



This is the 4th affidavit
of Graham Thom in this case
and was made on July 26, 2023

No. VLC-S-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 GP LTD., and ALDERBRIDGE WAY LIMITED
PARTNERSHIP

AFFIDAVIT

I, GRAHAM THOM, Businessman, of Vancouver, British Columbia, SWORN (OR AFFIRM)
THAT:

1. I am a director of the petitioners: 0989705 B.C. Ltd. ("098") and Alderbridge Way GP Ltd. (the "GP"). The GP is the sole general partner of the petitioner Alderbridge Way Limited Partnership (the "LP" and together with 098 and the GP, the "Petitioners") and as such I have personal knowledge of the matters herein deposed to, except where such facts are stated to be based upon information and belief and where so stated I do verily believe the same to be true.
2. Most of the documents relevant to this application are contained in affidavit #1 of Jennifer Alambre, made March 31, 2022.

Alderbridge Action

3. Attached hereto and marked as **Exhibit "A"** is a copy of the Notice of Civil Claim filed by Alderbridge Way Limited Partnership, Alderbridge Way GP Ltd., 0989705 B.C. Ltd. (collectively, the "**Alderbridge Group**"), Gatland Development Corporation, REV Holdings Ltd., REV Investments Inc., South Street Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel David Hanson and Brent Taylor Hanson

(collectively, the “**Guarantors**”) against Romspen in the Vancouver Registry of the Supreme Court of British Columbia bearing court file number VLC-S-S-232583 (“**Alderbridge Action**”)

4. I have reviewed the Notice of Civil Claim in the Alderbridge Action, and I verily believe that all of the factual allegations set out therein are true.
5. The representations made to the Alderbrige Group and the Guarantors that are central to the Alderbridge Action were made in a combination of orally and written communications between me and others in the Alderbridge Group on the one hand and various different officers and directors Romspen over the course of many months.
6. There were also numerous oral and written communications that followed each agreement entered into with Romspen that affirmed these representations.
7. Though my search for relevant documents is not yet complete, I am aware that there are more than 10,000 pages of documents that relate to the matters in issue in the Alderbridge Action.
8. During the material time period, the Alderbridge Group dealt with the following people at Romspen each of whom participated in the oral and written communications underlying the dispute:
 - (a) Wesley Roitman, managing general partner;
 - (b) Blake Cassidy, managing partner;
 - (c) Genia Ionova, senior underwriter; and
 - (d) Sandra Baumann-Chadwick, senior underwriter.

GEC Action

9. I have reviewed the Notice of Civil Claim (“**GEC Action**”) filed by GEC (Richmond) GP Inc. and Global Education City (Richmond) Limited Partnership (collectively, “**GEC**”). None of the Alderbridge Group or Guarantors are parties to that action, nor are any of us

parties to the postponement and subordination agreement at the heart of the GEC Action (“**GEC Postponement Agreement**”).

10. A copy of the GEC Postponement is attached as Exhibit “H” to affidavit #1 of Jennifer Alambre, made March 31, 2022.

R Jay Action


11. I have reviewed the Notice of Civil Claim (“**R Jay Action**”) filed by R Jay Management Ltd., MNB Enterprises Inc. Denis Schwab, Lesley Schwab, and Inland Consulting Ltd. (collectively, the “R Jay Group”). None of the Alderbridge Group or Guarantors are parties to that action, nor are any of us parties to the postponement and subordination agreement at the heart of the R Jay Action (“**R Jay Postponement Agreement**”).
12. A copy of the R Jay Postponement is attached as Exhibit “G” to affidavit #1 of Jennifer Alambre, made March 31, 2022.


The Romspen Action

13. On February 15, 2023, Romspen filed a Notice of Civil Claim against the Alderbrige Group and the Guarantors (“**Romspen Action**”) seeking, among other things, judgement in an amount in excess of \$191 million and attempting to realize upon the mortgage security. Though we were made aware that the action had been filed, it was not served on any of us at that time. A copy of the Rompsen Action is attached hereto as **Exhibit “B”**.
14. On May 19, 2023, counsel for Romspen wrote to our lawyers advising of their intention to bring the within application (“**May 19 Letter**”). Prior to receiving this letter there had been no suggestion to any of the Alderbrige Group or the Guarantors by Romspen that these actions should be heard together, or that they ought to be determined within the context of these CCAA proceedings. Attached here to as **Exhibit “C”** is a copy of the May 19 Letter.

- 15. On June 6, 2023, counsel for Romspen wrote to our lawyers asking if they had instructions to accept service of the Romspen Action on behalf of he Alderbridge Group and on behalf of the Guarantors. Attached hereto as **Exhibit “D”** is a copy of that letter. As far as I am aware, this is the first time that Romspen attempted to serve their action on any of us.
- 16. On June 21, 2023, counsel for Romspen sent a follow up letter to our lawyers asking if they had instructions to accept service of the Romspen Action on behalf of he Alderbridge Group and on behalf of the Guarantors. Attached hereto as **Exhibit “E”** is a copy of that letter.
- 17. Over the course of the following days, our lawyers exchanged emails with counsel for Romspen attempting to work out a schedule for the orderly exchange of pleadings and documents. Attached hereto as **Exhibit “F”** is a copy of the email string between counsel dated June 21, 2023 to June 27, 2023.

SWORN BEFORE ME at Vancouver,)
 British Columbia, on July 26, 2023.)


 _____)
 A commissioner for taking affidavits for)
 British Columbia.)
)


 _____)
 GRAHAM THOM)

Yan Gao
 Barrister & Solicitor
KORNFELD LLP
 1100 - 505 Burrard Street
 Vancouver, B.C. V7X 1M5
 Direct: 604-331-8367



This is Exhibit "A" referred to in the affidavit of Graham Thom sworn before me at Vancouver in the Province of British Columbia this 26 day of July A.D. 2023
.....
A Commissioner for taking Affidavits within British Columbia

Court File No. **VLC-S-S-232583**

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

Between

Alderbridge Way Limited Partnership and
Alderbridge Way GP Ltd. and 0989705 B.C. Ltd., Gatland
Development Corporation, REV Holdings Ltd., REV
Investments Inc., South Street Development Managers Ltd.,
South Street (Alderbridge) Limited Partnership, Samuel
David Hanson and Brent Taylor Hanson

Plaintiffs

and

Romspen Investment Corporation

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Alderbridge Way Limited Partnership ("**AWLP**") is a limited partnership formed under the laws of the Province of British Columbia. It is and was at all material times the beneficial owner of certain lands and premises in the Municipality of Richmond, Province of British Columbia, having a municipal address of 5333 No. 3 Road, Richmond, B.C., and legally described as:
 - PID: 030-721-733
 - Lot 1 Section 5 Block 4 North Range 6 West
 - New Westminster District Plan EPP86098
 - ("Property").
2. 0989705 B.C. Ltd. ("**098**") is a company formed under the laws of British Columbia. It is the legal owner of the Property under a bare trust established for the benefit of AWLP.
3. The Plaintiff Alderbridge Way GP Ltd. ("**AWGP**") is a body corporate formed under the laws of British Columbia and maintains an office at 200 – 1778 W. 2nd Avenue, Vancouver, British Columbia.
4. AWGP is the General Partner of AWLP. AWLP, 098 and AWGP are collectively referred to herein as the "**Alderbridge Way Group**".
5. The Plaintiffs Gatland Development Corporation ("**Gatland**"), REV Holdings Ltd. ("**RE VH**") REV Investments Inc. ("**REVI**"), South Street Development Managers Ltd. ("**SSDM**") are each corporations incorporated pursuant to the laws of the province of British Columbia.
6. South Street (Alderbridge) Limited Partnership ("**SSLP**"), is a British Columbia limited partnership.
7. Gatland maintains an office at 2900 - 733 Seymour Street, Vancouver, BC.
8. REVI and RE VH each maintain offices at #309, 1688 – 152 Street, Surrey BC.

9. The Plaintiff Samuel David Hanson ("**Sam**") is an individual, resident in British Columbia, who maintains an address at 200 – 1778 W. 2nd Avenue, Vancouver, British Columbia.
10. The Plaintiff Brent Taylor Hanson ("**Brent**") is an individual resident in British Columbia, who maintains an address at 200 – 1778 W. 2nd Avenue, Vancouver, British Columbia.
11. Gatland, REVH, REVI, Sam, Brent, SSLP and SSDM are collectively referred to herein as the "**Guarantors**".
12. The Defendant Romspen Investment Corporation ("**Romspen**") is a company incorporated pursuant to the laws of the Province of Ontario, and extraprovincially registered in British Columbia with Attorney for service at 1200-1075 West Georgia Street, Vancouver, British Columbia, V6E 3C9.
13. At all material times Romspen carried on the business of mortgage lending and construction financing throughout Canada and elsewhere.

