Financing	\$96,602,000
Contingency	\$15,349,000
TOTAL	\$605,000,000

24. While work on the construction of the Project structures, envelope, and finishes has yet to start, the Debtors are presently indebted to Romspen in the amount of approximately \$175 million with interest accruing on this amount at a rate of approximately \$1.5 million per month. In addition, as noted above, it is my understanding based on information provided by the Debtors or their agents and counsel to the Third Lien Lender, respectively, that as of the summer of 2021 the Debtors were indebted to (a) their Second Lien Lender (as defined below) for approximately \$60 million with interest accruing on this amount at a rate estimated to be approximately \$750,000 every month; (c) their Third Lien Lender (as defined below) for approximately \$94 million with interest accruing on this amount at a rate of approximately \$1.1 million per month; and (d) to seven (7) lien claimants for approximately \$16.8 million.

25. In other words, the Debtors are presently indebted for a sum in excess of \$325 million (not including property taxes and other potential payables), which is more than 50% of the Project's total Stage 1 budget, without the Debtors having started substantive work on the construction of the Project structures, envelope, and finishes. A further approximately \$3.3 million in interest is accruing on the Debtors' mortgage indebtedness each month.

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C. Project Financing

i. Romspen Credit Agreement

26. Pursuant to a commitment letter dated February 15, 2019 (the "**February 2019 Commitment**"), Romspen committed to provide the Debtors with \$90 million in mortgage financing with respect to the Project to be used for, among other things, payment of the existing mortgages on the Project Lands and to aid with payment of development costs directly related to the Project. The \$90 million in financing provided for by the February 2019 Commitment was subsequently increased to \$95 million (the "**Initial Commitment**") pursuant to a commitment letter dated July 24, 2019 (the "**July 2019 Commitment**"). The Debtors' obligations under the February 2019 Commitment and July 2019 Commitment were guaranteed by the Guarantors.

27. Pursuant to a letter agreement among Romspen, as lender, and the Debtors, as borrower, dated October 11, 2019, Romspen agreed to participate in a proposed syndicated non-revolving construction credit facility (the "**Construction Facility**") in the amount of up to \$422 million (inclusive of the Initial Commitment) (the "**Construction Loan Commitment Amount**") to fund the hard and soft costs of the Project on the terms set out in a Loan Agreement to Amend and Restate Commitment dated November 6, 2019 (the "**Credit Agreement**") among the Debtors, as borrowers, Romspen, as lender, and the Guarantors, as guarantors of the Debtors' obligations. A copy of the Credit Agreement is attached as Exhibit "**B**" to Alambre Affidavit.

28. Pursuant to the terms of the Credit Agreement, Romspen committed to funding up to \$212 million of the \$422 million loan provided the pre-conditions for such advances as set out in the Credit Agreement were met, and to make efforts to seek persons to acquire senior participations in the Construction Facility of up to an additional \$270 million. Under these terms, Romspen was to continue to participate in a junior position of approximately \$152 million upon syndication. The actual balance of Romspen's junior participation was to fluctuate as purchaser deposits in Stage 1 become available and senior participation funds were drawn, but it was never to be less than \$60 million.

29. As the Debtors exceeded the minimum qualified sales conditions in the Credit Agreement, Romspen advanced \$143,616,213.23 to the Debtors in four (4) separate draws under the Construction Facility made between November 25, 2019 and March 17, 2020. The total advances as of March 17, 2020 include cash advances of \$131,984,152.22 and a letter of credit

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provided by Romspen in the amount of \$11,632,061.01. The City of Richmond drew down on the letter of credit in two (2) equal draws made in February 2021 and December 2021. An additional \$5,160.01 was advanced to the Debtors in December 2021 to cover bank draw fees.

30. Pursuant to the terms of the Credit Agreement, any proposed drawdown on the Construction Facility after March 31, 2020 was conditional upon Romspen being satisfied that, in the aggregate, participation of persons committed to acquire senior participation rights in the Construction Facility was sufficient to provide the full amount of the Construction Loan Commitment Amount (i.e. \$422 million).

