

APR 01 2022

S-222758

NO. \_\_\_\_\_  
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

PETITIONERS

**PETITION TO THE COURT**

ON NOTICE TO: Those parties set out in Schedule "A" attached hereto.

**This proceeding is brought by the Petitioners for the relief set out in Part 1 below.**

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

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
  - (i) 2 copies of the filed Response to Petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for Response to Petition**

A Response to Petition must be filed and served on the petitioners,

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

(1)	<p>The address of the registry is:</p> <p style="text-align: center;">The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioners is:</p> <p style="text-align: center;">20<sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Fax number address for service (if any) of the petitioners:</p> <p style="text-align: center;">604-683-5214</p> <p>E-mail address for service (if any) of the petitioners:</p> <p style="text-align: center;"><a href="mailto:john.sandrelli@dentons.com">john.sandrelli@dentons.com</a> <a href="mailto:valerie.cross@dentons.com">valerie.cross@dentons.com</a></p>
(3)	<p>The name and office address of the petitioners' lawyer is:</p> <p style="text-align: center;">John Sandrelli/Valerie Cross Dentons Canada LLP 20<sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8</p>

**CLAIM OF THE PETITIONERS**

**Part 1: ORDER(S) SOUGHT**

1. 0989705 B.C. Ltd. (“**098**”), Alderbridge Way Limited Partnership (the “**LP**”), and Alderbridge Way GP Ltd. (the “**GP**”, collectively with 098 and the LP, the “**Petitioners**”) seek an order substantially in the form of the draft order attached hereto as **Schedule “B”** to this Petition, (the “**Initial Order**”), granting certain relief, including, *inter alia*:
  - (a) a declaration that the GP and 098 are companies to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) apply;
  - (b) a declaration that the LP shall enjoy the benefits of the protections and authorizations provided in the Initial Order, and shall be subject to the same restrictions thereunder;

- (c) a declaration that Alvarez & Marsal Canada Inc. be appointed as an officer of this Court (in its capacity as proposed monitor, the “**Proposed Monitor**” and, if appointed, the “**Monitor**”) to monitor the assets, business and affairs of the Petitioners with certain enhanced powers discussed below;
- (d) an order that, until further order of this Court, all proceedings, enforcement processes and remedies taken or that might be taken against the Petitioners, the GP’s or 098’s directors, or any of their property, or the Monitor be stayed, and the Petitioners’ operations be carried out in accordance with the express terms of the Initial Order, with liberty to seek to amend or extend the terms of the Initial Order;
- (e) an order authorizing and permitting the Petitioners to file with this Court a formal plan or plans (the “**Plan**” and “**Plans**” respectively) of compromise and arrangement between the Petitioners and one or more classes of their creditors pursuant to the provisions of the CCAA;
- (f) an order authorizing the Petitioners to carry on their business and operations in a manner consistent with the preservation of their property and business;
- (g) an order granting the following charges over the assets, property, and undertakings of the Petitioners in priority to all other creditors of the Petitioners other than certain security interests perfected by the financing statement (the “**Financing Statement**”) as set out in Schedule “B” of the Initial Order and which shall have the relative priority as set out below, as security for the obligations of the Petitioners to the beneficiaries of the following charges:
  - (i) firstly, the Monitor, counsel to the Monitor, and counsel to the Petitioners shall be entitled to the benefit of a charge (the “**Administration Charge**”) on the “**Property**” (as defined in the Initial Order), which charge shall not exceed an aggregate amount of \$300,000 as security for their respective fees and disbursements incurred;
  - (ii) secondly, the directors of the Petitioners shall be entitled to the benefit of a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$75,000 as security for the indemnity provided by the Petitioners in favour of their directors against obligations and liabilities that the directors may incur as directors of the Petitioners after the commencement of these CCAA proceedings, except to the extent that, with respect to any director, the obligation or liability was incurred as a result of the director’s gross negligence or wilful misconduct;

- (iii) thirdly, the security interests registered with respect to the security of Romspen Investment Corporation (“**Romspen**” and the “**Romspen Security**”); and
- (iv) fourthly, Gatland Development Corporation, REV Investments Inc. and South Street (Alderbridge) Limited Partnership (in their capacity as interim lender the “**Interim Lender**”) shall be entitled to the benefit of a charge (the “**Interim Financing Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$850,000 as security for the Interim Financing Facility (as defined below);
- (h) an order defining the classes of creditors of the Petitioners for the purposes of a meeting or meetings with respect to, and voting on, any Plan or Plans that may be filed;
- (i) an order that, upon filing a Plan, the Petitioners may call a meeting or meetings of the affected classes of their creditors to vote upon such a Plan;
- (j) such directions as may be required from time to time respecting the presentation of a Plan to the Petitioners’ creditors, proofs of claim, conduct of meetings and related matters;
- (k) an order sanctioning and approving any Plan, with such amendments as may be proposed by the creditors of the Petitioners and approved by the Petitioners or as may be proposed by the Petitioners;
- (l) an order that the orders in this proceeding shall have full force and effect in all provinces and territories of Canada and any other foreign country where creditors of the Petitioners are domiciled;
- (m) an order that the Petitioners shall be authorized and empowered, but not required to:
  - (i) apply as it may consider necessary or desirable, with or without notice, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize the Initial Order and/or to assist in carrying out the terms of the Initial Order and any subsequent orders of this Court; and
  - (ii) act as a foreign representative in respect of these proceedings for the purpose of having these proceedings recognized and/or aided in a jurisdiction outside Canada;

- (n) an order requesting the aid and recognition of other Canadian and foreign courts, tribunals, regulatory, administrative and other bodies, including, without limitation, any court or administrative tribunal of any federal or state court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of the Initial Order where required; and
  - (o) an order that the Petitioners be at liberty to serve all orders and materials (including the Plan) in this proceeding on any of their creditors by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, fax or email to the Petitioners' creditors at their respective addresses as last shown on the records of the Petitioners, and any such service or notice by courier, personal delivery, fax or email shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing; and
  - (p) such further and other relief as this Court may deem necessary.
2. The Petitioners also seek an order sealing certain documents defined below as the Confidential Documents.

## **Part 2: FACTUAL BASIS**

### **A. Overview**

1. The Petitioners have spent several years developing a high-density, mixed-used construction project at 7960 Alderbridge Way and 5333, 5411 No. 3 Road, Richmond, British Columbia (the "**Development**"). The Development will comprise seven mid-rise towers atop a multi-level podium with three levels of underground parking.
2. In March 2020, citing the effects of COVID-19 and the economic outlook, the Petitioners' senior secured construction lender suspended all further draws and advances under the Petitioners' construction facility. The Petitioners are now in the midst of a liquidity crisis.
3. The Petitioners spent the next year seeking: alternative construction financing, economic concessions from project proponents, and additional injections of equity, while securing several further advances from the Petitioners' second-lien lenders (defined below as the "**2ML Lenders**"). However, 2020 was a particularly unstable financial climate and in that environment of high uncertainty, the Petitioners were unable to secure the considerable replacement construction financing that the Development required.
4. Currently, the Petitioners have completed the major pre-construction phases of the Development, pre-sold a significant portion of the Development and largely finished the

major undertaking of site excavation and off-site civil work. The Petitioners have interested and committed partners in their 2ML Lenders who have worked with the Petitioners on a restructuring strategy. However, the Petitioners' restructuring efforts over the past two years have made it clear that relief under the CCAA is necessary to bring a restructuring transaction to fruition.

5. Accordingly, the Petitioners believe, if provided the chance to restructure in a stronger financial and post-pandemic market, supported by increasing market, land value and work in progress, a successful outcome can be reached for the benefit of all the Petitioners' stakeholders. As such, it is in the best interests of the Petitioners' stakeholders to apply for relief under the CCAA.

## **B. Background**

6. The Petitioners began work on the Development in 2017.
7. In March 2020, the Petitioners' senior secured construction lender, Romspen ceased funding on the Development. Since this time, construction on the Development largely halted, though the Petitioners continue to ensure the safety and integrity of the project site by funding on-going site security, daily de-watering costs, and the construction of fencing to secure the site perimeter.
8. In February 2021, Romspen issued demand to the Petitioners, claiming an amount in excess of \$158 million due and owing.
9. Consequently, in 2021, following extensive consultation with major stakeholders, the Petitioners opted to pursue a sale and investment solicitation process ("**2021 SISP**").
10. The Petitioners engaged Alvarez & Marsal Canada Inc. ("**A&M**") and Cushman & Wakefield Structured Finance ULC ("**CWSF**") to assist in conducting the 2021 SISP. The Petitioners selected a bid through the 2021 SISP, which ultimately did not complete, as certain conditions could not be satisfied.
11. It has become clear that potential interested parties require the relief provided by the CCAA in order to enter a restructuring transaction that will see the Development advance. The Petitioners are now aiming to complete a CCAA filing that will effect a strengthening of their balance sheet and position the LP and GP to progress the Development. Such a restructuring would see on a high-level:
  - (a) the Petitioners access the protections and relief afforded by the CCAA;
  - (b) a restructuring transaction that would be effected by way of a credit bid that would, among other things, see Romspen and any other priority claims paid and a

significant portion of the 2ML Lenders' debt converted to equity as part of an overall restructuring of the LP itself;

- (c) concurrently with the development of a credit bid, a sale and investment solicitation process run with the assistance of a monitor with enhanced powers (the "**CCAA SISP**"); and
  - (d) ultimately, an exit from CCAA that positions the restructured LP with an improved balance sheet.
12. It is anticipated that with a successful credit bid, the LP, led by the GP, with new equity, would then be in a position to continue the Development by advancing pre-sales, progressing permits, seeking additional capital, arranging further construction financing and commencing construction, on a phased basis to reduce capital requirements, in a post-COVID economic climate and strong real estate market.
13. In consultation with the Proposed Monitor and Romspen, the Petitioners have developed the CCAA SISP, the approval of which the Petitioners intend to seek at the comeback hearing scheduled before this Court on April 25, 2022 (the "**Comeback Hearing**"). This CCAA SISP is intended to run in tandem with the Petitioners' restructuring efforts, to help ensure that a restructuring or transaction that offers the greatest benefit to stakeholders is the outcome of these proceedings.
14. To preserve the value in the Development, and capitalize on the years of endeavor that the Petitioners have invested in the project, the Petitioners now seek creditor protection on short notice to certain stakeholders, defined below as the "**Notice Parties**", with a view to completing a restructuring or transaction that maximizes the benefit to stakeholders.