The Atmosphere

14. The Alderbridge Way Group is and was at all material times the Developer of a mixed-used residential, office, commercial and retail development, known as the "**Atmosphere**", to be constructed on the Property (the "**Development**"). Work on the Development began in 2017.
15. To the knowledge of Romspen at all material times, the Development was to comprise seven mid-rise towers atop a multi-level podium with three levels of underground parking and span the majority of a city block. The Development was to feature over a million square feet of residential, retail and office strata and rental properties.
16. Romspen also knew at all material times that residential strata units in the Development were to be offered to the public on a pre-sale basis in accordance with the *Real Estate Development Marketing Act*, SBC 2004, c. 41 ("**REDMA**").
17. The REDMA provides, *inter alia*, that a developer must not market pre-sale units for sale until it has prepared and filed a disclosure statement in the prescribed form with Superintendent of Real Estate.
18. REDMA Policy Statement No. 1 sets out the form that every disclosure statement must meet, and the information it must include. One of the requirements is to include a description of the construction financing that has been arranged or that the developer is proposing to arrange to construct the development.
19. REDMA Policy Statement No. 6 provides that a developer can begin marketing a development in the absence of financing for a period of up to a maximum of 12 months, provided the absence of financing is disclosed to purchasers.
20. On or about December 6, 2018, the Alderbridge Way Group filed a disclosure statement with the Superintendent of Real Estate ("**Disclosure Statement**").
21. In accordance with the Policy Statements, section 6.2 of the Disclosure Statement states:

6.2 Construction Financing

6.2.1 The Developer has not yet obtained a 'satisfactory financing commitment' for financing the construction and completion of the Development (the "Financing Commitment"), as required under Policy Statement 6 issued by the Superintendent of Real Estate under the Real Estate Development Marketing Act ("Policy Statement 6"). As such, the offering of all Strata Lots in the Development under this Disclosure Statement is made pursuant to Policy Statement 6, the particulars of which are set out in the 'Notice to Purchasers' located on page iii of this Disclosure Statement. The estimated date for obtaining a Financing Commitment is on or before that date which is nine (9) months from the date of this Disclosure Statement. The Financing Commitment may be secured by one or more financial encumbrances registered against title to the Lands including the Construction Security (see Section 4.4.1 above) and, if necessary, additional financial encumbrances to be registered against title to the Lands. In addition, the Developer may obtain financing from other lenders in connection with the Development, which will also be secured by registration of certain financial encumbrances to be registered against title to the Lands. All such financial encumbrances will be discharged from the appropriate Strata Lot upon or within a reasonable time after the completion of each sale of a Strata Lot.

6.2.2 An amendment to this Disclosure Statement confirming that the Financing Commitment has become a "satisfactory financing commitment" within the meaning of the Real Estate Development Marketing Act will be filed with the Superintendent of Real Estate once the satisfactory financing commitment has been obtained and a copy of such amendment will be delivered to each purchaser. (emphasis original)

22. In accordance with the REDMA, the Alderbridge Way Group began marketing strata units to the public in or about January 2019.
23. At the same time, the Alderbridge Way Group was seeking financing to retire existing debt and to fund construction of the Development in accordance with the representations made in section 6.2.1 of the Disclosure Statement.

The First Romspen Loan

24. On or about February 15, 2019, Romspen offered, and the Alderbridge Way Group accepted, a financing commitment for a loan of \$90 million to be secured by way of *inter alia*, a first ranking mortgage against the Property ("**Initial Commitment**"). The stated purpose of the loan was:
 - (a) To pay off the existing first mortgage;
 - (b) To pay off the existing second mortgage;
 - (c) To establish an interest reserve to service Romspen's new loan;

- (d) To provide funds to advance and facilitate the development of the project.
25. The loan was to be funded by way of periodic advances with the first advance to take place on February 15, 2019.
26. Each subsequent advance was conditional upon the Alderbridge Way Group meeting the "Advance Requirements" set out in paragraph 12.2 of the Initial Commitment.
27. In connection with the Initial Commitment and in consideration thereof, the Plaintiffs granted certain security to Romspen, including:
- (a) a first-ranking mortgage and assignment of rents over the Real Property in the principal amount of \$422 million (the "**Romspen Mortgage**");
 - (b) guarantees from the Guarantors ("collectively, the "**Guarantees**");
 - (c) a beneficial direction and charge agreement;
 - (d) personal property security agreements from certain Plaintiffs and certain guarantees from the Guarantors; and
 - (e) certain share and unit pledges ((a) through (e), collectively, the "**Romspen Security**").
28. The Initial Commitment was increased to \$95,850,000 pursuant to a letter agreement dated July 24, 2019 ("**July 19 Commitment**").
29. Each of the Advance Requirements were met, and in due course Romspen had advanced the full \$95,850,000 to the Alderbridge Way Group.
30. During this time, Alderbridge Way Group was completing the permitting process at the City of Richmond and continuing with the pre-sale marketing in anticipation of commencing construction, all in compliance with the REDMA and the representations made in the Disclosure Statement.
31. By or around the end of July 2019, the Alderbridge Way Group had pre-sold approximately 260 of the 282 residential condominium units and approximately 66,000 square feet of the 70,000 square feet of strata title retail space available, and it had collected approximately \$48 million in deposits.

The Second Loan

32. In or about November 2019, the Alderbridge Way Group received an offer from Romspen for construction financing in the amount of \$422 million, which financing was made subject to Romspen's promise to use commercially reasonable efforts to syndicate the entire amount ("**Conditional Offer of Financing**").
33. Section 1 of REDMA Policy Statement No. 6 defines satisfactory financing as:
- "satisfactory financing commitment" means
- (i) a commitment of funds from a lender that is not conditional on the developer entering into a certain number of purchase agreements with purchasers,
 - (ii) a conditional financing commitment, the conditions of which have been satisfied,

(iii) the availability of the developer's own funds, or (iv) a combination of (i), (ii) or (iii)

that is sufficient to finance the construction and completion of the development property including the installation of all utilities and other services associated with the development units;

34. As such, Romspen's Conditional Offer of Financing did not meet the definition of "satisfactory financing commitment" and it was rejected by the Alderbridge Way Group.
35. In order to meet the requirements of Policy Statement No. 6, the Alderbridge Way Group required a firm commitment of financing for \$212 million to fund construction of the two strata titled residential towers ("**Towers E and F**") covered under the filed disclosure statement. The commercial portions of the Atmosphere were not subjected to the REDMA, nor were the remaining residential units, as the disclosure statement for those units had not as yet been filed and marketing for them had not yet begun. The remaining \$210 million was to fund construction of the remainder of the project to completion.
36. On November 7, 2019, Romspen provided a memorandum, in which it revised its offer and committed to advance a minimum of \$212 million of its own funds, not subject to syndication, to fund construction ("**Revised Offer**"). On or about the same day, these terms were confirmed to the Alderbridge Way Group orally by Romspen's managing director, Blake Cassidy and by email dated November 13, 2019 from Romspen's solicitors to the solicitors for the Alderbridge Way Group
37. The Revised Offer meant that the Alderbridge Way Group had financing that met the REDMA definition of "satisfactory financing commitment" required for Towers E and F.
38. In or about January 2020, and again in February 2020 Romspen represented to the Plaintiffs that, as a matter of fact, they were oversubscribed in and had syndicate partners in order to allow it to fund the remaining \$210 million.
39. As such, and in reliance upon Romspen's representations, assurances and promises, the Alderbridge Way Group accepted the Revised Offer and entered into a new loan agreement with Romspen dated November 6, 2019, to fund the hard and soft construction costs, which new agreement amended and restated the Initial Commitment and the July 19 Commitment ("**Construction Loan Agreement**").
40. The Construction Loan Agreement identified and defined the "Construction Loan Commitment Amount" as \$422,000,000 (which was inclusive of the \$95,850,000 advanced pursuant to the Initial Commitment and the July 19 Commitment) to be funded by way of periodic advances.
41. The terms of the Construction Loan Agreement required Romspen to:
 - (a) advance a minimum amount of \$212 million of the Construction Loan Commitment Amount to fund construction of the residential and commercial portions of the Atmosphere ("**Romspen's Committed Amount**"); and

- (b) use commercially reasonable efforts to syndicate the balance of the Construction Loan Commitment Amount of up to \$210 million by March 31, 2020 ("**Syndication Commitment**").
42. If, despite using commercially reasonable efforts, Romspen was not able to syndicate the balance, then it was not obligated to advance any amounts above the Romspen Committed Amount. However, failure to syndicate did not relieve Romspen from its obligation to fund the initial \$212 million it had committed to.
43. In reliance upon the terms of the Construction Loan Agreement and the oral and written representations and assurances from Romspen and specifically the unconditional obligation to advance the Romspen Committed Amount, the Alderbridge Way Group filed an Amended Disclosure Statement with the Superintendent of Real Estate on December 3, 2019, which amended section 6.2 as follows

Section 6.2.1 is deleted in its entirety and replaced with the following text:

"The Developer has obtained a satisfactory financing commitment to finance the construction and completion of the Development, by way of a combination of: (i) the availability of its own funds; (ii) construction financing from Romspen Investment Corporation (the "Construction Financing"); and (iii) deposit monies insured by Westmount West Services Inc. pursuant to the deposit protection insurance described at Section 7.1.2 (the "Deposit Protection Insurance").

The Construction Financing is secured by mortgage security registered against title to the Lands under Mortgage CA7379144 and Assignment of Rents CA7379145, as modified by CA7749487, CA7379145, CA7884333 and CA7884334 (collectively, the "Construction Financing Encumbrances"). The Construction Financing Encumbrances will be discharged from each Strata Lot upon or within a reasonable time after the completion of the sale of such Strata Lot.