31. The Construction Loan Commitment Amount is to be reduced on a dollar-for-dollar basis for any purchaser deposits ("**Purchaser Deposits**") released to the Debtors in Stage 1 exceeding \$48,701,344 (other than the CIBT Deposits as discussed below). Any use of Purchaser Deposits is to be approved by Romspen prior to such release, with such approval not to be unreasonably withheld or delayed.

32. Based on information provided by the Debtors, Romspen understands that Purchaser Deposits received by the Debtors as of September 30, 2019 total approximately \$25.4 million (not including the CIBT Deposits), including approximately \$7.5 million in deposits with respect to commercial shops and approximately \$17.9 million in deposits with respect to residential units. To Romspen's knowledge the deposit funds are being held in trust by the Debtors' solicitors.

ii. Romspen's Security

33. To secure their obligations under the Credit Agreement, the Debtors granted Romspen security, including among other things, (a) a first-ranking mortgage on the Project Lands and a beneficial charge agreement (the "**Romspen Mortgage**"), assignment of insurance, and environmental indemnity agreement with respect to the Project Lands; and (b) general security agreements in favour of Romspen from each of Alderbridge LP, Alderbridge GP, and 098 Ltd. (the "**Debtor GSAs**"). Copies of the Romspen Mortgage and the Debtor GSAs are attached as **Exhibits "C" to "F"** to the Alambre Affidavit.

34. The Guarantors have executed guarantees (the "**Guarantees**") in favour of Romspen in connection with the Debtors' obligations under the Credit Agreement. The

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Guarantors' obligations under the Guarantees are secured by general security agreements granted by each of the Guarantors.

35. The Debtors, the Guarantors, and their respective shareholders and unitholders (as applicable) have granted to Romspen additional security in the form of subordination, pledge, and other agreements as contemplated by Article 12 of the Credit Agreement.

iii. The Second-Ranking Mortgage

36. The Debtors have obtained a loan or credit facility from 1185678 B.C. Ltd. (the "Second Lien Lender") in the maximum principal amount of \$60 million, which loan or credit facility is secured by, among other things, a mortgage (the "Second Lien Mortgage") on the Project Lands in the amount of \$60 million.

37. The Second Lien Lender is an agent for a group of investors including R. Jay, J.V. Driver, MNB, Wong Holdings, Gatland, REV Investments, Voth Developments Ltd., Inland Consulting Ltd., Dennis Schwab, Lesley Schwab, and South Street LP. (collectively, the "2MLs").

38. There exists an overlap between the 2MLs, the unitholders of Alderbridge LP (one of the Debtors), and certain of the Guarantors of the Debtors' obligations to Romspen. Namely, the 2MLs (other than Voth Developments Ltd., Inland Consulting Ltd., and Dennis and Lesly Schwab) are unitholders of Alderbridge LP. Gatland, REV Investments, and South Street LP are Guarantors of the Debtors' obligations to Romspen. Gatland and REV Investments are also shareholders in Alderbridge GP, one of the Debtors.

39. Pursuant to a Subordination and Standstill Agreement between Romspen and the Second Lien Lender dated for reference October 31, 2019 (the "Second Lien Standstill"), the Second Lien Lender has agreed to subordinate and postpone its loan and the security therefor, including the Second Lien Mortgage, in favour of Romspen. A copy of the Second Lien Standstill is attached as Exhibit "G" to the Alambre Affidavit.

iv. The Third-Ranking Mortgage

40. Prior to Romspen's involvement with the Project, the Debtors had entered into a Purchase and Development Agreement (the "CIBT PDA") with an affiliate of CIBT Education Group, Inc., GEC (Richmond) GP Inc. ("CIBT").

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41. The CIBT PDA gives CIBT the ability to acquire Towers D, G and 6,631 square feet of retail space for a discounted purchase price in return for CIBT releasing its \$60 million deposit (the "CIBT Deposit") into the Project.

42. The CIBT Deposit is secured by, among other things, a mortgage (the "Third Lien Mortgage") on the Project Lands in the amount of \$60 million.

43. Pursuant to a Subordination and Standstill Agreement between Romspen and the CIBT dated for reference October 31, 2019 (the "Third Lien Standstill"), CIBT has agreed to subordinate and postpone its loan and the security therefor, including the Third Lien Mortgage, in favour of Romspen. A copy of the Third Lien Standstill is attached as Exhibit "H" to the Alambre Affidavit.