## **C. Petitioners**

### *i. Background of the Petitioners*

15. The GP is a corporation formed under the laws of the Province of British Columbia. The GP is the sole general partner of the LP.
16. The LP is a limited partnership formed under the laws of the Province of British Columbia. The LP was formed for the business of purchasing, constructing, developing, selling and leasing real property in Richmond, British Columbia.
17. 098 is a corporation formed under the laws of the Province of British Columbia. 098, as nominee, holds legal title to 7960 Alderbridge Way and 5333, 5411 No. 3 Road, Richmond, British Columbia (the "**Real Property**"), on behalf of the LP as the beneficial owner. The Development is located on the Real Property.



18. The LP, by the GP, is the sole shareholder of 098.

*ii. The LP's business is intertwined with the GP and 098*

19. The LP's business is intertwined with the business of the GP and 098.

20. The GP is responsible for managing, controlling and operating the business and affairs of the LP and has the ability to enter agreements, financings, and investments on behalf of the LP and to hold any LP property. Under the limited partnership agreement between the GP and the LP, the GP holds the LP's property, whether registered in the name of the GP, or in its name in trust, as bare trustee and agent for the limited partners of the LP.

21. The GP's operations focus solely on fulfilling the role of general partner of the LP, managing the LP's affairs, representing the LP, acting on behalf of the LP, and making all decisions affecting the LP's business.

22. The LP is a co-obligor on each of the secured credit facilities providing construction funding for the Development and the primary obligor under the Development's principal purchase agreement.

23. The operations of the GP and the LP are significantly intertwined in constructing, developing, leasing and selling the Development. The LP could not pursue its partnership purpose without the contributions and management of the GP.

24. The LP's business is also intertwined with 098's business. The LP is the sole shareholder of 098 and 098 holds legal title to the Real Property of which the LP is the beneficial owner.

*iii. Petitioners' leadership team*

25. The GP's and 098's directors are: Sam Hanson, Jason Ratzlaff and Graham Thom. The GP's shareholders are Gatland Development Corporation, REV Investments Inc. and South Street Development Managers Ltd., who are party to a shareholder's agreement made effective as of June 5, 2017.

26. The LP has the following limited partners: South Street (Alderbridge) Limited Partnership, REV Investments Inc., Gatland Development Corporation, J.V. Driver Projects Inc., G. Wong Holdings Inc., MNB Enterprises Inc., Chatanooga Investments Ltd., Kenneth Voth, and R. Jay Management Ltd.

27. The Petitioners do not directly employ any individuals in British Columbia. Individuals who work on the Development are employed through various contracts.



## **D. The Development**

28. Beginning in 2017, work commenced on assembling and re-zoning the Development site. At this time, the Petitioners also worked through the permitting process with the City of Richmond.
29. To date, the Petitioners have obtained a development permit, a building permit for excavation, a building permit for foundation and an underpinning works permit, and the Petitioners were working through the final steps to have the final building permit issued. Certain permits have since lapsed and the Petitioners believe that upon a successful restricting the same will be issued relatively quickly.
30. Currently, excavation work is largely complete. The majority of work currently being done at the site is related to de-watering and security.
31. The Development is planned to be seven mid-rise towers, referred to as buildings A-G; which include five residential condominium strata lot towers; one rental tower; one commercial office tower; a section of affordable rental units; and commercial retail space. The Development plans provide that the Real Property will be subdivided by an airspace subdivision plan.

## **E. Development Sales**

### *i. GEC Development Agreement – Towers G and D*

32. On or about February 28, 2018, the LP entered a Purchase and Development Agreement (as subsequently amended by a series of amending agreements, the “**GEC PDA**”) with Global Education City (Richmond) Limited Partnership, by its general partner, GEC (Richmond) GP Inc. (collectively, “**GEC**”), and guaranteed by CIBT Education Group Inc. (“**CIBT**”) setting out the terms and conditions on which the LP agreed to sell, and GEC agreed to buy, the “**GEC Development**” (as defined in the GEC PDA), which includes a commercial office tower (being tower G), two residential rental towers (being towers D and F), as well as some retail space in the commercial office tower.
33. In October 2018, the GEC PDA was amended to reduce the number of towers that GEC was purchasing from three to two. GEC no longer intended to purchase tower F.

### *ii. Pre-sale contracts for residential condominium strata lot tower*

34. The residential units in towers E and F are largely pre-sold. Currently, 260 of 281 condominium have been sold, leaving 21 units available. There are also 38 remaining strata lots in the residential development dedicated for affordable residential housing.

35. Current purchase agreements for the residential towers (towers E and F) have a total net price of approximately \$177 million. The LP's real estate counsel currently holds approximately \$29.7 million in respect of those purchasers' deposits.

*iii. Pre-sale contracts for retail strata lots*

36. A total of 33 retail strata lots are anticipated to be constructed, of which 28 have been pre-sold to purchasers and four of the remaining lots are allocated to CIBT under the GEC PDA.
37. Purchase agreements for those retail strata lots have a total net price of approximately \$76 million. The LP's real estate counsel currently holds approximately \$18.7 million in respect of those purchasers' deposits.

**F. Financial History**

38. The Petitioners are party to two loan agreements for construction financing:
- (a) a loan agreement, dated November 6, 2019 (as amended and restated from time to time, the "**Romspen Credit Agreement**"), among each of the Petitioners, as borrowers; Romspen, as lender; and various guarantors; and
  - (b) an amended and restated term sheet, dated August 5, 2021 (the "**2ML Credit Agreement**"), between: the Petitioners, as borrowers; the 2ML Lenders (defined below), as lenders; 1185678 B.C. Ltd. (the "**2ML Agent**"), as agent to the 2ML Lenders; and various guarantors.
39. In addition to the construction financing agreements, the Petitioners are party to the GEC PDA with CIBT and GEC and have granted a mortgage in connection to a deposit paid under the GEC PDA.

*i. The Romspen Credit Agreement*

40. Romspen is the Petitioners' senior secured creditor.
41. Under the Romspen Credit Agreement, Romspen committed to provide \$212 million of a non-revolving credit facility up to a maximum principal amount of \$422 million (the "**Romspen Credit Facility**"). Interest accrues at 10% per annum, compounded monthly. Among other fees, a loan fee of \$10,550,200 is payable to Romspen, with roughly \$7 million of that fee having already been paid.

42. Romspen claims it has advanced approximately \$143.6 million to the Petitioners as of March 31, 2020, and that as of February 28, 2022, approximately \$175 million is owing to Romspen.
43. In connection with the Romspen Credit Facility, the Petitioners 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 Gatland Development Corporation, REV Holdings Ltd. REV Investments Inc., South Street Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel Hanson and Brent Hanson (collectively, the “**Guarantors**”);
  - (c) a beneficial direction and charge agreement;
  - (d) personal property security agreements from the Petitioners and the Guarantors; and
  - (e) certain share and unit pledges ((a) through (e), collectively, the “**Romspen Security**”).

ii. The 2ML Credit Agreement

44. The 2ML Credit Agreement provides for a maximum principal amount of \$60 million (the “**2ML Credit Facility**”). The 2ML Credit Facility was advanced in tranches with corresponding promissory notes (the “**2ML Promissory Notes**”). The 2ML Promissory Notes have varying interest rates and maturity dates. The 2ML Credit Agreement does not create a committed loan facility and states that further advances under the 2ML Credit Agreement are in the discretion of the 2ML Lenders.
45. The current 2ML lenders are either unitholders of the LP or entities associated with unitholders of the LP, namely: R. Jay Management Ltd., J.V. Driver Investments Inc., MNB Enterprises Inc., G. Wong Holdings Inc., Gatland Development Corporation, REV Investments Inc., Voth Developments Ltd., Inland Consulting Ltd., Dennis Schwab and Lesley Schwab and South Street (Alderbridge) Limited Partnership (collectively, the “**2ML Lenders**”).
46. Under the 2ML Credit Agreement, the principal amount of approximately \$47.5 million is currently claimed by the 2ML Lenders, together with interest and other amounts totalling another \$29.2 million, for a total of approximately \$76.7 million, as more particularly described in the First Affidavit of Graham Thom, sworn March 31, 2022.

47. In connection with the 2ML Credit Agreement, the Petitioners granted certain security in favour of the 2ML Agent and executed other documents, including:
- (a) a second-ranking mortgage and assignment of rents in the principal amount of \$60 million over the Real Property (the “**2ML Mortgage**”);
  - (b) a beneficial direction and charge agreement; and
  - (c) guarantees from the Guarantors with limited guarantees from G. Wong Holdings Inc. and MNB Enterprises Inc. ((a) through (c) collectively, the “**2ML Security**”).
48. The 2ML Lenders entered into an agency agreement in connection with the 2ML Credit Facility (the “**Agency Agreement**”). Under the Agency Agreement, R. Jay Management Ltd. and J. V. Driver Investments Inc. have the right (provided certain events occur) to direct the 2ML Agent on behalf of the 2ML Lenders.
49. On March 22, 2021, J.V. Driver Investments Inc. gave notice that it was exercising its right to direct the 2ML Agent in relation to the 2ML Credit Agreement.

*iii. The CIBT and GEC PDA*

50. The Petitioners have granted a mortgage in favour of CIBT and GEC in connection with the GEC PDA.
51. As of November 1, 2019, a \$60 million deposit (the “**GEC PDA Deposit**”) had been paid to the Petitioners in connection with the GEC PDA, which deposit was utilized for the purposes of advancing the Development.
52. The Petitioners granted a third-ranking mortgage against the Real Property in the principal amount of \$65 million (the “**GEC Mortgage**”) in connection with the GEC PDA Deposit.

**G. Romspen Demand**

53. On February 22, 2021, Romspen wrote to the Petitioners, issuing demand (the “**Romspen Demand**”), and stating that the entire principal amount of the Romspen Credit Facility currently outstanding and all accrued and unpaid interest thereon, and all other payments and amounts due under the Romspen Credit Facility, in the amount of \$157,885,395.55 as at February 10, 2021, was immediately due and payable.

**H. The 2021 SISP**

54. In April 2021, the GP engaged A&M to assist with contingency planning, on the understanding that appropriate measures and safeguards should be put in place so that

the Proposed Monitor would retain its eligibility to act as court-appointed monitor should the Petitioners need to file for protection under the CCAA. As part of this work, A&M assisted in coordinating a process and timeline to secure potential investors, partners or purchasers for the Development.