The Developer has entered into a master deposit protection contract with Westmount (as defined in Section 7.1.2) to obtain the Deposit Protection Insurance, as more particularly described in Section 7.1.2. The Deposit Protection Insurance will be secured by mortgage security registered against title to the Lands under a mortgage and assignment of rents (collectively, the "Westmount Encumbrances"). The Westmount Encumbrances will be discharged from title to individual Strata Lots upon or within a reasonable time following the transfer of title to each individual purchaser.

In addition, the Developer may obtain financing from other lenders in connection with the Development, which will also be secured by registration of certain financial encumbrances to be registered against title to the Lands or deposit monies insured by Westmount

pursuant to the deposit protection insurance described at Section 7.1.2. All such financial encumbrances will be discharged from the appropriate Strata Lot upon or within a reasonable time after the completion of the sale of such Strata Lot."

Section 6.2.2 is deleted in its entirety;

Romspen's Breach of the Construction Loan Agreement

44. Article 3 of the Construction Loan Agreement set out a list of conditions precedent that had to be met before each periodic advance was made ("**Funding Conditions**").
45. To assist in determining when the Funding Conditions had been met, and the timing of each advanced, the parties appointed BTY Group ("**BTY**") as an Independent Cost Consultant to monitor the progress of the project and report to Romspen. The Funding Conditions included the following with respect to the role of the Independent Cost Consultant:
 - (a) The Independent Cost Consultant must be satisfied as to the project budget, plans, proposed schedule and the adherence to the cash flow projections;
 - (b) The Independent Cost Consultant must prepare a report confirming, *inter alia*, that the project can be completed in accordance with the schedule and the budget;
 - (c) The Independent Cost Consultant must provide the Lender with a report/certificate signed by them which:
 - (i) certifies hard costs and soft costs incurred to date on the project on a line-by-line basis;
 - (ii) estimate the cost to complete;
 - (iii) confirms the amount of the Borrower's equity;
 - (iv) confirms the amount of the applicable holdback; and
 - (v) confirms that, in its opinion, the conditions set out in the Construction Loan Agreement with respect to the entitlement to a drawdown for payment have been satisfied.

("Cost Consultant Conditions")
46. Pursuant to the terms of the Construction Loan Agreement, each request for a funding advance ("**Draw Request**") was provided in draft to both Romspen and BTY. BTY would then review the request and prepare its report and recommendations, which would then be sent in draft to the Alderbridge Way Group and then in final form to Romspen. In the course of performing its role, BTY would amend the amount of the Draw Request to reflect its opinion of the amount needed for that month.
47. It was an express term of the agreement that time was of the essence.

48. In accordance with the Construction Loan Agreement, the Alderbridge Way Group made the following four draw requests, each of which were approved by BTY and funded by Romspen:
- (a) Draw # 1 – Nov. 25, 2019
 - (b) Draw #2 - Dec. 20, 2019
 - (c) Draw #3 – Feb. 11, 2020
 - (d) Draw #4 – March 17, 2020
49. On March 25, 2020, Alderbridge Way Group delivered its fifth draw request for \$1,700,014.00, along with all required documentation, to BTY and to Romspen ("**Draw #5**").
50. Alderbridge Way Group and BTY worked together to revise Draw #5 in the following days, and on March 31, 2020, BTY provided a draft of its recommendation for a draw in the amount of \$4,058,322 to the Alderbridge Way Group.
51. On March 31, 2020, Romspen advised the Alderbridge Way Group and the principal guarantors of the project by letter that it had unilaterally decided to suspend all further draws and advances, despite the fact that it had not yet fully advanced the Romspen Committed Amount and despite the fact that all Funding Conditions had been met to that date. In that letter, Rompsen states that its reason for suspending funding was as follows:
- As you know, the COVID-19 global pandemic has had dramatic and rapid effects on public health policies, the economic outlook and the functioning of the financial markets. The effects rapidly change on a daily basis, particularly in the financial markets, and are unpredictable. The Lender [i.e., Romspen] has not been successful in obtaining commitments from other lenders to participate in the Construction Facility under the Loan Agreement, in part as a result of the dramatic and ongoing effects on the financial markets, especially in the credit markets.
- Therefore, the Lender cannot waive the conditions for continued funding in the Loan Agreement regarding participations in the Construction Facility. As a result, the Lender is concerned that the capital necessary to continue and complete the construction of the Project may not be available. Accordingly, the Lender has decided to suspend all further draws and advances as permitted under the terms of the Loan Agreement.
- ("March 31 Notice")**
52. At no point did Romspen advise the Alderbridge Way Group that any Funding Conditions had not been met or that Alderbridge Way Group had breached the Construction Loan Agreement in any way.

53. From and after March 31, 2020, despite the fact of their prior commitments and representations and the fact that they had funds from redemptions of their investor funding, Romspen refused to make any further advances in respect of the Romspen Committed Amount, including funding Draw #5.
54. Contrary to the March 31, 2020 Letter, Romspen's cessation of funding was not permitted under the Construction Loan Agreement but, rather, constituted a breach of contract as outlined below. Further, what Romspen did not disclose in its March 31, 2020 Letter was that Romspen had decided to proceed to fund other projects, which Romspen considered its most favoured projects, while abandoning its contractual commitments on others and that the Plaintiffs' Development was not one of these most favoured projects.
55. In particular, and contrary to Romspen's assertions in the March 31, 2020 Letter, that it "cannot" proceed with further funding, the fact is that Romspen had funds available to fund the Romspen Committed Amount. Further, it had investors available who were willing to invest for syndication purposes. Romspen chose to direct those funds, and those investors, to other projects instead of the Development, and breach the Construction Loan Agreement, using the COVID-19 pandemic as a pretext.
56. In particular, and without limitation, in or about the time of Romspen's March 31, 2020 Letter:
 - (a) Romspen chose to fund, and did fund, a project known as the "Talara Apartments" in Toronto, Ontario;
 - (b) Romspen chose to bring in some of its lending partners to participate in a syndication of the funding of a project known as the "Landmark" in White Rock, BC;
 - (c) Romspen chose to fund, and did fund, a project in Lakeland, Tennessee;
 - (d) Romspen received approximately \$26.5 million in sale proceeds from the sale of the St-Laurent Apartments in Montreal, Quebec; and
 - (e) Romspen funded other projects and arranged for investors to syndicate other loans, other than and instead of the Development, the further particulars of which are known to Romspen.
57. Romspen never re-commenced funding the Development after its March 31, 2020 Letter. At the time that it ceased funding, on March 31, 2020, Romspen was at least \$68,383,787 short of the Romspen Committed Amount of \$212,000,000. In terms of actual construction funding (as opposed to the pay out of previous mortgagees), less than half of the funds to which Romspen had committed had been advanced by that point.
58. By March 31, 2020, the Development had not achieved slab-on-grade level. Instead, at that point, the Development consisted physically of a large, excavated hole.
59. As a result of Romspen's refusal to fund the Romspen Committed Amount, construction work on the Development ceased shortly after its March 31, 2020 Letter. Romspen's actions caused an ongoing financial and liquidity crisis. Multiple

construction liens were filed. The Development's permits granted by the City of Richmond lapsed. The Developers were forced to seek relief by way of *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings.

60. In response to Romspen's March 31, 2020 Letter, the Developers commenced looking for alternate financing to replace Romspen, informed Romspen of same, and did not subsequently pay interest on the Romspen loan. The Developers did not succeed in securing alternate financing.
61. Efforts to sell or fund the Development have, to date, been unsuccessful. The present state of the Development remains merely a large hole in the ground in the downtown area of Richmond. All of these consequences were reasonably foreseeable by Romspen as a result of its wrongful decision to renege on its contractual duties and financial obligations owed to the Plaintiffs and its investors.
62. The Construction Loan Agreement was of such a nature that Romspen owed the Alderbridge Way Group a duty of good faith performance and a general duty of honesty in contractual performance.
63. Contrary to what is set out in the March 31 Notice, Romspen was not permitted under the Construction Loan Agreement to cease funding in the manner that it did, and as such its refusal to continue funding, including its refusal to fund Draw #5, constituted a breach of contract, including a breach of its obligations of good faith and honest performance.
64. Further, Romspen breached the Syndication Commitment in that it did not make commercially reasonable efforts, or any efforts at all, to syndicate the balance of the Construction Loan Commitment Amount.
65. At the same time that Romspen was telling the Alderbridge Way Group that the onset of COVID-19 had made credit markets too unpredictable to continue funding, Romspen wrongfully chose to syndicate and advance funds for other developments or other projects.
66. In making the decision to fund and syndicate loans for other projects rather than fulfilling its obligations to the Alderbridge Way Group, Romspen breached the Construction Loan Agreement and its other sundry contractual obligations.
67. Further, or in the alternative, Romspen also committed these breaches when it directed its investors or potential investors to fund other preferred projects rather than the Atmosphere, notwithstanding the Syndication Commitment.
- 68.
69. In attempting to mitigate the damages caused by Romspen's unlawful conduct as alleged herein, the Plaintiffs incurred substantial costs and expenses, particulars of which will be provided prior to the trial of this action.
70. On February 17, 2021, Romspen served a notice of default upon the Developers, alleging a number of defaults, including the failure to pay interest and the presence of liens against title to the Property. Romspen served a further notice on the Developers on February 22, 2021, calling the loan and providing a 10-day notice of intention to enforce security (the "**Feb. 22, 2021 Letter**"). The specific and sole