III. THE DEBTORS' INSOLVENCY

A. *Lack of Investor Interest in the Project*

44. It was a condition for any drawdown on the Construction Facility proposed to be made after March 31, 2020 that Romspen be satisfied that, in the aggregate, participation of other persons (i.e. other lenders) committed to acquire senior participation rights in the Construction Facility was sufficient to provide the full amount of the Construction Loan Commitment Amount of \$422 million. This was essentially a "syndication" condition.

45. Romspen was unsuccessful in obtaining commitments from other lenders to participate in the Construction Facility to meet the senior participation requirements contemplated by the Credit Agreement and was accordingly unable to syndicate the loan. As a result, on March 31, 2020, Romspen wrote to the Debtors to advise that it could not waive the conditions for continued funding in the Credit Agreement regarding participations in the Construction Facility. Given this lack of participation by other lenders, and as permitted by the Credit Agreement, in March 2020 Romspen suspended further draws and advances. A copy of Romspen's letter to the Debtors dated March 31, 2020 regarding the foregoing is attached as Exhibit "I" to the Alambre Affidavit.

46. At or about this time, the Debtors breached their obligations under the Credit Agreement by, among other things, failing to pay interest in arrears contrary to section 8.01(1)(a) of the Credit Agreement.

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47. Notwithstanding the Debtors having breached their obligations under the Credit Agreement as of March 2020, some two (2) years ago, Romspen did not initiate enforcement proceedings at that time. Romspen instead emphasized in its March 31, 2020 letter that it was prepared to discuss with the Debtors ways to manage through the disruptions associated with the COVID-19 pandemic, including by continuing to look for other lenders or investors to participate in the Construction Facility. However, while it was prepared to engage in such discussions, Romspen specifically advised the Debtors that it would be necessary for the Debtors to raise additional equity or look for other sources of capital.

C. The Debtors' Continuing Defaults under the Credit Agreement

48. In the approximate one-year period between March 2020 and February 2021, the Debtors were not able to refinance, obtain investment in, and/or sell their interest in the Project to be able to meet their obligation to Romspen or their other creditors.

49. On February 17, 2021, after refraining from doing so for nearly a year, Romspen sent a default letter to the Debtors and Guarantors setting out the following defaults under the Credit Agreement:

- (a) a breach of Section 8.01(1)(a) of the Loan Agreement, which requires the Debtors to pay interest computed as provided in Article 5 of the Credit Agreement monthly in arrears. Presently, interest from March 1, 2020 to February 28, 2022 is in arrears, which totals approximately \$31.6 million, with further interest accruing at a rate of approximately \$1.5 million per month;
- (b) a breach of Section 11.01(m) of the Credit Agreement, which requires the Debtors to maintain all realty taxes current. As of February 17, 2021, the 2020 property taxes in respect of the Project Lands were in arrears in the amount of \$824,272.39 and interest to February 10, 2021 in the amount of \$5,046.13 had accrued;
- (c) a breach of Section 11.01(w) of the Credit Agreement, which requires the Debtors to, among other things, manage the development and Construction of, and operate, the Project in accordance with the Project Budget and the Construction Schedule (each as defined in the Credit Agreement), and, subject to *Force*

Majeure, to not abandon (for a single period of 20 days or more), and to ensure that there is no abandonment of, the Project; and

- (d) a breach of Section 11.01(aa) of the Credit Agreement, which requires the Debtors to, among other things, always maintain Borrower's Equity (as defined in the Credit Agreement).

50. A copy of Romspen's February 17, 2021 default notice (the "Default Notice") letter is attached as **Exhibit "J"** to the Alambre Affidavit.

51. In addition to the above defaults, the Default Notice advised the Debtors that Romspen was requiring them to release, discharge, or vacate from title the claims of lien made against the Project Lands under the *Builders Lien Act* (British Columbia). As of the date of the Default Notice there were nine (9) such liens that were registered between August 13, 2020 and December 11, 2020. As of the date of this affidavit, an additional six (6) liens were registered against the Project Lands. The Debtors' failure to release, discharge, or vacate these liens, which have a face value of approximately \$16.8 million, is an event of default under section 13.01(1)(s) of the Credit Agreement. A copy of each of these liens is attached as **Exhibit "K"** to the Alambre Affidavit.