55. In May 2021, the GP engaged CWSF to lead the 2021 SISF.
56. As further described in the First Affidavit of Graham Thom, under the 2021 SISF, the Petitioners carried out a sale and investment solicitation process to solicit offers from individuals interested in purchasing the assets of, or financing, investing or partnering in the business of, the GP, the LP and 098.
57. On or about July 22, 2021, the Petitioners selected one development partner ("**Developer 1**") as the successful bid. The Petitioners and Developer 1 worked over four months to satisfy the necessary conditions, including entering into a letter of intent and a restructuring agreement, to complete a transaction.
58. On January 21, 2022, Developer 1 wrote to the Petitioners with an alternative non-binding proposal to complete the transaction, with revised conditions and a reduced purchase price. The Petitioners did not accept the revised offer and on January 25, 2022, the Petitioners and Developer 1 ultimately terminated their restructuring agreements.

#### **I. CIBT and GEC Demand**

59. On June 9, 2021, counsel to GEC (Richmond) GP Inc., the general partner of GEC, wrote to 098 and issued demand (the "**GEC Demand**"). The GEC Demand stated that the full amount owing pursuant to the GEC Mortgage was due and owing in the amount of \$94,106,654.14 as at June 8, 2021 with interest of 15% per annum.

#### **J. Insolvency of the Petitioners**

60. Following March 2020, when Romspen suspended future draws under the Petitioners' construction facility, the Petitioners worked to progress the Development by:
  - (a) negotiating with the 2ML Lenders regarding incremental further funding, including securing and completing additional advances under the 2ML Credit Facility in May 2020, July 2020, June 2021, August 2021 and January 2022;
  - (b) pursuing refinancing with several established construction lenders and finalizing a term sheet with one lender ("**Construction Lender 1**"); however, the Petitioners recognize that such loans are only part of the solution to fully funding the Development, which requires additional contributions from equity and mezzanine lenders;

- (c) negotiating with project proponents and stakeholders regarding terms of their existing agreements to address project economics, including extensive discussions with the LP's limited partners, the 2ML Agent, and CIBT;
  - (d) negotiating with existing suppliers, contractors and lien claimants;
  - (e) securing the Development site, with on-going care and maintenance activities such as de-watering and security; and
  - (f) communicating project developments to all stakeholders, including creditors, contractors, suppliers, purchasers, the City of Richmond, Romspen, the LP's limited partners, the 2ML Lenders, the 2ML Agent and CIBT.
61. Throughout this time, the Petitioners and their counsel have been in constant communication with Romspen, the 2ML Lenders, CIBT/GEC and other stakeholders.
62. Despite the Petitioners' efforts, with no funds available to advance construction of the Development, the Petitioners now require protection from creditor action in light of:
- (a) Romspen suspending senior construction financing under the Romspen Credit Facility;
  - (b) the unavailability of further funding under the 2ML Credit Facility;
  - (c) the series of builders' liens filed on title to the Real Property; and
  - (d) negotiations addressing project economics with major stakeholders indicating relief under the CCAA is necessary to bring a restructuring transaction to fruition.
63. The Development is not currently generating any sales or revenue. The Petitioners have insufficient cash to pay their liabilities as they come due.
64. The Petitioners urgently require the relief sought herein to preserve and stabilize operations, to prevent enforcement steps from being taken in respect of their secured debt facilities, and to preserve the opportunity to restructure their business.

**K. Assets**

65. Largely, the LP's assets consist of cash, trust deposits, deferred management fees, and construction in progress.
66. The LP's 2020 unaudited 2020 financial statements (the "**LP 2020 Financial Statements**") provide, as of December 31, 2020, the LP's current and long-term assets totalled: \$351,356,154, consisting of:

- (a) cash in the amount of \$67,783;
  - (b) trust deposits in the amount of \$49,298,494;
  - (c) deferred management fees in the amount of \$3,437,989; and
  - (d) construction in progress totalling \$298,551,888.
67. As of February 28, 2022, the Petitioners' real estate counsel holds a total of \$48,467,600.18 on account of pre-sale contracts for the Development.
68. The Petitioners' major asset is the Real Property, of which 098 is the registered owner and the LP is the beneficial owner. Since May 1, 2019, Altus Group Limited ("**Altus**") has completed appraisals and draft appraisals of the Real Property. On or about March 1, 2022, Altus issued its most recent draft appraisal of the Real Property, listing the current market value of the lands "as is" and aggregate market value of the lands "as if complete", both of which values had significantly increased since 2019.
69. The Real Property is encumbered by, among other charges, liens, certificates of pending litigation and interests, several mortgages and assignments of rent, as further described in the First Affidavit of Graham Thom.

**L. Partners' Capital**

70. The LP December 2020 Financial Statements list partners' capital as totalling \$8.5 million.

**M. Liabilities**

71. The LP's liabilities are comprised primarily of accounts payable and accrued liabilities, the Credit Facilities, and the GEC PDA.
72. The LP's current and long-term liabilities consist of:
- (a) accounts payable and accrued liabilities of \$83,440,954;
  - (b) \$199,415,200 in secured liabilities under the credit facilities; and
  - (c) the GEC PDA Deposit of \$60,000,000.
73. As described in more detail in the First Affidavit of Graham Thom, \$251,992,049.69 has been demanded and other accounts payable and liabilities are also due.



74. In summary, the Petitioners' primary secured obligations claimed by Romspen, the 2ML Lenders, and GEC (the "**Secured Creditors**") are approximately as follows:

<b>Creditor</b>	<b>Principal claimed/ GEC PDA Deposit (CAD\$)</b>	<b>Interest (CAD\$)</b>
Romspen	\$143,600,000 as at March 31, 2020	\$31,400,000 as at February 2022
2ML Lenders	\$47,528,816 as at Jan 31, 2022	\$29,163,939 as at Jan 31, 2022, including \$1,187,755 in fees and costs
GEC	\$60,000,000 as at July 7, 2021	\$35,214,147.67 as at July 7, 2021
Total	\$251,128,816	\$95,778,087

75. In addition, the Petitioners have one further secured creditor with a registered financing statement related to certain equipment at the British Columbia personal property registry.
76. Further, as of March 3, 2022, property taxes were due and owing on the Real Property (for the years 2020 and 2021) in the amount of \$1,673,668.85.

#### **N. Key Suppliers**

If granted CCAA protection, the Petitioners intend to work with the Monitor to identify those suppliers that, among other considerations, are essential to construction of the Development.

#### **O. Proposed Restructuring Plan**

77. The Petitioners are currently in a liquidity crisis, primarily due to Romspen ceasing funding and issuing the Romspen Demand. Romspen is in a position to enforce its security, including the Romspen Mortgage. The Development is not generating sales or revenue. These factors have necessitated a restructuring of the Petitioners' affairs.
78. The directors of the GP have spent the past two years in discussions with key project proponents.
79. Following the 2021 SISF, and over the past several months, the Petitioners re-engaged with several construction lenders, and possible project partners, including established local developers, to discuss possible paths forward for the Development.

80. Specifically, Construction Lender 1 has presented a term sheet dated March 4, 2022 that the Petitioners anticipate pursuing as part of a restructuring, upon exit from the CCAA proceedings, to provide the Development with sufficient funds to progress construction. While these term sheets are under review and negotiation, none have yet reached final stages.
81. Through many months of consultation with key parties, the Petitioners believe that the ability to restructure under the CCAA will benefit all stakeholders. The Petitioners anticipate pursuing a restructuring transaction by way of a credit bid from the 2ML Lenders, which would see Romspen and other priority claims paid cash and a significant portion of the 2ML Lender's debt converted to equity. With a successful credit bid, it is anticipated that the LP, led by the GP, would be in a position to progress and refinance the Development.
82. In addition to the credit bid, the CCAA SISP is anticipated to run concurrently to the Petitioners' restructuring efforts, to ensure that a restructuring or transaction that offers the greatest benefit to stakeholders is the outcome of this process.
83. It is anticipated that the Petitioners will an order approving the CCAA SISP at the Comeback Hearing (the "**SISP Approval Order**"). The CCAA SISP is anticipated to commence the day after the SISP Approval Order is granted and progress towards a binding final agreement with respect to an asset purchase or investment partnership by the Summer of 2022, as more particularly described in the First Affidavit of Graham Thom.
84. As such, it is anticipated that the 2ML Lenders will be a bidder and participate in the CCAA SISP. As certain 2ML Lenders are unitholders in the LP, or directors of the GP, the Petitioners are seeking to have the Initial Order provide the Proposed Monitor with enhanced powers to, among other things, conduct the CCAA SISP (the "**Enhanced Monitor's Powers**").
85. The Petitioners and their counsel have also continued to consult with key Development stakeholders, including Romspen, the 2ML Agent, 2ML Lenders, CIBT, the LP limited partners, and various of lienholders, on the path forward for the Development, the need for these CCAA proceedings, including the proposed interim financing and the Petitioners' plan for restructuring within these proceedings.
86. It has become clear that potential interested parties require the relief provided by the CCAA to enter a restructuring transaction that will see the Development advance.
87. The Petitioners are now seeking relief under the CCAA, on short notice to the Notice Parties (as defined below), to preserve their operations, to prevent enforcement steps from

being taken in respect of the Petitioners' secured debt facilities, and to preserve the opportunity to complete a restructuring.

88. The directors of the GP and 098 have years of experience with this particular project and decades of experience in property development, which can be capitalized on to move the Development to completion, now on a phased basis to reduce capital requirements, and maximize stakeholder recovery.

**P. Cash-Flow**

89. In consultation with the Proposed Monitor, the Petitioners have prepared a 5-week cash flow statement for the period ending April 29, 2022 (the "**Cash-Flow Statement**").
90. The Petitioners require approximately \$1 million in order to meet their obligations through to the end of the Cash-Flow Statement period and approximately \$850,000 in order to meet their obligations to the date of the Comeback Hearing.

**Q. Interim Financing**

91. The Interim Lender has agreed to provide the Petitioners with a \$1 million financing facility.
92. To support certain near-term liquidity requirements, and on the premise that the Petitioners will successfully restructure their operations or complete a proposed transaction with a successful bidder, Gatland Development Corporation, REV Investments Inc. and South Street (Alderbridge) Limited Partnership have agreed to act as Interim Lender during these CCAA proceedings, and to provide a \$1 million interim financing facility (the "**Interim Financing Facility**") under a term sheet between the Petitioners and the Interim Lender, dated March 30, 2022 (the "**Interim Financing Credit Agreement**").
93. The Petitioners and their advisors have considered different financing options, and determined that it would be very difficult to obtain the requisite financing for these CCAA proceedings with another third party lender, as opposed to the Interim Lender. Any such financing would likely have to involve a priming of the senior secured lenders' security position over their objections. The Petitioners have been unable to source financing, other than from Gatland Development Corporation, REV Investments Inc. and South Street Development Managers Ltd., who have agreed to act as the Interim Lender and are willing to take a security position subordinate to Romspen.
94. As set out in the Cash-Flow Statement, the Petitioners anticipate that approximately \$850,000 will be required for their operations and restructuring efforts from the date of the Initial Order to the Comeback Hearing. This includes amounts for certain professional who have been unpaid in assisting the Petitioners with these proceedings and will be paid from

the initial draw as set out in the Cash Flow. The Petitioners believe this amount is reasonable given what is required to operate and preserve the Development in the ordinary course, and to fund the various costs of the restructuring during that period.