- alleged Event of Default, upon which Romspen relied on in its Feb. 22, 2021 Letter, was the Developer's alleged failure to pay interest.
71. Despite the claims in the March 31 Letter about the adverse effects of COVID-19, Romspen's revenue in 2020 was approximately \$240,000,000, which was an increase from the previous year, and Romspen's net income was \$133,000,000. At the end of 2021, Romspen announced a "record funding year", with \$1.4 billion in funded mortgage transactions.
 72. Romspen made a decision to target the Atmosphere for a revocation of funding, notwithstanding the its obligations under the Construction Loan Agreement, including its obligation to fund the Romspen Committed Amount and the Syndication Commitment, and to target other projects for funding and syndication instead, as set out above.
 73. Notwithstanding its wrongful conduct, Romspen has claimed interest of approximately \$1,500,000 per month for the period after reneging on its contractual duties arising pursuant to, *inter alia*, the Construction Loan Agreement. However, as a matter of fact and law, interest was not owing as set out in Part 3 below. Romspen subsequently compounded the damage to the Plaintiffs with further highhanded and unlawful acts by demanding repayment of the loan in its Feb. 22, 2021 Letter.
 74. Having breached the Construction Loan Agreement and by refusing to the Romspen Committed Amount, Romspen called the loan and delivered a 10-day notice on February 22, 2021, in circumstances where the Development had suffered the foreseeable consequences of a \$68,383,787 plus funding shortfall, despite the fact that the maturity date on the loan remained more than a year in the future.
 75. As a direct and foreseeable result of Romspen's breaches, the Alderbridge Way Group has suffered, and will continue to suffer, loss and damages including, but not limited to:
 - (a) Loss of profits from failure of the Development, including the loss of presales of the Development's units;
 - (b) Reputational damages caused by Romspen's unlawful acts as alleged herein;
 - (c) Costs incurred in attempting to mitigate the damages caused by the wrongful acts of Romspen;
 - (d) Further and other loss and damage which will be particularized prior to the trial of this matter.

Part 2: RELIEF SOUGHT

1. Damages for breach of contract;
2. A declaration that all security instruments, including guarantees provided to Romspen by the plaintiffs are unenforceable;

3. A declaration that no interest is payable to Romspen in relation to funds advanced pursuant to the loan agreements;
4. Damages for the tort of "unlawful means";
5. Aggravated and punitive damages;
6. Interest at the rate that the Plaintiffs are lawfully entitled to;
7. Special costs, or in the alternative, ordinary costs;
8. A set off of all damages and costs awarded to the Plaintiffs;
9. Such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. The express and/or implied terms of the Construction Loan Agreement required Romspen to provide stable funding for the development up to a set minimum of \$212 million as and when the Funding Conditions were met for each Draw Request, and to use commercially reasonable efforts to syndicate and advance a further \$210 million to fund the construction of the rest of the project .
2. Romspen knew it was the primary source of construction financing for the project and that if it ceased funding, construction would stop and the project would fail.
3. With this knowledge, on March 31, 2020, Romspen unilaterally, and in breach of its obligations, withdrew its funding and, in particular, refused to advance funds in respect of Draw #5. At the time, Romspen knew and could foresee that its wrongful conduct as alleged would make it impossible for the Alderbridge Way Group to find an alternative source of funding to continue the project in a timely manner.
4. Rather than using its funds to honour the obligations it owed to the Alderbrige Way Group, Romspen chose to fund other projects that it preferred over the Atmosphere.
5. Further, in breach of its obligation to use commercially reasonable efforts to syndicate the balance of the Construction Loan Commitment Amount, Romspen directed its investors and potential investors to invest in other projects that it preferred over the Atmosphere. In particular, in breach of the Syndication Commitment, Romspen directed its investors or potential investors to fund other projects that it preferred, including but not limited to the Landmark, as set out above.
6. Romspen's wrongful conduct was motivated by a belief that it could ultimately be able to acquire ownership of the Development for its own use and purposes at a distressed and depressed price by reason of its wrongful conduct as alleged herein.
7. Romspen's conduct as described herein constitutes, *inter alia*, a breach of the Construction Loan Agreement, a breach of the duty of good faith and a breach of the general duty of honest performance in contract owed to the Plaintiffs and each of them. In the alternative, Romspen committed the tort of "unlawful means".

8. Romspen's conduct related to important contractual provisions and demonstrated an intention to not be bound by those contractual provisions. Romspen's conduct thus constituted a repudiatory breach of contract.
9. Romspen had no right to call the loan. Romspen cited a number of alleged defaults, including the failure by the Developers to pay interest and the presence of liens on title, as "Events of Default" allowing it to call the loan. However, each of these alleged Events of Default were directly caused by Romspen's breaches and repudiation of the Construction Loan Agreement. Romspen is not entitled to take a benefit under a contract from circumstances that arise out of its own breach of same.

New Zealand Shipping Co. v. Societe des Ateliers, [1919] A.C. 1 (UKHL)

Alghussein Estate v. Eton College, [1991] 1 All E.R. 267 (UKHL)

Barclays Bank v. Metcalfe, 2011 ONSC 5008

F. J. Bloemen Ply Ltd. v. Gold Coast, [1973] A.C. 115 [J.C.P.C.]

10. Romspen owed the Plaintiffs and each of them a duty of good faith performance. Further, or in the alternative, Romspen owed the Plaintiffs a duty to not undermine the legitimate contractual interests and expectations of the Plaintiffs in bad faith. Further, or in the alternative, Romspen owed the Plaintiffs and each of them a general duty of honesty in contractual performance.

Bhasin v. Hrynew, 2014 SCC 71 ["Bhasin"]

C.M. Callow Inc. v. Zollinger, 2020 SCC 45

Wastech Services Ltd. v. Greater Vancouver Sewerage, 2021 SCC 7

11. Romspen breached its duty of good faith, and/or its duty to not undermine the Plaintiffs' legitimate contractual interests in bad faith, and/or its duty of honesty in contractual performance when Romspen ceased funding on March 31, 2020 in breach of the Romspen Lender Commitment, on the stated basis that it could not continue to fund due to the COVID -19 pandemic, but in fact funded other projects notwithstanding the COVID-19 pandemic.
12. Romspen targeted the Plaintiffs' Development for a cessation of funding so that it could maintain its own liquidity and/ or to acquire ownership of the Development while continuing to fund its other preferred projects, by reallocating the funds committed to the Development to other projects instead, notwithstanding Romspen's contractual obligations to the Plaintiffs.
13. Further, or in the alternative, Romspen committed these breaches when it directed its investors or potential investors to fund other projects that it preferred, including but not limited to the Landmark, rather than the Development, as set out in Part 1 above, notwithstanding the Syndication Commitment.

Tort of "unlawful means"

14. Further, or in the further alternative, Romspen is liable to the Plaintiffs in damages under the "unlawful means" tort.

Bram Enterprises v. A.I. Enterprises, 2014 SCC 12

15. Romspen wilfully breached its obligations to fund the Development with full knowledge of the Plaintiffs' vulnerability if it withheld its financial commitments, and thus of the loss and damage that the Plaintiffs would suffer as a result of such breach. Romspen chose to target the Development and to target the Plaintiffs specifically with its wrongdoing as set out above.
16. Romspen's wrongful conduct as alleged herein constituted a repudiation of its agreements with the Plaintiffs herein and the Plaintiffs have accepted the said repudiation.

The Guarantees are Unenforceable Against the Guarantors

17. It was fundamental to the terms of the Guarantees given by the Guarantors, that Romspen, *inter alia*:
 - (a) strictly comply with each and every obligation under the Construction Loan Agreement and that it not breach or repudiate it;
 - (b) not breach the duty of good faith performance owed to the Alderbridge Way Group pursuant to the Construction Loan Agreement;
 - (c) not breach the duty of honest performance of the Construction Loan Agreement owed to the Alderbridge Way Group; and
 - (d) not engage in any tortious conduct directed at the Alderbridge Way Group.
18. Romspen breached these fundamental terms and, as such, the Guarantees are unenforceable against the Guarantors.

Aggravated and punitive damages

19. As a direct and foreseeable result of the wrongful conduct of Romspen, the Alderbridge Way Group has suffered loss and damage.
20. But for Romspen's breaches of contract and/or other wrongful conduct, outlined above, the Development would have been completed and the Plaintiffs would be earning revenue therefrom. In the alternative, but for Romspen's breaches of contract outlined above, the Development would be much closer to completion, and would have completed at a much earlier date. Either of these would enable the Developers to earn revenue from its sales of the completed project.
21. The conduct of Romspen was sufficiently wanton, egregious, and high-handed to be deserving of an award of aggravated or punitive damages.