52. On February 22, 2021, approximately one year after the Debtors' breach of their obligations to pay interest under the Credit Agreement, Romspen issued a demand (the "Demand") with respect to the Credit Agreement, declaring the entire amount owing under the Credit Agreement as of February 10, 2021, being the sum of \$157,885,389.55 (the "Indebtedness"), to be immediately due and owing. Concurrently with its demand, Romspen issued a Notice of Intention to Enforce Security (the "Enforcement Notice") issued to the Borrower and the Guarantors pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). Copies of the Demand and Enforcement Notice are attached to the Alambre Affidavit as **Exhibits "L"** and **"M"** respectively.

53. Between March 31, 2020, being the date of the Debtors' initial breach of the Credit Agreement, and February 17, 2021, being the date of Romspen's Default Notice, approximately \$14.5 million in interest accrued and was not paid. Between March 1, 2020 and February 28, 2022, approximately \$31.6 million in interest accrued and has not been paid.

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54. On June 9, 2021, CIBT's counsel sent to 098 Ltd. a notice of default and a notice of intention to enforce security prescribed by section 244 of the BIA. CIBT's default letter advised that the total amount owing under the Third Lien Mortgage as of June 8, 2021 was \$94,107,754.14 with interest continuing to accrue on this amount at a rate of approximately \$1.1 million per month. A copy of CIBT's counsel's default letter is attached as **Exhibit "N"** to the Alambre Affidavit.

55. On the same day, CIBT's counsel wrote to (a) Romspen pursuant to the Third Lien Standstill to give the required 90 days' written notice of its intention to commence an "Enforcement Action" (as defined in the Third Lien Standstill) under the Third Lien Mortgage; and (b) the Second Lien Lender pursuant to a subordination and standstill agreement among those parties to give notice of CIBT's intention to commence an enforcement action under the Third Lien Mortgage. Copies of CIBT's counsel's letters to Romspen and the Second Lien Lender are attached to the Alambre Affidavit as **Exhibits "O"** and **"P"** respectively.

IV. The Debtors' Continued Restructuring Efforts

56. Notwithstanding the breaches and defaults under the Credit Agreement, and delivery of the Demand and Enforcement Notice, Romspen refrained from taking active enforcement steps so as to provide the Debtors with additional time to find a solution to their financial difficulties. Unfortunately, during the last two (2) years the Debtors' efforts have to date been unsuccessful.

A. Commencement of the Debtors' SISP

57. On May 19, 2021, counsel to the Debtors wrote to counsel to Romspen to advise that the Debtors were commencing a sale and investment solicitation process (the "**Debtors' SISP**") to solicit offers from individuals interested in purchasing the assets and undertakings of, or refinancing, investing, or participating in the business of the Debtors.

58. To this end, the Debtors advised that they had engaged Cushman & Wakefield Structured Finance UL ("**Cushman**") to work with the Debtors and Alvarez & Marsal Canada Inc. ("**A&M**") (which had previously been engaged by the Debtors) to finalize the offering and other marketing materials for the Project in the hopes of going to market the week of May 24, 2021.

59. In connection with the proposed Debtors' SISP, the Debtors provided to Romspen a "power point" overview prepared by A&M setting out details of the Debtors' SISP process and

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timelines. The Debtors' SISP contemplated the selection of a successful bid, and the closing of a transaction, by the end of August 2021.

60. While Rompsen expressed some concerns with the Debtors' SISP and whether it would lead to a transaction, Rompsen recognized that the Debtors' had retained professional parties to assist in the process and that the plan was to consummate a transaction on the timeline set out above. Rompsen refrained from taking enforcement steps during the Debtors' SISP.

B. The Debtors' SISP Did Not Result in a Transaction

61. In summary, the Debtors' SISP, carried out by the Debtors with the assistance of Cushman and A&M in mid-2021, involved among other things:

- (a) preparation by Cushman of the Cushman Teaser and its distribution to potentially interested parties;
- (b) the development and maintenance of a "data room" (the "Debtors' Data Room") containing documents necessary for a interested party to evaluate the opportunity presented by the Debtors' SISP, including the Debtors' financials and key construction, marketing, sales tax, survey, environmental, geotechnical, permitting, planning, and architectural documents;
- (c) the delivery of non-disclosure agreements ("NDAs") to thirty-one (31) interested parties and the execution of NDAs with seventeen (17) of them;
- (d) the delivery of marketing materials with respect to the Project, including the Cushman OM, and the granting of access to the Debtors' Data Room to the seventeen (17) parties who signed NDAs; and
- (e) the holding of seven (7) management calls.