## **R. Relief Requested**

### *i. Stay of Proceedings*

95. A stay of proceedings is essential to maintaining the *status quo* to preserve the value of the Petitioners' business. A stay will provide time for the Petitioners to pursue, with the assistance of the Proposed Monitor, restructuring opportunities that will provide sufficient capital to stabilize the Petitioners' operations and enable the Petitioners to progress the Development in a manner that offers the greatest benefit to numerous stakeholders.
96. The Petitioners also require the relief under the CCAA to extend to the LP due to the high degree of integration within the Petitioners' organization structure and the fact that the LP is an obligor on the Petitioners' outstanding debt.
97. The Petitioners are seeking a stay of proceedings for ten days, expiring April 11, 2022, at which time the Petitioners are scheduled to appear before this Court for a short stay extension (the "**Stay Extension Hearing**") to extend the stay to April 25, 2022, the scheduled date of the Comeback Hearing.

### *ii. Monitor*

98. The Proposed Monitor has consented to act as monitor in these proceedings, to provide court supervision and monitoring, and to generally assist the Petitioners with their restructuring efforts. This includes the Proposed Monitor assisting the Petitioners as necessary, and assisting with the preparation of a Plan to be put to the Petitioners' creditors pursuant to the terms of the Initial Order and the provisions of the CCAA.

### *iii. Enhanced Monitor's Powers*

99. The Petitioners are also seeking to expand the powers of the Proposed Monitor in these CCAA proceedings above the powers provided for in the BC model CCAA initial order.
100. The Initial Order contemplates that the Proposed Monitor will be authorized and empowered, but not required to, *inter alia*, to conduct the CCAA SISF and to manage certain receipts and disbursements of the Petitioners utilizing the Enhanced Monitor's Powers.
101. Following conversations with Romspen and considering the Petitioners' efforts to progress the Development over the past two years and the likely involvement of the 2ML Lenders

as a bidder under the CCAA SISP, it is the Proposed Monitor's view that the Enhanced Monitor's Powers are appropriate in the circumstances to progress the restructuring and implement the CCAA SISP.

102. The Proposed Monitor is prepared to accept the Enhanced Monitor's Powers provided for in the Initial Order should the Court determine that it is in the best interest of all stakeholders.

*iv. Administration Charge*

103. The Petitioners are seeking an administration charge over their assets, properties and undertakings up to a maximum amount of \$300,000 to secure payment of the fees and disbursements of the Petitioners' legal counsel, the Proposed Monitor, and the Proposed Monitor's legal counsel. The Administration Charge would rank in priority to all other encumbrances, including all other court-ordered charges.

104. The Administration Charge will ensure that the Petitioners retain access to the professionals whose expertise and knowledge is required to pursue a restructuring under the CCAA.

*v. Directors' Charge*

105. The Petitioners are seeking a second-ranking charge in favour of GP's and 098's directors over the Petitioners' assets, properties and undertakings up to a maximum amount of \$75,000 to indemnify the GP's and 098's directors in respect of liabilities they may incur as directors of the GP and 098, respectively, in these proceedings, subject to the Administration Charge.

*vi. Interim Financing Charge*

106. As noted, it is anticipated that the Petitioners will require incremental financing during these CCAA proceedings. Over the first 5 weeks of the proceedings, the Petitioners expect to require approximately \$1 million.

107. It is a condition to the Interim Financing Facility that the Petitioners obtain a charge in favour of the Interim Lender over the assets of the Petitioners.

108. Without Interim Financing Facility and the cooperation of the Interim Lender, the Petitioners will not have sufficient cash on hand to secure the Development site and fund these CCAA proceedings until the Comeback Hearing. Without such funding, the Petitioners' primary asset will be at risk and the Petitioners would be unable embark upon these CCAA proceedings, which are intended to effect a transaction for the benefit of all stakeholders.

109. The Petitioners are seeking approval of the Interim Financing Credit Agreement, and Interim Financing Facility provided for therein.
110. The Petitioners are also seeking approval of the Interim Financing Charge, being a fourth priority charge on the assets, property and undertakings of the Petitioners, in priority to all other charges other than the Administration Charge, the Directors' Charge, and the Romspen Security, up to a maximum amount of \$850,000, to provide funds for the period of the date of the Initial Order to the date of the Comeback Hearing.
111. The Petitioners anticipate seeking an increase in the Interim Financing Charge at the Comeback Hearing.

**S. Conclusion**

112. The Petitioners have worked over the last two years to find a path to progress the Development. The Petitioners now require the protection of the CCAA to reorganize their affairs and advance a transaction that offers the greatest benefit to all stakeholders.

**Part 3: LEGAL BASIS**

1. The Petitioners rely on:
  - (a) the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. [C-36](#), as amended (the "CCAA");
  - (b) the *Business Corporations Act*, S.B.C. 2002, c. [57](#);
  - (c) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. [B-3](#), as amended (the "BIA");
  - (d) the *Supreme Court Civil Rules*, B.C. Reg. [168/2009](#), as amended;
  - (e) the inherent and equitable jurisdiction of this Court; and
  - (f) such further and other legal basis as counsel may advise and this Court may allow.

**A. The CCAA applies to the Petitioners**

2. The CCAA applies in respect of a “debtor company” if the claims against that debtor company are of more than \$5 million.

*Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“**CCAA**”), ss. [2](#), [3](#).

3. The CCAA defines “company” as a company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province. A “debtor company” is any company that is bankrupt or insolvent.

CCAA, s. [2\(1\)](#).

4. Whether a company is insolvent is evaluated by reference to the definition of “insolvent person” in the BIA, which provides that:

*insolvent person* means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and:

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

*Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. [2](#).

5. In the context of the CCAA, this test has been interpreted expansively. If a company is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”, it is considered insolvent.

*Stelco Inc., Re*, [2004 CarswellOnt 1211](#) (Ont. Sup. Ct. J.) at para. 26, leave to appeal ref’d. [2004 CarswellOnt 2936](#) (Ont. C.A.) and [CarswellOnt 5200](#) (S.C.C.).

See also, *Lemare Holdings Ltd., Re.*, [2014 BCSC 893](#) at para. 18.



6. In this case, the GP and 098 are debtor companies and the CCAA should apply to the GP and 098 as:

- (a) the GP and 098 are established as corporations pursuant to the *Business Corporations Act* and thus qualify as companies under the CCAA;
- (b) the GP and 098 are subject to claims well in excess of \$5 million. The GP and 098 owe a significant amount in respect of secured debt that is due. The GP and 098 have insufficient cash flow to meet their demands, as the Development is not currently generating sales or revenue. The GP and 098 have run out of liquidity and are unable to meet their obligations as the same become due.

*Business Corporations Act*, S.B.C. 2002, c. [57](#).

7. In addition, the CCAA ought to apply to the LP. The LP is a necessary party to these proceedings. The LP is intertwined in the business of the GP and 098 and with the Development, as, among other things:

- (a) the LP is the beneficial owner of the Real Property;
- (b) the LP owns shares through the GP in 098;
- (c) the GP's operations focus solely on fulfilling the role of general partner of the LP, in managing the LP's affairs, representing the LP, acting on behalf of the LP, and making all decisions affecting the LP's business; and
- (d) the LP is a co-obligor on each of the secured credit facilities providing construction funding for the Development and the primary obligor under the Development's principal purchase agreements.

8. "It is well established that the court has the jurisdiction [under section 11 of the CCAA] to extend a stay of proceedings to a partnership [related to a petitioner] in order to ensure that the purposes of the CCAA can be achieved".

*Target Canada Co. (Re)*, [2015 ONSC 303](#) ("**Target**") at para. 42.

See also, *1057863 B.C. Ltd. (Re)*, [2020 BCSC 1057](#) at para. 5.

CCAA, s. [11](#).

9. Courts have held that this relief is appropriate where the operations of a debtor company are "so intertwined with those of a partner or limited partnership in question that not

extending the stay would significantly impair the effectiveness of a stay in respect of the debtor company.”

*Re 4519922 Canada Inc.*, [2015 ONSC 124](#) at para 37.

See also *Prizm Income Fund, (Re)*, [2011 ONSC 2061](#) at paras. 26-27.

10. Extension of the relief sought in these proceedings to the LP is necessary to effect a restructuring with respect to the GP, 098 and the Development. The LP’s business cannot be separated from that of the GP and 098, particularly with respect to the Development, and the LP is a co-obligor in respect of the debts of the GP and 098. If the relief sought in these proceedings is not extended to the LP, creditors will be able to seek remedies against the LP in spite of a stay being in place against the GP and 098. The Petitioners submit that in these circumstances it is appropriate for the CCAA to apply to the Petitioners, including the LP.

**B. The relief sought is urgent**

11. The Petitioners have provided short notice of this application to the following Secured Creditors and stakeholders:
  - (a) the Proposed Monitor;
  - (b) Romspen;
  - (c) GEC and CIBT;
  - (d) R. Jay Management Ltd.;
  - (e) MNB Enterprises Inc.;
  - (f) the J.V. Driver Group (including J.V. Driver International and J.V. Driver Inc.);
  - (g) the 2ML Agent; and
  - (h) Metro-Can Construction (AT) Ltd. ((a)-(h) collectively, the “**Notice Parties**”).
12. Other than the Notice Parties, the Initial Order is essentially being sought on an *ex parte* basis vis-à-vis the Petitioners’ other interested parties.
13. Section 11 of the CCAA provides that:

“... if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the

restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances."

CCAA, s. [11](#), emphasis added.

14. Rule 8-5 (6) of the *Supreme Court Civil Rules* provides that “[t]he court may make an order without notice in the case of urgency.”

Supreme Court Civil Rules, B.C. Reg. 168/2009, R. [8-5\(6\)](#).