Plaintiffs' address for service:

Howard Shapray and Shane D. Coblin
Kornfeld LLP
1100 One Bentall Centre

505 Burrard Street, Box 11
 Vancouver, British Columbia
 Canada V7X 1M5

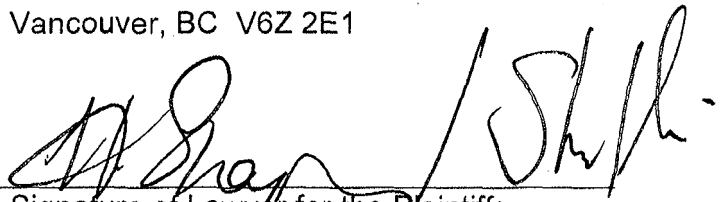
Fax number address for service (if any): n/a

E-mail address for service (if any): hshapray@kornfeldllp.com;
 scoblin@kornfeldllp.com

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street
 Vancouver, BC V6Z 2E1

Dated: March 28, 2023


 Signature of Lawyer for the Plaintiffs
 Howard Shapray, K.C. and Shane D. Coblin

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM: breach of contract

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

This is Exhibit " B " referred to in the affidavit of Graham Thom sworn before me at Vancouver in the Province of British Columbia this 21 day of July A.D. 2023

S 231106
No. Vancouver Registry

SUPREME COURT OF BRITISH COLUMBIA VANCOUVER REGISTRY

A Commissioner for taking Affidavits within British Columbia

FEB 15 2023 IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN 

ROMSPEN INVESTMENT CORPORATION

PLAINTIFF

AND

0989705 B.C. LTD., ALDERBRIDGE WAY GP LTD., ALDERBRIDGE WAY LIMITED PARTNERSHIP, GATLAND DEVELOPMENT CORPORATION, REV HOLDINGS LTD., REV INVESTMENTS INC., SOUTH STREET DEVELOPMENT MANAGERS LTD., SOUTH STREET (ALDERBRIDGE) LIMITED PARTNERSHIP, SAMUEL DAVID HANSON and BRENT TAYLOR HANSON

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

15FEB23 2302788 RISS 300.00
21422 5231106

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF PLAINTIFF**Part 1: STATEMENT OF FACTS*****The Parties***

1. The Plaintiff, Romspen Investment Corporation ("**Romspen**"), is an Ontario corporation. Since beginning its operations in 1996, 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 properties primarily across Canada and the United States.

2. The Defendant, 0989705 B.C. Ltd. ("**098 Ltd.**"), is a British Columbia corporation with a registered office at 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8. 098 Ltd. is the legal owner of lands in Richmond, British Columbia, with a legal description of Parcel Identifier 030-721-733 Lot 1 Section 5 Block 4 North Range 6 West New Westminster District Plan EPP86098 (the "**Project Lands**"), which is the site of a proposed seven-tower, mixed-use development project (the "**Project**").

3. The Defendant, Alderbridge Way Limited Partnership ("**Alderbridge LP**"), is a British Columbia limited partnership with a registered office at 2000-250 Howe Street, Vancouver, BC, V6C 3R8. Alderbridge LP is the beneficial owner of the Project Lands.

4. The Defendant, Alderbridge Way GP Ltd. ("**Alderbridge GP**"), is a British Columbia corporation with a registered office at 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8. Alderbridge GP is the general partner of Alderbridge LP.
5. 098 Ltd., Alderbridge LP, and Alderbridge GP (together, the "**Debtors**"), are borrowers under a Loan Agreement to Amend and Restate Commitment dated November 6, 2019 (the "**Credit Agreement**"), which was an amendment to and restatement of a February 2019 commitment letter and a July 2019 commitment letter, among the Debtors, as borrowers, Romspen, as lender, and the Guarantors (as defined herein), pursuant to which Romspen agreed to provide mortgage financing with respect to the Project on certain terms and conditions.
6. The Defendant, Gatland Development Corporation ("**Gatland**"), is a British Columbia corporation with a registered office at 2900-733 Seymour Street, Vancouver, BC, V6B 0S6. Gatland is a unitholder of Alderbridge LP, a shareholder in Alderbridge GP, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
7. The Defendant, REV Investments Inc. ("**REV Investments**"), is a British Columbia corporation with a registered office at #309, 1688-152nd Street, Surrey, BC, V4A 4N2. REV Investments is a unitholder of Alderbridge LP, a shareholder in Alderbridge GP, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
8. The Defendant, REV Holdings Ltd. ("**REV Holdings**"), is a British Columbia corporation with a registered office at #309, 1688-152nd Street, Surrey, BC, V4A 4N2. REV Holdings is a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
9. The Defendant, South Street (Alderbridge) Limited Partnership ("**South Street LP**"), is a British Columbia limited partnership with a registered office at 1600-925 West Georgia Street, Vancouver, BC, V6C 3L2. South Street LP is a unitholder in Alderbridge LP and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
10. The Defendant, South Street Development Managers Ltd. ("**South Street Ltd.**"), is a British Columbia corporation with a registered office at 1600-925 West Georgia Street, Vancouver, BC, V6C 3L2. South Street Ltd. is a shareholder in Alderbridge GP and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.

11. The Defendant, Samuel David Hanson ("**S.D. Hanson**"), is an individual residing in British Columbia, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents. S.D. Hanson is a director of 098 Ltd. and Alderbridge GP, and a director and officer of South Street Ltd.

12. The Defendant Brent Taylor Hanson ("**B.T. Hanson**"), is an individual residing in British Columbia, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.

13. Gatland, REV Investments, REV Holdings, South Street LP, South Street Ltd., S.D. Hanson, and B.T. Hanson shall be collectively referred to in this Notice of Civil Claim as the "**Guarantors**".

The Project

14. 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.

15. 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.

16. Beginning in 2019, and as described below, Romspen advanced approximately \$143.6 million in senior mortgage loans to the Debtors in connection with the Project. In addition, the Debtors received a further approximate \$120 million in additional mortgage financing from other parties.

17. Notwithstanding the significant advance to the Debtors from Romspen, and the additional mortgage financing from others, the construction of the Project stagnated at an early stage and the Debtors experienced financial difficulties. No substantive work has been done on the Project Lands since 2020. The Debtors are insolvent. On April 1, 2022 the Debtors filed for and obtained insolvency protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") in the Supreme Court of British Columbia (the "**Initial Order**"). The Project currently remains in its preliminary stages and is essentially an excavated and shored hole in the ground.

The Credit Agreement

18. Pursuant to a commitment letter dated February 15, 2019 (the "**February 2019 Commitment**"), Romspen agreed to provide the Debtors with \$90 million in mortgage financing with respect to the Project to be used for, among other things, a payout 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.

19. In accordance with the terms of a letter agreement among Romspen and the Debtors dated October 11, 2019, Romspen, as lender, the Debtors, as borrowers, and the Guarantors entered into the Credit Agreement pursuant to which 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 the Credit Agreement (which was an amendment to and restatement of the February 2019 Commitment and the July 2019 Commitment).

20. Pursuant to the Credit Agreement, the parties agreed to the following terms and conditions, among others:

- (a) The Debtors were required to pay interest on the Construction Facility computed as provided in Article 5, payable monthly in arrears (as defined in the Credit Agreement) (Articles 5 and 8);
- (b) The Debtors were required to maintain all realty taxes current (Article 11.01(m));
- (c) The Debtors were required to, among other things, manage the development and Construction of, and operate, the Project in accordance with the Project Budget and the Construction Schedule (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 (Article 11.01(w));

- (d) The Debtors were required to, among other things, maintain at all times Borrower's Equity (as defined in the Credit Agreement) in accordance with the terms of the Credit Agreement (Article 11.01(aa));
- (e) In the event of any Event of Default (as defined in the Credit Agreement at Article 13.01) the entire principal amount of the Construction Facility then outstanding and all accrued interest and unpaid interest thereon, and all other payments or amounts due under the Credit Agreement, shall, at the option of Romspen, become immediately due and payable with interest as provided in the Credit Agreement (Article 13.02); and
- (f) The Guarantors jointly and severally with the Debtors were required to satisfy all terms, conditions and requirements contained in the Credit Agreement and the Security (as defined in the Credit Agreement) and each of the Debtors and Guarantors' obligations under the Credit Agreement, including without limitation, the obligations to repay the Construction Facility, were primary obligations and joint and several (Article 17.02).

21. In accordance with the Credit Agreement and other loan documents, 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.

Romspen's Security for the Debtors' and the Guarantors' Obligations

22. To secure their obligations under the Credit Agreement, the Debtors granted Romspen security, including the following:

- (a) First Mortgage with respect to the Project Lands dated for reference February 15, 2019 and registered in the New Westminster Land Title Office (the "LTO") on March 5, 2019 under No. CA7379144, as modified by a modification of mortgage and assignment of rents dated for reference July 24, 2019 and registered in the LTO on September 16, 2019 under No. CA7749487 and by a modification of

mortgage and assignment of rents dated for reference November 5, 2019 and registered in the LTO on November 22, 2019 under No. CA7884333, granted by 098 Ltd. to Romspen over the Project Lands (together, the "**Mortgage**");

- (b) Security Agreement dated for reference February 15, 2019 made by 098 Ltd. to and in favour of Romspen (the "**098 Ltd. GSA**");
- (c) Security Agreement dated for reference February 15, 2019 made by Alderbridge LP to and in favour of Romspen (the "**Alderbridge LP GSA**");
- (d) Security Agreement dated for reference February 15, 2019 made by Alderbridge GP to and in favour of Romspen (together with the 098 Ltd. GSA and the Alderbridge LP GSA, the "**Debtor GSAs**"); and
- (e) the other security documents listed in Article 12.01 of the Credit Agreement,

in each case as amended, restated, supplemented, or replaced from time to time.