62. The Debtors ultimately elected to pursue a transaction which contemplated an equity restructuring of the Debtors as set out in a non-binding term sheet (the "**Restructuring LOI**").

63. The Debtors negotiated with the counterparty who submitted the non-binding Restructuring LOI for a number of months starting in the summer of 2021 and into January 2022.

64. On January 21, 2022, Romspen was advised that the prospective acquiror had not waived the mutual tax and other conditions and instead proposed to the Debtors an entirely new transaction structure for the sale of the Debtors' interest in the Project at a materially reduced purchase price. At this time the negotiations ceased with that party.

V. THE CONSENSUAL CCAA FILING

65. Unfortunately, and notwithstanding the two-year grace period granted by Romspen during which the Debtors have been afforded the opportunity to pursue the Debtors' SISP with the benefit of their own advisors, on their own timelines, and based on the value that they ascribe to the Project, the Debtors' efforts to find a solution to their financial difficulties have not come to fruition.

66. The Debtors are clearly insolvent and an insolvency filing is needed. As noted at the outset of this affidavit, Romspen and the Debtors have worked very hard for a long time in an effort to find a consensual path forward. These discussions have included direct discussions among the parties, discussions among counsel and the involvement of A&M and its counsel. Compromises have been made to achieve a path forward, on a consensual basis, that has various inter-connected parts, all of which is to the benefit of all stakeholders.

67. In the circumstances, Romspen's support for the Consensual CCAA Filing, including (a) the ranking of the interim lending facility after Romspen, (b) the granting of enhanced powers to the Monitor, (c) a CCAA SISP run by the Monitor with well-defined timelines, consultation rights, and consent rights, and (d) an agreed upon termination of the CCAA SISP and alternative path forward if the CCAA SISP fails, is the result of extensive negotiations to achieve a careful balancing of various parties' rights including those of Romspen as first-ranking secured lender with the Debtors' desire to attempt to effect a sale and/or restructuring under the CCAA with the benefit of their existing management and advisors.

VIII. CONCLUSION

68. For the reasons set out above, Romspen supports the Debtors obtaining CCAA protection based on the negotiated terms of the Consensual CCAA Filing.


69. I have reviewed the Notice to the Profession, Public and the Media RE: Affidavits for use in Court Proceedings, dated March 27, 2020, by Direction of Chief Justice C.E. Hinkson

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(the "Direction"). I was not physically present before the commissioner, but I was linked with the commissioner utilizing video technology and we followed the process for remote commissioning of affidavits as set out in the Direction.

SWORN BEFORE ME VIA MICROSOFT)
TEAMS at Vancouver, British Columbia)
on)
March 31, 2022)

_____)
A Commissioner for taking Affidavits for)
British Columbia)


_____)
Wesley Roitman)

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IN THE SUPREME COURT OF BRITISH COLUMBIA

THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 0989705 B.C.
LTD., ALDERBRIDGE WAY LIMITED PARTNERSHIP, AND ALDERBRIDGE WAY GP LTD.

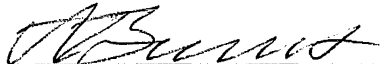
PETITIONERS

CERTIFICATE – TAKING AFFIDAVIT BY VIDEO

The undersigned authority has the honour to certify, in conformity with British Columbia Supreme Court Notice to the Profession, the Public and the Media: Affidavits for use in Civil and Family Proceedings dated March 27, 2020.

1. I am the commissioner of Affidavit #1 of Wesley Roitman ("Affidavit #1") sworn March 31, 2022;
2. I am satisfied that the process of taking this affidavit by video link was necessary because it was impossible, or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together;
3. I am satisfied that the process described in the above-referenced Notice to the Profession was followed in commissioning Affidavit #1; and
4. Both copies of Affidavit #1 are hereby submitted as true identical copies.

Date: March 31, 2022



Signature of Alison Burns
Lawyer for the Petitioner