15. In this case, the Petitioners require urgent relief due to their liquidity challenges and inability to pay the critical site service contractors needed to preserve the integrity and the value of the Development. The Petitioners have sought to have this application heard this date on short notice to preserve and stabilize operations, to prevent enforcement steps from being taken in respect of their secured debt facilities, and to preserve the opportunity to restructure their business.
16. Therefore, the Petitioners submit that granting the orders sought herein is appropriate, even though the Notice Parties have only been provided short notice.

**C. A stay of proceedings is appropriate**

17. Section 11.02 of the CCAA provides that on an initial application, the court may:

...make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, s. [11.02](#).

18. The purpose of the stay of proceedings is to assist the debtor in maintaining the *status quo*, while working to stabilize its affairs and negotiate a plan of arrangement with creditors, thus benefiting both the debtor and its creditors.

*Re: Ted Leroy Trucking [Century Services] Ltd.*, [2010 SCC 60](#) (“**Century Services**”) at paras. 60-62.

19. The power to grant a stay of proceedings should be construed broadly to facilitate the CCAA's legislative purpose. The CCAA is remedial legislation, affording courts with broad jurisdiction to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

[Century Services](#) at para. 59.

20. As the primary policy instrument available under the CCAA, a stay of proceedings helps to facilitate compromises and arrangements between companies and their creditors. It provides an essential period of reprieve from litigation proceedings, allowing a debtor company to instead focus on negotiations with creditors.

*Campeau v. Olympia & York Developments Ltd*, 1992 CarswellOnt 185 (Ct. J. (Gen. Div.)) at para. 17.

21. The stay of proceedings also facilitates the on-going operations of the debtor's business, preserves the value of the operations and provides the debtor with the necessary time, flexibility and "breathing room" to carry out a court-supervised restructuring or sale process.

*Re Lehndorff General Partners Ltd.*, 1993 CarswellOnt 183 (Ont. Ct. J.) at paras. 5-7.

22. The threshold for a debtor company to obtain a stay of proceedings under the CCAA is low. The company only has to satisfy the Court that a stay of proceedings would "usefully further" its efforts to reorganize. The debtor company is not required to put forward anything more than a germ of a plan that requires protection.

[Century Services](#) at para. 70.

*Industrial Properties Regina Limited v. Copper Sands Land Corp.*, [2018 SKCA 36](#) at para. 21.

23. Further, since November 1, 2019, when certain amendments to the CCAA became effective, any stay of proceedings in an Initial Order under the CCAA is restricted to ten days, albeit subject to extension at the first comeback application and subsequently thereafter. This short initial stay period is meant to minimize prejudice to creditors who may have received short or no notice of the initial petition. Any creditor with concerns

about the adequacy of service is only required to wait ten days to make its case in opposition to the debtor company's filing or the resulting stay of proceedings.

CCAA, s. [11.02\(1\)](#).

24. The Petitioners submit that the remedial purposes of the CCAA are engaged in this circumstance. The Petitioners seek to preserve the prospective value of their assets, while addressing the various claims against them. The Petitioners submit that providing breathing space to enable the Petitioners to restructure and continue their operations will unlock significant value for stakeholders and is preferable to the devastating social and economic effects of a creditor-initiated liquidation at this stage.
25. The requested stay of proceedings conforms to the BC model CCAA initial order and is sought to enable the Petitioners to explore restructuring alternatives. The Petitioners have the necessary "germ of a plan", as on a high level, the restructuring will see:
  - (a) the Petitioners benefitting from the protections and relief afforded by the CCAA;
  - (b) a credit bid that if successful, would among other things, see Romspen and any other priority claims paid and a significant portion of the 2ML debt converted to equity as part of an overall restructuring of the LP; and
  - (c) an exit from CCAA, that positions the restructured LP with a much-improved balance sheet.
26. The efforts of which will provide an exit from CCAA, that positions the restructured LP with a much-improved balance sheet allowing for future construction financing and ultimately completion of the Development. Therefore, the Petitioners submit that a ten-day stay of proceedings until the scheduled Stay Extension Hearing is appropriate in these circumstances.

**D. The Proposed Monitor should be appointed Monitor**

27. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA.

CCAA, s. [11.7](#).

28. Section 11.7(2) of the CCAA provides restrictions on who may be appointed as a monitor. In particular, if in the two preceding years an entity was an auditor or accountant for the debtor company than they are barred from acting as monitor.
29. The Petitioners seek to have the Proposed Monitor appointed as Monitor in these proceedings. The Proposed Monitor is not barred by section 11.7(2) of the CCAA from

acting as Monitor, as at no time in the preceding two years have any members of the Proposed Monitor been:

- (a) a director, officer, or employee of the Petitioners;
  - (b) related to the company or any director or officer of the Petitioners; or
  - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the Petitioners.
30. Further the Proposed Monitor is not under a trust indenture or power of attorney related to the Petitioners, nor is it related to a holder of any such indenture or power of attorney.
31. As described above, A&M has been working with the Petitioners over the past year to provide guidance in relation to the Petitioners' financial challenges and has assisted in the administration of the 2021 SISP. A&M is the same entity as the Proposed Monitor.
32. Throughout this time, A&M's goal has been to assist the Petitioners to find a restructuring solution that benefits the Petitioners and all of the Petitioners' stakeholders. A&M has not stood to benefit from any specific outcome of the Petitioners' restructuring efforts (i.e. A&M was not to receive any success fee) and A&M have been paid hourly rate on a contract basis by the Petitioners up to this point.
33. This Court in *Mountain Equipment Co-Operative (Re:)* ("**MEC**") appointed a monitor who was related to an entity that had previously been assisting a debtor company in its pre-CCAA restructuring efforts, finding it appropriate to do so as:
- (a) the proposed monitor was not barred from appointment by section 11.7(2) of the CCAA;
  - (b) the affiliate entity was compensated on an hourly rate and did not benefit from any particular outcome of the company's restructuring efforts;
  - (c) it had been apparent that the company may need to file for CCAA protection in the future and the affiliate entity's role prior to filing was designed with this filing in mind; and
  - (d) the proposed monitor's ability to act independently, as an officer of the court, for the benefit of all stakeholders was not compromised.

*Re: Mountain Equipment Co-Operative*, [2020 BCSC 1586](#) ("MEC") at paras. 85-92.

34. This Court reasoned that it was appropriate to appoint the proposed monitor in *MEC*, as:

A&M Securities' involvement with MEC was clearly in the context of finding a solution to MEC's financial difficulties in the short term. It is common ground that MEC could most likely have obtained CCAA protection in early 2020 and then conducted the search for financing and/or the SISP within those proceedings. MEC states that it had good reason not to obtain court protection at that time, as I will discuss later in these reasons. This is a distinguishing factor from Nelson Education, where the monitor had a much more extensive and historical relationship with the debtor and other stakeholders.

Further, I can discern no conflict, whether real or apparent, arising from A&M Securities' previous involvement. Importantly, there is no success fee or compensation built into the second engagement that could possibly stand as an incentive for the Monitor to recommend the Kingswood sale (or any other sale) for approval. ...

In addition, as I will discuss in more detail below, there would be considerable cost and delay in replacing the Monitor at this time. The monitor engagement for MEC is not a simple affair and any new firm would take some time to fully assume that role and prepare a report — likely not even within "at least" two weeks, the delay sought by the objecting parties. Time is not on MEC's side in these urgent circumstances.

[MEC](#), at paras. 91-93, emphasis added.

35. The Petitioners submit, in the case at bar, similar to *MEC*, it is appropriate for the Proposed Monitor to be appointed Monitor, as:

- (a) the Proposed Monitor is not barred by section 11.7 of the CCAA from acting as Monitor;
- (b) in its involvement with the Petitioners, A&M was compensated on an hourly rate basis and did not benefit from any particular outcome of the company's restructuring efforts;
- (c) since A&M's involvement with the Petitioners, the Petitioners, A&M, Romspen, and the 2ML Lenders have always been aware that the Petitioners may need to file for CCAA protection, and although the filing has been delayed as the Petitioners have pursued other courses of restructuring, it has always been contemplated by these parties that the Proposed Monitor would be the Monitor, should the Petitioners file; and
- (d) there is no conflict, real or apparent, in the Proposed Monitor acting as Monitor. None of A&M's involvement with the Petitioners has impacted the Proposed Monitor's ability to act for the benefit of all stakeholders. A&M was not engaged to help the Petitioners reach a specific outcome for the benefit of any one group, but rather A&M has the goal of restructuring the Petitioners for the benefit of all



stakeholders. At the time of initial involvement, the Petitioners' major secured creditors were supportive of A&M's involvement.

36. Further, as acknowledged by this Court in *MEC*, there is considerable cost savings in allowing the Proposed Monitor to be the Monitor in these proceedings, as it is familiar with the business of the Petitioners and this particular restructuring.
37. Therefore, the Petitioners submit that the Proposed Monitor should be appointed as Monitor in these CCAA proceedings.

**E. The Proposed Monitor should be given Super Monitor powers**

38. The ability of a Court to augment a monitor's powers, duties and responsibilities above those provided for in the model order is contemplated by section 23(1)(k) of the CCAA and is in line with the broad discretionary and remedial powers afforded to a Court pursuant to section 11 of the CCAA.

CCAA, s. [23\(1\)\(k\)](#).

39. The expansion of a monitor's powers is not uncommon in CCAA proceedings, and such order have been granted in previous cases, including by this Court.

See for example: *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 1746](#) at para. 95;

*Mountain Equipment Co-Operative (Re)*, [2020 BCSC 2037](#) at para. 9-10.

40. In this case, the Petitioners require that the Proposed Monitor have the Enhanced Monitor's Powers to further progress their restructuring efforts and conduct the CCAA SISF, and manage certain receipts, disbursements, monies and cash payments of the Petitioners.
41. The Petitioners submit the Enhanced Monitor's Powers of the Proposed Monitor being sought are warranted in the circumstances and support the remedial purposes of the CCAA.

**F. The Charges are necessary and appropriate**

42. The Petitioners are seeking to have the following Charges granted over the assets of the Petitioners in priority to all other claims, charges, and encumbrances, other than the certain security interest perfected by the Financing Statement. The Petitioners propose that security interest perfected by the Financing Statement rank in priority to the Charges

until the Comeback Hearing, at which time the relative priority shall be determined by further Court order made on notice to the necessary secured parties.

*i. The Administration Charge*

43. The Petitioners seek a first-ranking Administration Charge in the amount of \$300,000 to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of legal counsel for the Petitioners, the Proposed Monitor and legal counsel for the Proposed Monitor.