23. The Guarantors have executed guarantees (the "**Guarantees**") to and in favour of Romspen as collateral security for the payment and performance of the "**Guaranteed Obligations**" (as defined in the Guarantees), as follows:

- (a) Guarantee dated for reference February 15, 2019 made by Gatland to and in favour of Romspen;
- (b) Guarantee dated for reference February 15, 2019 made by REV Investments to and in favour of Romspen;
- (c) Guarantee dated for reference February 15, 2019 made by REV Holdings to and in favour of Romspen;
- (d) Guarantee dated for reference February 15, 2019 made by South Street LP to and in favour of Romspen;
- (e) Guarantee dated for reference February 15, 2019 made by South Street Ltd. to and in favour of Romspen;

- (f) Guarantee dated for reference February 15, 2019 made by S.D. Hanson to and in favour of Romspen; and
- (g) Guarantee dated for reference February 15, 2019 made by B.T. Hanson to and in favour of Romspen.

24. Pursuant to the Guarantees, each of the Guarantors irrevocably and unconditionally guaranteed the due and punctual performance and payment to Romspen, whether at stated maturity, by acceleration or otherwise, of the Guaranteed Obligations which include, without limitation, the due and punctual performance and payment to Romspen, whether at stated maturity by acceleration or otherwise, of all obligations of the Debtors to Romspen under the Credit Agreement (which was an amendment to and restatement of the February 2019 Commitment and the July 2019 Commitment), the Mortgage, the Debtor GSAs, and other "**Credit Documents**" (as defined in the Mortgage).

25. In addition to the Guarantees, each of the Guarantors granted to Romspen security interests in all their respective right, title, and interest in and to all their personal property and undertakings, present and future, now owned or hereafter acquired, as security for the due payment of all debts, liabilities, and obligations of such Guarantor to Romspen in accordance with the terms of security agreements (the "**Guarantor GSAs**"), as follows:

- (a) Security Agreement dated for reference February 15, 2019 made by Gatland to and in favour of Romspen;
- (b) Security Agreement dated for reference February 15, 2019 made by REV Investments to and in favour of Romspen;
- (c) Security Agreement dated for reference February 15, 2019 made by REV Holdings to and in favour of Romspen;
- (d) Security Agreement dated for reference February 15, 2019 made by South Street LP to and in favour of Romspen;
- (e) Security Agreement dated for reference February 15, 2019 made by South Street Ltd. to and in favour of Romspen;

- (f) Security Agreement dated for reference February 15, 2019 made by S.D. Hanson to and in favour of Romspen; and
- (g) Security Agreement dated for reference February 15, 2019 made by B.T. Hanson to and in favour of Romspen.

Default under the Credit Agreement

26. Beginning in or around March 2020, the Debtors failed to satisfy their obligations to pay interest monthly on Romspen's loans. Specifically, from March 2020 and thereafter, the Debtors failed to pay interest in arrears contrary to the terms of the Credit Agreement.

27. Notwithstanding the Debtors having breached their obligations under the Credit Agreement as of March 2020, Romspen did not initiate enforcement proceedings at that time. Romspen instead emphasized to the Defendants that it was prepared to discuss with the Defendants options, 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 Defendants that it would be necessary for the Debtors to raise additional equity or look for other sources of capital.

28. On March 31, 2020, Romspen advised the Debtors and the Guarantors that (a) commitments from persons to acquire senior participation rights in the Construction Facility sufficient to provide the full amount of the Construction Loan Commitment Amount were not in place; (b) Romspen was not waiving the conditions for continued funding in the Credit Agreement regarding participations in the Construction Facility; (c) Romspen was not obligated to fund further amounts under the Credit Agreement; and (d) all further draws and advances under the terms of the Credit Agreement were suspended.

29. 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 so as to be able to meet their obligations to Romspen or their other creditors.

30. On February 17, 2021, approximately one year after the Debtors' breach of their obligations to pay interest under the Credit Agreement and after giving the Defendants ample opportunity to try to meet their obligations to Romspen, Romspen sent a default letter (the

"Default Notice") to the Debtors and Guarantors setting out defaults under the Credit Agreement, including:

- (a) A breach of Article 8.01(1)(a) of the Loan Agreement, which required the Debtors to pay interest computed as provided in Article 5 of the Credit Agreement monthly in arrears;
- (b) A breach of Article 11.01(m) of the Credit Agreement, which required the Debtors to maintain all realty taxes current. As of the date of the February 17, 2021 letter, 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 Article 11.01(w) of the Credit Agreement, which required 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 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 Article 11.01(aa) of the Credit Agreement, which required the Debtors to, among other things, maintain at all times Borrower's Equity (as defined in the Credit Agreement).

Romspen also notified the Defendants that it was requiring them to clear the Project Lands of builders liens.

31. The defaults set out in the Default Notice were not cured and the builders liens against the Project Lands were not discharged within the applicable cure periods under the Credit Agreement, or at all, resulting in Events of Default. By February 22, 2021, as the Debtors had not cured their default on interest payments, among other defaults, Romspen exercised its right under the Credit Agreement to accelerate the loan. On February 22, 2021, Romspen issued a demand (the "**Demand**") with respect to the Credit Agreement, providing notice to the Debtors and Guarantors of an Event of Default and that Romspen was declaring the entire amount owing under the Credit Agreement as of February 10, 2021, being the sum of \$157,885,389.55, to be

immediately due and owing pursuant to Article 13.02 of the Credit Agreement. Romspen further demanded, pursuant to the Guarantees, payment from the Guarantors of the entire amount owing.

32. The defaults and Event of Default under the Credit Agreement and failure to pay the entire amount owing despite the Demand, also constituted breaches and defaults by the Defendants of the Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents between the parties, as applicable.

33. Concurrently with its February 22, 2021 Demand, Romspen issued a Notice of Intention to Enforce Security to each of the Debtors and each of the Guarantors pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, RSC. 1985, c. B-3.

34. Notwithstanding the breaches and defaults under the Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents, 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, the Debtors' efforts have been unsuccessful.

35. The Debtors and the Guarantors are jointly and severally indebted to Romspen for the principal balance, interest, and other costs, fees, expenses, and charges, including all legal fees and disbursements on a solicitor and own-client full indemnity basis payable in the amounts and rates provided for under the Credit Agreement, Mortgage, Debtors GSAs, Guarantees, Guarantor GSAs, and other Credit Documents, as applicable (together, the "**Indebtedness**"). As of January 30, 2023, the amount of the Indebtedness that the Debtors and Guarantors are jointly and severally indebted to Romspen for is \$191,209,278.96, plus all costs, fees, expenses, and charges, including all legal fees and disbursements on a solicitor and own-client full indemnity basis pursuant to the Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantors GSA, and other Credit Documents, as applicable.

36. As of January 31, 2023, interest continues to accrue on the Indebtedness at the rate of approximately \$1.59 million per month.

37. Despite the Default Letter, Demand, and outstanding Indebtedness, none of the Debtors or Guarantors have paid the Indebtedness, or any part thereof.

The CCAA Proceedings

38. On April 1, 2022 the Debtors filed for and obtained insolvency protection under the CCAA in the Supreme Court of British Columbia (Initial Order).

39. The Court in the CCAA proceedings has granted a stay of proceedings against the Debtors, with the most recent order extending that stay of proceedings to February 24, 2023.

40. The applicable CCAA orders provide that nothing in those orders shall prevent the commencement of a proceeding against the Debtors to protect rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such proceeding during the stay except for service of the initiating documents on the Debtors.

Part 2: RELIEF SOUGHT

41. Romspen claims:

- (a) A declaration that the Debtors are in default of their obligations to repay the Indebtedness;
- (b) A declaration that the Guarantors are in default of their obligation to repay the Indebtedness;
- (c) Judgment against the Debtors, jointly and severally, in the amount of \$191,209,278.96, as of January 30, 2023, plus interest pursuant to the terms of the Credit Agreement, Mortgage, Debtor GSAs, and other Credit Documents, as applicable, until the date of payment;
- (d) Judgment against Guarantors, jointly and severally, in the amount of \$191,209,278.96, as of January 30, 2023, plus interest pursuant to the terms of the Credit Agreement, Mortgage, Guarantees, Guarantor GSAs, and other Credit Documents, as applicable, until the date of payment;
- (e) Alternatively, as against the Debtors and Guarantors, jointly and severally, damages for breach of contract;

- (f) The appointment of a receiver or receiver-manager of all of the assets, undertakings and properties of the Debtors and Guarantors, including all proceeds;
- (g) An order for sale of the Project Lands as is necessary and expedient in the circumstances;
- (h) All costs, fees, expenses, and charges, including all legal fees and disbursements on a solicitor and own-client full indemnity basis, pursuant to the Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents, as applicable;
- (i) In the alternative, costs pursuant to the *Supreme Court Civil Rules*; and
- (j) Such further and other interim, interlocutory, or permanent relief as this Honourable Court may deem just and convenient.

Part 3: LEGAL BASIS

42. The Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents are valid and binding contracts between the parties and are enforceable in accordance with their terms.

43. The Defendants have breached and defaulted in their obligations to Romspen under the Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents and valid and binding contracts between the parties, as applicable, and as set out herein.

44. Romspen has demanded that the Defendants pay the Indebtedness, interest and other fees and costs that are contractually owing to Romspen. Despite Romspen's demands, the Defendants have failed to pay the Indebtedness, interest and other fees and costs to Romspen.

45. Each of the Debtors are in default of their obligation to pay the Indebtedness, interest and other fees and costs, and are accordingly liable to Romspen for breach of contract.

46. Each of the Guarantors are in default of their obligation to pay the Indebtedness, interest and other fees and costs, and are accordingly liable to Romspen for breach of contract.

47. As a result of the Defendants' breaches of contract, Romspen has suffered losses and damages.

48. The Defendants are jointly and severally liable to Romspen for the Defendants' breaches of contract.

49. Romspen is entitled to a full indemnity from the Defendants for all fees and costs, including Romspen's legal fees and disbursements on a solicitor and own client full indemnity basis, pursuant to the terms of the Credit Agreement, Mortgage, Debtor GSAs, Guarantees, Guarantor GSAs, and other Credit Documents and valid and binding contracts between the parties.

50. The relief sought by Romspen is just and convenient in the circumstances.

Plaintiff's address for service:	Blake, Cassels & Graydon LLP Barristers and Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter L. Rubin
Fax number address for service (if any):	N/A
E-mail address for service (if any):	Vancouver.service@blakes.com and peter.rubin@blakes.com
Place of trial:	Vancouver
The address of the registry is:	800 Smithe Street, Vancouver, BC V6Z 2E1

Date: February 15, 2023



Signature of Peter L. Rubin
Lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

- 15 -

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff's claim against the Defendants for breach of contract in connection with financing advanced for failed a real estate development project. The Defendants are the debtors and guarantors pursuant to a credit agreement and other related agreements with the Plaintiff.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

Court Order Interest Act, R.S.B.C. 1996, c. 79



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

This is Exhibit "C" referred to in the
affidavit of Graham Thom
sworn before me at Vancouver
in the Province of British Columbia
this 25 day of July A.D. 2023
.....
A Commissioner for taking Affidavits
within British Columbia

May 19, 2023
VIA E-MAIL

Peter Rubin*
Partner
Dir: 604-631-3315
peter.rubin@blakes.com
*Law Corporation
Reference: 70553/90061

Harper Grey LLP
Barristers & Solicitors
3200 – 650 West Georgia Street
Vancouver, BC V6B 4P7

Cassels Brock & Blackwell LLP
Suite 2200, HSBC Building
885 West Georgia Street
Vancouver, BC V6C 3E8

Attention: John P. Sullivan and Salman Y. Bhura

Attention: Vicki Tickle, Jordanna Cytrynbaum, and Rajit Mittal

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, BC V7X 1M5

Attention: Howard Shapray, K.C. and Shane D. Coblin

RE: In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., SCBC Action No. S-222758 (the "CCAA Proceedings")

GEC (Richmond) GP Inc., et al. v. Romspen Investment Corporation, SCBC Action No. S-228019
Romspen Investment Corporation v. 0989705 B.C. Ltd., et. al., SCBC Action No. S-231106;
R Jay Management Ltd. et al. v. Romspen Investment Corporation, SCBC Action No. S-24877; and
Alderbridge Way Limited Partnership, et al. v. Romspen Investment Corporation, SCBC Action No. S-232583 (collectively, the "Actions")

Dear Sirs/Mesdames:

We write as counsel to Romspen Investment Corporation in respect of the above-noted Actions.

Our client's position is that the claims and counterclaims asserted in each of the Actions (the "Claims") are necessarily related to each other and to the CCAA Proceedings such that their timely and orderly resolution in the context of the CCAA Proceedings is required. Accordingly, we have instructions to bring an application in the CCAA Proceedings for (a) an order providing that the Claims be determined by Justice Fitzpatrick in the context of the CCAA Proceedings (the "Carriage Order"); and (b) an order establishing a litigation process for the determination of the Claims in the context of the CCAA Proceedings (the "Case Planning Order").

51386053.1



Page 2

Please advise by no later than May 26, 2023 if your respective clients will consent to a Carriage Order being granted in the CCAA Proceedings. If any of the parties to the Actions are not prepared to agree to a Carriage Order being granted, we will request at the hearing scheduled in the CCAA Proceedings before for May 31 2023 that Justice Fitzpatrick set a date for the hearing of an application for the Carriage Order and the Case Planning Order. If there is agreement on the appropriateness of a Carriage Order, we will still request on May 31, 2023 that Justice Fitzpatrick reserve a date for the hearing of an application for a Case Planning Order.

Yours truly,



Peter Rubin

51386053.1

TORONTO

CALGARY

VANCOUVER

MONTRÉAL

OTTAWA

NEW YORK

LONDON

Blake, Cassels & Graydon LLP | blakes.com



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

June 6, 2023

Peter Rubin*
Partner
Dir: 604-631-3315
peter.rubin@blakes.com

VIA EMAIL

*Law Corporation

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, BC V7X 1M5

Attention: Howard Shapray, K.C. and
Shane D. Coblin

**Re: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.
SCBC Action No. 231106, (the "Action")**

Dear Sirs:

We have instructions to effect service of the notice of civil claim that commenced the Action, of which your clients have been aware for several months.

Please confirm by June 12, 2023 whether you have instructions to accept service of the enclosed notice of civil claim on behalf of each of the defendants named therein. If your instructions are to accept service on behalf of some but not all defendants, please confirm which defendants you are accepting service on behalf of.

Yours truly,

Peter Rubin

Encl.

This is Exhibit "D" referred to in the
affidavit of Graham Thom
sworn before me at Vancouver
in the Province of British Columbia
this 26 day of July A.D. 2023
.....
A Commissioner for taking Affidavits
within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

FEB 15 2023

No. **S 231106**
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ROMSPEN INVESTMENT CORPORATION

PLAINTIFF

AND

**0989705 B.C. LTD., ALDERBRIDGE WAY GP LTD., ALDERBRIDGE WAY LIMITED
PARTNERSHIP, GATLAND DEVELOPMENT CORPORATION, REV HOLDINGS
LTD., REV INVESTMENTS INC., SOUTH STREET DEVELOPMENT MANAGERS
LTD., SOUTH STREET (ALDERBRIDGE) LIMITED PARTNERSHIP,
SAMUEL DAVID HANSON and BRENT TAYLOR HANSON**

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Romspen Investment Corporation ("**Romspen**"), is an Ontario corporation. Since beginning its operations in 1996, 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 properties primarily across Canada and the United States.

2. The Defendant, 0989705 B.C. Ltd. ("**098 Ltd.**"), is a British Columbia corporation with a registered office at 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8. 098 Ltd. is the legal owner of lands in Richmond, British Columbia, with a legal description of Parcel Identifier 030-721-733 Lot 1 Section 5 Block 4 North Range 6 West New Westminster District Plan EPP86098 (the "**Project Lands**"), which is the site of a proposed seven-tower, mixed-use development project (the "**Project**").

3. The Defendant, Alderbridge Way Limited Partnership ("**Alderbridge LP**"), is a British Columbia limited partnership with a registered office at 2000-250 Howe Street, Vancouver, BC, V6C 3R8. Alderbridge LP is the beneficial owner of the Project Lands.

4. The Defendant, Alderbridge Way GP Ltd. ("**Alderbridge GP**"), is a British Columbia corporation with a registered office at 20th Floor, 250 Howe Street, Vancouver, BC, V6C 3R8. Alderbridge GP is the general partner of Alderbridge LP.
5. 098 Ltd., Alderbridge LP, and Alderbridge GP (together, the "**Debtors**"), are borrowers under a Loan Agreement to Amend and Restate Commitment dated November 6, 2019 (the "**Credit Agreement**"), which was an amendment to and restatement of a February 2019 commitment letter and a July 2019 commitment letter, among the Debtors, as borrowers, Romspen, as lender, and the Guarantors (as defined herein), pursuant to which Romspen agreed to provide mortgage financing with respect to the Project on certain terms and conditions.
6. The Defendant, Gatland Development Corporation ("**Gatland**"), is a British Columbia corporation with a registered office at 2900-733 Seymour Street, Vancouver, BC, V6B 0S6. Gatland is a unitholder of Alderbridge LP, a shareholder in Alderbridge GP, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
7. The Defendant, REV Investments Inc. ("**REV Investments**"), is a British Columbia corporation with a registered office at #309, 1688-152nd Street, Surrey, BC, V4A 4N2. REV Investments is a unitholder of Alderbridge LP, a shareholder in Alderbridge GP, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
8. The Defendant, REV Holdings Ltd. ("**REV Holdings**"), is a British Columbia corporation with a registered office at #309, 1688-152nd Street, Surrey, BC, V4A 4N2. REV Holdings is a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
9. The Defendant, South Street (Alderbridge) Limited Partnership ("**South Street LP**"), is a British Columbia limited partnership with a registered office at 1600-925 West Georgia Street, Vancouver, BC, V6C 3L2. South Street LP is a unitholder in Alderbridge LP and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.
10. The Defendant, South Street Development Managers Ltd. ("**South Street Ltd.**"), is a British Columbia corporation with a registered office at 1600-925 West Georgia Street, Vancouver, BC, V6C 3L2. South Street Ltd. is a shareholder in Alderbridge GP and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.