44. Section 11.52 of the CCAA, provides that a court may grant a priority charge in respect of certain professional fees and expenses incurred in proceedings under the CCAA.

CCAA, s. [11.52](#).

45. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically any failure to provide protection for professional fees will “result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood by bankruptcy proceedings.”

*Re Timminco Ltd.*, [2012 ONSC 506](#) at para. 66.

See also *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) (“**Canada North**”) at paras. 24-25, 30.

46. Factors the court will consider in granting a charge under section 11.52 include:

- (a) the size and complexity of the business being restructured,
- (b) the proposed role of the beneficiaries of the charge,
- (c) whether there is unwarranted duplication of roles,
- (d) whether the quantum of the proposed charge appears to be fair and reasonable,
- (e) the position of the secured creditors likely to be affected by the charge, and
- (f) the views of the monitor.

*Re Canwest Publishing Inc.*, [2010 ONSC 222](#) (“**Canwest**”) at para. 54.

CCAA, s. [11.52](#).

47. The section 11.52 factors support the granting of the Administration Charge, given that:
- (a) there is sizable debt owing by the Petitioners and the Development and the Petitioners' business is highly complex;
  - (b) legal counsel for the Petitioners, the Proposed Monitor and legal counsel for the Proposed Monitor will play an active role in this insolvency and have the necessary experience and expertise to assist the Petitioners in reaching a Plan of arrangement;
  - (c) it is not anticipated that there will be a duplication of roles as between the legal counsel for the Petitioners, the Proposed Monitor and legal counsel for the Proposed Monitor, as each serves a unique role in these insolvency proceedings;
  - (d) the Petitioners submit that the quantum of the charge appears to be fair and reasonable and reflects the market standard of an insolvency of this complexity;
  - (e) the secured creditors will be primed by the charge, but the Petitioners submit that the secured creditors will benefit from the CCAA and the Administration Charge is a necessary part of these CCAA proceedings; and
  - (f) the Proposed Monitor is supportive of the charge.
48. The Petitioners require the specialized expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to carry out and complete a restructuring and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.
49. The quantum of the Administration Charge was determined in consultation with the Proposed Monitor and is fair and reasonable in light of the number of beneficiaries, the size and complexity of the Petitioners' operations, and the complexity of the proposed restructuring.
50. Therefore, the Petitioners submit that it is appropriate in these circumstances to grant the Administration Charge over the Petitioners' against their assets, properties and undertaking ranking in first priority.

*ii. The Directors' Charge*

51. The Petitioners seek a second-ranking Directors' Charge in the amount of \$75,000 to secure the indemnity of the GP's and 098's directors, subject to the Administration Charge.

52. Pursuant to section 11.51 of the CCAA, a court also has authority to grant a priority charge over all or part of the debtor's property in favour of any director of the company for an amount necessary to indemnify those directors against obligations and liabilities they incur following commencement of CCAA proceedings.

CCAA, s. [11.51](#).

53. The court must be satisfied with the amount of the proposed charge. In granting such a charge, courts will consider:

- (a) whether the charge is essential to the successful restructuring of the debtor,
- (b) whether the continued participation of the directors is critical to the restructuring and,
- (c) whether the amount of the charge is appropriate in light of the obligations and liabilities that already exist for the directors.

[Canwest](#) at paras. 56-57.

See also, *Re Canwest Global Communications Corp.*, [2009 CarswellOnt 6184](#) (Ont. Sup. Ct. J.)

54. These considerations support the granting of the Directors' Charge, as:

- (a) it is essential that the GP's and 098's directors remain engaged throughout these proceedings should the Petitioners be able to reach a Plan of arrangement, therefore, the charge in favour of the GP's and 098's directors is essential for the restructuring;
- (b) the continued participation of the GP's and 098's directors is critical to the restructuring and to the CCAA SISF, especially given that the GP's and 098's directors hold specialized expertise and connections in the realm of construction and this particular Development; and
- (c) the charge is appropriate in light of the active role the GP's and 098's directors have been playing and are anticipated to play in these restructuring proceedings.

55. The Proposed Monitor is supportive of the Directors' Charge and has recommended that the Directors' Charge be fixed at the amount of \$75,000.

56. A charge in favour of directors is intended to provide protections for management of a debtor. The continued participation of the GP's and 098's directors in the on-going management of the Petitioners is essential to the continuing the Petitioners' business

operations and maintaining and improving the value of their assets while the Petitioners pursue the restructuring process and the CCAA SISP. Such expertise could not be replaced on the timelines contemplated for this restructuring. The Directors' Charge is necessary to ensure that the GP's and 098's directors continue working in their current capacities in the context of a CCAA proceeding and the Directors' Charge is reasonable in the circumstances.

57. Therefore, the Petitioners submit that in these circumstances it is appropriate to grant the Directors' Charge over the Petitioners' assets, properties and undertaking ranking in second priority, subject only to the Administration Charge.

*iii. The Interim Financing Charge*

58. The Interim Lender has agreed to provide the Petitioners with the Interim Financing Facility to continue their operations during these CCAA proceedings and to finance the cost of the restructuring.
59. And while the Interim Lender is comprised of Gatland Development Corporation, REV Investments Inc. and South Street (Alderbridge) Limited Partnership all of whom hold a prior secured interest as against the Petitioner, the Interim Lender is advancing the Interim Financing Facility as a new loan. The proposed Interim Financing Charge will not secure any pre-filing obligations.
60. The Petitioners seek a fourth-ranking charge in the amount of \$850,000 in favour of the Interim Lender, subject to the Administration Charge, the Directors' Charge and the Romspen Security.
61. Section 11.2(5) of the CCAA, provides that an interim financing charge must be "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business" during the initial stay period.
62. In the case herein, the Petitioners are seeking that the Interim Financing Charge provide funds for the initial stay period (10 days, up to the Stay Extension Hearing) as well as for the period up to the Comeback Hearing (24 days, up to and including April 25, 2022).
63. The Petitioners initial ten day stay period expires on April 11, 2022, at which point the Petitioners are scheduled to return to this Court for the Stay Extension Hearing, to seek a brief stay extension, which would extend the stay of proceedings until April 25, 2022, the date of the Comeback Hearing. The Petitioners have scheduled the Stay Extension Hearing and the Comeback Hearing based on this Court's availability to hear the applications.

64. While the Interim Financing Charge sought herein covers more than the strict 10 day initial stay period, the Interim Financing Charge sought is necessary to accommodate this Court's availability and ensure the Petitioners have the necessary funds to progress to the scheduled Comeback Hearing.

CCAA, s. [11.2\(5\)](#).

See also, [MEC](#) at para. 55.

65. It is anticipated that the Petitioners will seek an increase in the Interim Financing Charge at the Comeback Hearing scheduled on April 25, 2022, to provide liquidity through the remainder of these CCAA proceedings.

66. The CCAA authorizes a court to grant approval of an interim financing and also order a charge with respect to the same, over the assets of the debtor company, in priority to any secured creditor of the debtor, on notice to the secured creditors who are likely to be affected by such security or charge and in an amount that the court considers appropriate having regard to the debtor company's cash flow statement. The security or charge may not secure an obligation that exists before the order granting the charge is made.

CCAA, s. [11.2\(1\)](#).

See for example, [MEC](#) at para. 2.

67. Section 11.2 provides that in deciding whether to make an order for an interim lender's charge, a court will consider, among other factors:

- (a) the period during which the debtor is expect to be subject to the CCAA proceedings;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor;
- (e) the nature and value of the debtor's property;

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's reports, if any.

CCAA, s. [11.2\(4\)](#).

See also, [MEC](#) at para. 53-54.

68. The factors under section 11.2(4) of the CCAA support the granting of the Interim Financing Charge, as:

- (a) the Petitioners anticipate being in these CCAA proceedings until at least April 2022, and likely into the summer of 2022;
- (b) the business and financial affairs of the Petitioners are to be managed by the GP's and 098's directors and overseen by the Proposed Monitor;
- (c) without the Interim Financing Facility, the Petitioners will not be able to fund their operations and continue the restructuring efforts and the value of the Development will diminish as a result;
- (d) the Secured Creditors and other key stakeholders who would be prejudiced by the Interim Financing Charge have been given notice of the Interim Financing Charge, albeit short notice. However, the Interim Financing Charge sought herein is limited to the funds needed by the Petitioners until the Comeback Hearing and therefore the prejudice to the secured creditors is reduced. The Interim Financing Charge will not prime the Petitioners' senior secured creditor's proven secured claim; and
- (e) the Proposed Monitor supports the approval of the Interim Financing Facility and the granting of the Interim Financing Charge.

69. In addition to the factors under section 11.2(4) of the CCAA, the policy reasons behind allowing such a charge were recently discussed by the Supreme Court in *Canada v. Canada North Group Inc.* ("**Canada North**"), where Justice Côté explained:

[In *Canada North*,] financing secured by a super priority was necessary if the company was to remain a going concern (para. 59). Justice Deschamps rejected the suggestion "that the DIP lenders would have accepted that their claim ranked below claims resulting from the deemed trust", because "[t]he harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries"...

...



This Court has similarly found that financing is critical as "case after case has shown that 'the priming of the DIP facility is a key aspect of the debtor's ability to attempt a workout'" ... As lower courts have affirmed, "Professional services are provided, and DIP funding is advanced, in reliance on super-priorities contained in initial orders. To ensure the integrity, predictability and fairness of the CCAA process, certainty must accompany the granting of such super-priority charge.

Canada North, at paras. 26 and 29.

70. In the case herein, the Petitioners submit that it is appropriate to grant the Interim Financing Charge sought to provide the Petitioners with the necessary funds to operate until the Comeback Hearing and to ensure that the Interim Lender has certainty with respect to its priority as against the Petitioners' assets. The Petitioners propose that the Interim Financing Charge be granted over the Petitioners' assets, properties and undertaking ranking in fourth priority, subject to the Administration Charge, the Directors' Charge, and the Romspen Security.