11. The Defendant, Samuel David Hanson ("**S.D. Hanson**"), is an individual residing in British Columbia, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents. S.D. Hanson is a director of 098 Ltd. and Alderbridge GP, and a director and officer of South Street Ltd.

12. The Defendant Brent Taylor Hanson ("**B.T. Hanson**"), is an individual residing in British Columbia, and a guarantor of the Debtors' obligations to Romspen under the Credit Agreement and related loan documents.

13. Gatland, REV Investments, REV Holdings, South Street LP, South Street Ltd., S.D. Hanson, and B.T. Hanson shall be collectively referred to in this Notice of Civil Claim as the "**Guarantors**".

The Project

14. 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.

15. 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.

16. Beginning in 2019, and as described below, Romspen advanced approximately \$143.6 million in senior mortgage loans to the Debtors in connection with the Project. In addition, the Debtors received a further approximate \$120 million in additional mortgage financing from other parties.

17. Notwithstanding the significant advance to the Debtors from Romspen, and the additional mortgage financing from others, the construction of the Project stagnated at an early stage and the Debtors experienced financial difficulties. No substantive work has been done on the Project Lands since 2020. The Debtors are insolvent. On April 1, 2022 the Debtors filed for and obtained insolvency protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") in the Supreme Court of British Columbia (the "**Initial Order**"). The Project currently remains in its preliminary stages and is essentially an excavated and shored hole in the ground.



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
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Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

June 21, 2023

Peter Rubin*
Partner
Dir: 604-631-3315
peter.rubin@blakes.com

VIA EMAIL

*Law Corporation

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, BC V7X 1M5

Attention: Howard Shapray, K.C. and
Shane D. Coblin

**Re: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.
SCBC Action No. 231106, (the "Action")**

Dear Sirs:

We have not received a response to our letter dated June 6, 2023, in which we asked that you confirm by June 12 whether you have instructions to accept service of the notice of civil claim commencing the above-noted Action.

We ask again that you please advise whether you have instructions to accept service on behalf of each of the defendants in the Action. We would appreciate the courtesy of a response.

Yours truly,

Peter Rubin

This is Exhibit " E " referred to in the affidavit of *Graham Thom* sworn before me at ... *Vancouver* ... in the Province of British Columbia this *26* day of *July* ... A.D. 20 *23*

.....
A Commissioner for taking Affidavits within British Columbia

Mila Pavlakovic

Subject: FW: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice

From: Howard Shapray <hshapray@kornfeldllp.com>

Sent: July 25, 2023 6:41 PM

To: Shane D. Coblin <scoblin@kornfeldllp.com>

Subject: Fwd: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice

Begin forwarded message:

From: "Bychawski, Peter" <peter.bychawski@blakes.com>
Subject: RE: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice
Date: June 27, 2023 at 1:27:57 PM PDT
To: Howard Shapray <hshapray@kornfeldllp.com>
Cc: "Rubin, Peter" <peter.rubin@blakes.com>, "Alambre, Jennifer" <jennifer.alambre@blakes.com>, "Shane D. Coblin" <scoblin@kornfeldllp.com>

EXTERNAL EMAIL

Howard,

Yes. We have instructions to accept service on behalf of Romspen.

We are prepared to agree to an extension for the filing of responses in the two actions to August 4 on a mutual basis; i.e., the responses in our clients' respective actions would both be due by no later than August 4.

Peter Bychawski
Partner
peter.bychawski@blakes.com
T. +1-604-631-4218

This is Exhibit " F " referred to in the affidavit ofGraham Thom..... sworn before me atVancouver.... in the Province of British Columbia this .27.6. day of ...July.... A.D. 20 23
.....
A Commissioner for taking Affidavits within British Columbia

From: Howard Shapray <hshapray@kornfeldllp.com>
Sent: Tuesday, June 27, 2023 1:17 PM
To: Bychawski, Peter <peter.bychawski@blakes.com>
Cc: Rubin, Peter <peter.rubin@blakes.com>; Alambre, Jennifer <jennifer.alambre@blakes.com>; Shane D. Coblin <scoblin@kornfeldllp.com>
Subject: Re: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice

External Email | Courrier électronique externe

Peter

I have clients who are out of town. I am away July 10 - 19 inclusive. Will you grant me an extension to file a Response to Romspen's Claim as a matter of professional courtesy?

On Jun 27, 2023, at 10:27 AM, Bychawski, Peter <peter.bychawski@blakes.com> wrote:

EXTERNAL EMAIL

Howard,

Your clients' proposal is not acceptable. We confirm that we served each of your clients other than Brent Hanson with the notice of civil claim yesterday. Mr. Hanson was served today. We look forward to receiving your clients' responses.

Peter Bychawski

Partner

peter.bychawski@blakes.com

T. +1-604-631-4218

From: Howard Shapray <hshapray@kornfeldllp.com>

Sent: Friday, June 23, 2023 2:09 PM

To: Bychawski, Peter <peter.bychawski@blakes.com>

Cc: Rubin, Peter <peter.rubin@blakes.com>; Alambre, Jennifer

<jennifer.alambre@blakes.com>; Shane D. Coblin <scoblin@kornfeldllp.com>

Subject: Re: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice

External Email | Courrier électronique externe

Dear Peter(s):

What you suggest is likely not exactly what my clients had in mind. Perhaps it is my fault for being ambiguous. They wanted 42 (21+21) days to file a Response and 21 extra days to deliver their List(s) of Documents which would be 56 days after the August 4 date for delivery of Responses. They did not instruct me that Romspen would necessarily obtain the same extensions. After all, Romspen is a single entity. I have to deal with multiple parties.

If you can agree that the extensions that I have outlined are in favour of my clients and not necessarily reciprocal, I am able to accept service on their behalf.

Howard

On Jun 23, 2023, at 1:00 PM, Bychawski, Peter
<peter.bychawski@blakes.com> wrote:

EXTERNAL EMAIL

Howard,

This approach is acceptable and we are able to accept service on behalf of our client on the same basis. To confirm, on this approach (i) the responses of our respective clients in the two actions would be due on August 4 and (ii) the lists of documents of our respective clients in the

two actions would be due on September 4 subject to any court order setting a different date. Please confirm agreement on this approach and the dates.

Peter Bychawski
 Partner
peter.bychawski@blakes.com
 T. +1-604-631-4218

From: Howard Shapray <hshapray@kornfeldllp.com>
Sent: Wednesday, June 21, 2023 3:53 PM
To: Alambre, Jennifer <jennifer.alambre@blakes.com>
Cc: Shane D. Coblin <scoblin@kornfeldllp.com>; Rubin, Peter <peter.rubin@blakes.com>; Bychawski, Peter <peter.bychawski@blakes.com>
Subject: Re: Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.; SCBC Action No. 231106 - without prejudice

External Email | Courrier électronique externe

Peter(s)
 I have conditional instructions to accept service. However, because of other work demands, summer schedules and travel interruptions I would ask as a *quid pro quo* that you agree to extend the deadline for filing any responsive materials including a list of documents by 21 days. Also, would you confirm your ability to accept service on behalf of your client(s).
 Howard

On Jun 21, 2023, at 12:27 PM, Alambre, Jennifer <jennifer.alambre@blakes.com> wrote:

EXTERNAL EMAIL

Good afternoon,

Please see the attached letter of today's date from Mr. Peter Rubin.

Regards,

Jennifer Alambre
 Legal Administrative Assistant to Peter Rubin*,
 Karine Russell, Alison Burns and Tunç Dogan
jennifer.alambre@blakes.com
 T. +1-604-631-5244
 * denotes law corporation

<image001.png>

Blake, Cassels & Graydon LLP
 595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3 (Map)
 blakes.com LinkedIn

We're moving offices. Find us here after June 30, 2023.

<image002.png>

This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the communication and any copy immediately. Thank you. Ce message électronique peut contenir des renseignements CONFIDENTIELS et immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci

Howard Shapray, K.C.*, FCI Arb. | hshapray@kornfeldllp.com | [Bio](#) |
 d:604.331.8340 | f:604.681.0920 |
 Cell: (604) 765-2247

KORNFELD LLP
KORNFELD, SHAPRAY & PARTNERS
An International Member of Ally Law

1100 - 505 Burrard Street
 Vancouver, V7X1M5
 Canada

*Law Corporation

This message is intended only for the addressee and may contain information which is privileged, confidential and exempt from disclosure under applicable law. Unauthorized dissemination, distribution or duplication of this transmission is strictly prohibited.

Howard Shapray, K.C.*, FCI Arb. | hshapray@kornfeldllp.com | [Bio](#) | d:604.331.8340 |
 f:604.681.0920 |
 Cell: (604) 765-2247

KORNFELD LLP
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*Law Corporation

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Howard Shapray, K.C.*, FCI Arb. | hshapray@kornfeldllp.com | [Bio](#) | d:604.331.8340 | f:604.681.0920 |
 Cell: (604) 765-2247

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