#### **G. Sealing Order**

71. The Petitioners are seeking an Order (the "**Sealing Order**") sealing the second affidavit of Graham Thom, sworn March 30, 2022, (the "**Confidential Thom Affidavit**") which attaches:
- (a) the first appraisal of the Real Property the Petitioners obtained;
  - (b) the most recent appraisal of the Real Property the Petitioners obtained; and
  - (c) the most recent term sheet received from Construction Lender 1 (items (a) through (c) collectively, the "**Thom Confidential Documents**").
72. The Petitioners are seeking that the Sealing Order also seal the second affidavit of Jennifer Alambre, sworn March 31, 2022, (the "**Confidential Alambre Affidavit**", together with the Confidential Thom Affidavit, the "**Confidential Affidavits**") which attaches a appraisal, prepared by Saran Appraisals & Consulting Ltd., of the Real Property obtained by Romspen on January 25, 2022 (the "**Alambre Confidential Document**", together with the Thom Confidential Documents, the "**Confidential Documents**")
73. The information contained in the Confidential Documents, if publicly available, would cause harm to any future efforts to market the Real Property. Specifically, the appraised value of the Real Property, if public, could affect the ability for free and open negotiation in the event of a future sale of all or any of the Real Property. And the terms and conditions of the Construction Lender 1 term sheet, if public, could affect the ability for free and open negotiation with a future construction lender.

74. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada set out the following two-part confidentiality test (the “**Sierra Test**”) to be applied when determining whether public access to a court document should be restricted:

- (a) Is the order necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk?
- (b) Do the salutary effects of the sealing order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings?

*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at paras. 543, 544.

75. The *Sierra Test* was recently reviewed in *Sherman Estate v. Donovan*, where the Supreme Court of Canada held that the *Sierra Test*, which “continues to be an appropriate guide for judicial discretion”, was predicated “upon three core prerequisites” around which the test should be recast. The Supreme Court in *Sherman Estate* found that a confidentiality order is appropriate where:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

*Sherman Estate v. Donovan*, [2021 SCC 25](#) (“**Sherman Estate**”) at paras. 38, 43.

76. Accordingly, where “all three of these prerequisites have been met”, this Court has discretion to limit court openness by, among other things, granting a sealing order.

[Sherman Estate](#), at para. 38

77. In this case, the Petitioners submit that the important public interest is the commercial interest of the Petitioners and all interested stakeholders, that the Petitioners have the ability to keep the appraised value of the Real Property confidential so as not to jeopardize any further marketing efforts of the Real Property or future lending opportunities with potential construction lenders. This confidentiality allows for a fair sales and solicitation process in the future.

78. There is no reasonable alternative other than sealing the Confidential Documents and the Confidential Affidavit.

79. There are no negative effects to sealing the Confidential Documents and the Confidential Affidavit and no party is prejudiced by the Sealing Order.

**H. Conclusions**

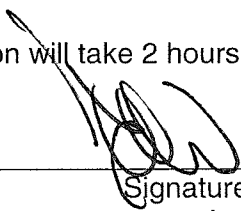
80. Based on the aforementioned information, the Petitioners submit that it is appropriate in the circumstances to grant the Initial Order and the Sealing Order.

**Part 4: MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Graham Thom, sworn March 31, 2022;
2. Affidavit #2 of Graham Thom, sworn March 30, 2022;
3. Affidavit #2 of Jennifer Alambre, sworn on March 31, 2022;
4. The Proposed Monitor's Prefiling Report, to be filed; and
5. Such further and other materials as counsel may advise and this Court may allow.

The petitioners estimate that the hearing of the Petition will take 2 hours.

Date: March 31, 2022

  
\_\_\_\_\_  
Signature of John Sandrelli  
Lawyer for petitioner

<b><i>To be completed by the court only:</i></b>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Petition
<input type="checkbox"/>	with the following variations and additional terms:
_____	
_____	
_____	
Date:	_____
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

**SCHEDULE "A"**

NO. \_\_\_\_\_  
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

PETITIONERS

**SERVICE LIST**

NO. \_\_\_\_\_  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN 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

PETITIONERS

**SERVICE LIST**

As at March 28, 2022

<b>Name of Counsel:</b>	<b>Name of Parties:</b>
<p>Dentons Canada LLP Barristers &amp; Solicitors 20<sup>th</sup> Floor – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention:     John Sandrelli                   Tevia Jeffries                   Valerie Cross                   Emma Newbery</p> <p>E-mail: john.sandrelli@dentons.com           tevia.jeffries@dentons.com           valerie.cross@dentons.com           emma.newbery@dentons.com           avic.arenas@dentons.com           lee.ngo@dentons.com</p> <p>Tel:     (604) 687-4460 Fax :    (604) 683-5214</p>	<p><i>0989705 B.C. Ltd., Alderbridge Way Limited Partnership and Alderbridge Way GP Ltd.</i></p>

Name of Counsel:	Name of Parties:
<p>Fasken Martineau DuMoulin LLP 550 Burrard St #2900, Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson</p> <p>Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a></p> <p>Tel. : 1 604 631 4786</p>	<p><i>Proposed Monitor for 0989705 B.C. Ltd., Alderbridge Way Limited Partnership and Alderbridge Way GP Ltd.</i></p>
<p>Alvarez &amp; Marsal Canada Inc. Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3L2</p> <p>Attention: Anthony Tillman Pinky Law</p> <p>Email: <a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a> <a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a></p> <p>Tel.: (604) 639-0849</p>	<p><i>Proposed Monitor for 0989705 B.C. Ltd., Alderbridge Way Limited Partnership and Alderbridge Way GP Ltd.</i></p>
<p>Blake, Cassels &amp; Graydon LLP 595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3</p> <p>Attention: Peter Rubin</p> <p>Email: <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a> <a href="mailto:greg.umbach@blakes.com">greg.umbach@blakes.com</a> <a href="mailto:peter.bychawski@blakes.com">peter.bychawski@blakes.com</a> <a href="mailto:claire.hildebrand@blakes.com">claire.hildebrand@blakes.com</a></p> <p>Tel: 604-631-3300 Fax: 604-631-3309</p>	<p><i>Romspen Investment Corporation</i></p>
<p>Romspen Investment Corporation 162 Cumberland Street, Suite 300 Toronto, Ontario M5R 3N5</p> <p>Attention: Blake Cassidy Wes Roitman</p> <p>Email: <a href="mailto:BlakeCassidy@romspen.com">BlakeCassidy@romspen.com</a> <a href="mailto:wes@romspen.com">wes@romspen.com</a></p> <p>Tel: 416.928.4868 Fax: 416.928.3848</p>	<p><i>Romspen Investment Corporation</i></p>

Name of Counsel:	Name of Parties:
<p>Nathanson, Schachter &amp; Thompson LLP Suite 750 – 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Attention: Peter Reardon</p> <p>Email : <a href="mailto:preardon@nst.ca">preardon@nst.ca</a> <a href="mailto:staylor@nst.ca">staylor@nst.ca</a></p> <p>Tel : 778-328-8940</p>	<p><i>GEC (Richmond) GP Inc. and CIBT Education Group Inc.</i></p>
<p>McMillan LLP Royal Centre, Suite 1500 1055 West Georgia Street, PO Box 11117 Vancouver, BC V6E 4N7</p> <p>Attention: Vicki Tickle</p> <p>Email: <a href="mailto:vicki.tickle@mcmillan.ca">vicki.tickle@mcmillan.ca</a></p> <p>Tel: 236-826-3022</p>	<p><i>R. Jay Management Ltd.</i></p>
<p>Digby Leigh &amp; Co. 201 - 3053 Edgemont Blvd., North Vancouver, BC V7R 2N5</p> <p>Attention: Digby Leigh</p> <p>Email: <a href="mailto:dleigh@leighco.ca">dleigh@leighco.ca</a> <a href="mailto:vchen@leighco.ca">vchen@leighco.ca</a></p> <p>Tel : 604-984-3394</p>	<p><i>MNB Enterprises Inc.</i></p>
<p>Bennett Jones 4500 Bankers Hall East 855 2nd Street SW Calgary, AB T2P 4K7</p> <p>Attention: Chris D. Simard</p> <p>Email: <a href="mailto:simardc@bennettjones.com">simardc@bennettjones.com</a></p> <p>Tel: 403.298.4485</p>	<p><i>JV Driver Group</i></p>

Name of Counsel:	Name of Parties:
<p>JV Driver International 1458-409 Granville Street Vancouver, B.C. V6C 1T2</p> <p>Attention: Michael Weber Tamara Middleton</p> <p>Email: <a href="mailto:mweber@jvdriver.com">mweber@jvdriver.com</a> <a href="mailto:tmiddleton@jvdriver.com">tmiddleton@jvdriver.com</a></p> <p>Tel: 604-349-2011</p>	<p><i>JV Driver International, J.V. Driver Inc. And 1185678 B.C. Ltd.</i></p>
<p>McCarthy Tetrault LLP 745 Thurlow St Suite 2400, Vancouver, BC V6E 0C5</p> <p>Attention: Lance Williams and Forrest Finn</p> <p>Email: <a href="mailto:lwilliams@mccarthy.ca">lwilliams@mccarthy.ca</a> <a href="mailto:ffinn@mccarthy.ca">ffinn@mccarthy.ca</a></p> <p>Tel: 604-643-7154</p>	<p><i>Metro-Can Construction (AT) Ltd.</i></p>
<p>McLean &amp; Armstrong LLP 300 – 1497 Marine Drive, West Vancouver, BC, V7T 1B8</p> <p>Attention: Chris Moore</p> <p>Email: <a href="mailto:cmoore@mcleanarmstrong.com">cmoore@mcleanarmstrong.com</a></p> <p>Tel: 604 925 0672</p>	<p><i>Metro-Can Construction (AT) Ltd.</i></p>
<p>City of Richmond Roads and Construction Services 5599 Lynas Lane Richmond, BC V7C 5B2</p> <p>Attention : Larry Ford, Manager of Roads and Construction</p> <p>Email: <a href="mailto:larry.ford@richmond.ca">larry.ford@richmond.ca</a></p> <p>Tel: 604-244-1262</p>	<p><i>City of Richmond</i></p>



Name of Counsel:	Name of Parties:
<p>Deputy Attorney General British Columbia Regional Office Department of Justice Canada National Litigation Sector 900 - 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Attention: Jason Levine</p> <p>E-mail: <a href="mailto:jason.levine@justice.gc.ca">jason.levine@justice.gc.ca</a></p> <p>Tel.: (604) 666-0632 Fax: (604) 666-1462</p>	<p><i>Her Majesty The Queen in Right of Canada</i></p>
<p>Ministry of Attorney General (British Columbia) Legal Services Branch, Revenue &amp; Taxation Her Majesty the Queen in right of the Province of British Columbia Ministry of Advanced Education Skills and Training 400 – 1675 Douglas Street, Victoria, BC V8W 9J7</p> <p>Attention: Aaron Welch</p> <p>Email: <a href="mailto:Aaron.Welch@gov.bc.ca">Aaron.Welch@gov.bc.ca</a> <a href="mailto:AGLSBRevTax@gov.bc.ca">AGLSBRevTax@gov.bc.ca</a></p> <p>Tel: (250) 356-8589 Fax: (250)387-0700 Tel: (236) 478-2419 Fax: (250) 387-0700</p>	<p><i>Her Majesty The Queen in Right of the Province of British Columbia</i></p>
<b>LIEN CLAIMANTS:</b>	<b>CHARGES</b>
<p>Romspen Investment Corporation Suite 300 - 162 Cumberland Street Toronto, ON M5R 3N5</p>	<p><i>PPR Base Reg. No. 349695L</i></p>
<p>1185678 B.C. Ltd. 60 Caldeu Street Delta, BC V3M 5S2</p>	<p><i>PPR Base Reg. No. 539982M</i></p>
<p>ATCO Structures &amp; Logistics Ltd. c/o 2463 Fraser Hwy Langley, TWP BC V2Z 2L2</p>	<p><i>PPR Base Reg. No. 760494M</i></p>

Name of Counsel:	Name of Parties:
GBL Architects Inc. c/o 700 – 401 West Georgia Street Vancouver, BC V6B 5A1	<i>Builder's Lien No. CA8358916</i>
Rush Contractors Group Inc. c/o #270 – 8202 Swenson Way Delta, BC V4G 1J8	<i>Builder's Lien No. CA8372128</i>
Keller Foundations Ltd. c/o 130 – 9347 200A Street Langley, BC V1M 0B3	<i>Builder's Lien No. CA8374576</i>
Metro-Can Construction (AT) Ltd. c/o Suite 520 – 14070 – 152 <sup>nd</sup> Street Surrey, BC V3R 0Y3	<i>Builder's Lien No. CA8430747, CA8430748, CA8430749, CA8430750, CA8639513, CA8639514, CA8808803 and CA8808900</i>
Storm Guard Water Treatment Inc. c/o Suite 2400 – 745 Thurlow Street Vancouver, BC V6E 0C5	<i>Builder's Lien No. CA9305990 and CA9305991</i>
Glotman Simpson Consulting Engineers c/o 1661 West 5 <sup>th</sup> Avenue Vancouver, BC V6J 1N5	<i>Builder's Lien No. WX2169278</i>
Metro Testing and Engineering Ltd. c/o #401 – 6741 Cariboo Road Burnaby, BC V3N 4A3	<i>Builder's Lien No. WX2169384</i>

EMAIL SERVICE LIST:

john.sandrelli@dentons.com; tevia.jeffries@dentons.com; valerie.cross@dentons.com;  
emma.newbery@dentons.com; avic.arenas@dentons.com; lee.ngo@dentons.com;  
atillman@alvarezandmarsal.com; pinky.law@alvarezandmarsal.com; jason.levine@justice.gc.ca;  
Aaron.Welch@gov.bc.ca; AGLSBRevTax@gov.bc.ca; peter.rubin@blakes.com;  
greg.umbach@blakes.com; claire.hildebrand@blakes.com; BlakeCassidy@romspen.com;  
preardon@nst.ca; staylor@nst.ca; vicki.tickle@mcmillan.ca; dleigh@leighco.ca; vchen@leighco.ca;  
simardc@bennettjones.com; mweber@jvdriver.com; tmiddleton@jvdriver.com; lwilliams@mccarthy.ca;  
ffinn@mccarthy.ca; cmoore@mcleanarmstrong.com; larry.ford@richmond.ca

**SCHEDULE "B"**

Draft Order

(See Attached)



## **SUBSEQUENT HEARING DATE**

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 11 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10 a.m., on the 11<sup>th</sup> day of April, 2022, or such other date as this Court may order (the "**Return Date**").

## **PLAN OF ARRANGEMENT**

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. Subject to this Order and any further Order of this Court, including for clarity the Enhanced Monitor's Powers (as defined herein) provided herein, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and instruct the consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained by them, with liberty to retain and instruct such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) the fees and disbursements of any Assistants retained by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:

- (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
  - (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and
  - (iii) any related corporate matters; and
- (b) all amounts owing for goods and services actually supplied to the Petitioners by other parties providing goods or services, with the prior consent of the Monitor, if, in the opinion of the Petitioners and the Monitor, the supplier or service provider is critical to the Business and ongoing operations of the Petitioners and the payment is required to ensure ongoing supply.

6. Except as otherwise provided herein, including for clarity the Enhanced Monitor's Powers provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services, provided that any capital expenditure exceeding \$25,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 5(a) of this Order, which may be incurred after the Order Date.

7. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:
  - (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted, including, without limitation, any amounts or claims which are to be paid pursuant to Section 6(3) of the CCAA;
  - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
  - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.
  
8. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order;
  - (b) to make no payments in respect of any financing leases which create security interests;
  - (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
  - (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided

such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and

- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

9. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate. If the disposition of assets exceeds these quantum, the Petitioners shall seek the approval of the Monitor and the consent of Romspen Investment Corporation ("**Romspen**"), and if the Monitor deems appropriate and Romspen consents, the approval of the Court for such dispositions; and
- (b) pursue all avenues of refinancing for their Business or Property, in whole or part;

all of the foregoing are to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

10. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter



into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

11. Until and including April 11, 2022, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

12. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

13. Nothing in this Order, including paragraphs 11 and 12, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the

commencement of a Proceeding to protect lien or other 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 lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

14. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

16. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after

the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS**

17. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors of the Petitioners with respect to any claim against the directors that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors are alleged under any law to be liable in their capacity as directors for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director of the Petitioners 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 except for service of the initiating documentation on the applicable director.

### **DIRECTORS INDEMNIFICATION AND CHARGE**

18. The Petitioners shall indemnify their directors against obligations and liabilities that they may incur as directors of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director, the obligation or liability was incurred as a result of the director's gross negligence or wilful misconduct.

19. The directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$75,000 as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40, 42, and 43 of this Order.

20. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' insurance policy, or to the extent that

such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

## **APPOINTMENT OF MONITOR**

21. Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (b) assist the Petitioners, to the extent required by the Petitioners, in their dissemination, to the Interim Lender (as hereinafter defined) and its counsel, with a copy to Romspen and its counsel, of financial and other information as agreed to between the Petitioners and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (c) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (d) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' meetings for voting on the Plan;

- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

23. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

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

25. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners are confidential, the Monitor shall not provide such

information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

26. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

### **ENHANCED MONITOR'S POWERS**

27. The expansion of the Monitor's powers set forth below is hereby authorized and approved on the terms and conditions set out herein. Nothing in this Order shall derogate from the powers and duties of the Monitor provided for above and in the CCAA.

28. In addition to the powers and duties of the Monitor set forth above, and without altering in any way the limitations and obligations of the Petitioners arising under this Order and by virtue of the institution of these proceedings, the Monitor is hereby authorized and empowered to:

- (a) monitor, review and direct the Petitioners' receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary to ensure the appropriate monitoring and controls of the Petitioners' expenses and disbursements;
- (b) advise the Petitioners in its preparation of the Petitioners' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel, with a copy to Romspen and its counsel, on a periodic basis agreed to by the Interim Lender and as required by and in accordance with the Definitive Documents (as hereinafter defined);
- (c) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of

the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;

- (d) be entitled to rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by the Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;
- (e) implement a sales and investment solicitation process with respect to the Property and the Business in accordance with an Order to be sought (the “**CCAA SISP**”) and pending such Order, take such steps as the Monitor may deem appropriate in order to prepare for the initiation of the CCAA SISP;
- (f) engage such consultants, agents, or experts and such other persons from time to time and on whatever basis to assist the Monitor in carrying out the CCAA SISP;
- (g) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and direction with respect to any matter including, without limitation in regards to the CCAA SISP;
- (h) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred upon the Monitor by this Order or any further order of the Court; and
- (i) meet and consult with the directors and management of the Petitioners and with Romspen with respect to any of the foregoing, including, without limitation, the CCAA SISP;

(collectively, the “**Enhanced Monitor’s Powers**”)

and in each case where the Monitor takes any such actions or steps it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Petitioners and their past or present directors, and without interference from any other Person. The

Petitioners' directors shall not be liable for any actions taken by them in accordance with a direction of the Monitor.

29. No provision of this Order is intended, or shall be deemed to appoint the Monitor as an officer, director or employer of any of the Petitioners.

30. The Petitioners and their current and former shareholders, directors, agents and representatives shall cooperate fully with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other order of this Court.

### **ADMINISTRATION CHARGE**

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amounts of \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000 as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 40, 42, and 43 of this Order.



## INTERIM FINANCING

34. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Gatland Development Corporation, REV Investments Inc. and South Street (Alderbridge) Limited Partnership (collectively, the “**Interim Lender**”) in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$850,000 unless permitted by further Order of this Court.

35. Such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet between the Petitioners and the Interim Lender dated as of March 30, 2022 (the “**Interim Financing Credit Agreement**”), attached to the first affidavit of Graham Thom sworn March 31, as Exhibit “R”.

36. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Interim Financing Credit Agreement or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Financing Charge**”) on the Property. The Interim Financing Charge shall not secure an obligation that exists before this Order is made. The Interim Financing Charge shall have the priority set out in in paragraphs 40, 42, and 43 of this Order.

38. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Financing Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Financing Charge, the Interim Lender, upon 5 days notice to the Petitioners, the Monitor, and Romspen, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Credit Agreement, Definitive Documents and the Interim Financing Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the Interim Financing Credit Agreement, the Definitive Documents or the Interim Financing Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

39. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. The priorities of the Administration Charge, the security interests registered with respect to the security of Romspen (the “**Romspen Security**”), the Interim Financing Charge, and the Directors’ Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$300,000);

Second – Directors’ Charge (to a maximum amount of \$75,000);

Third – the Romspen Security; and

Fourth – the Interim Financing Charge (to a maximum principal amount of \$850,000).

41. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Financing Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

42. Notwithstanding any other provision of this Order, subject to the priorities established pursuant to paragraph 40 of this Order, and without limiting the generality of paragraphs 19, 33, and 37 of this Order, the Charges shall rank in priority subsequent to the security interest perfected by the financing statement described in **SCHEDULE "B"** hereof, until the Return Date, and thereafter the relative priority of the Charges shall be determined by further order of the Court, made on notice to the secured parties described therein. For greater certainty, this Order shall not affect or be construed as affecting the relative priority at law of the Romspen Security *vis a vis* the security interest perfected by the financing statement described in Schedule "B".

43. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

44. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Directors' Charge.

45. The Administration Charge, the Directors' Charge, the Interim Financing Credit Agreement, the Definitive Documents and the Interim Financing Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any

bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners’ entering into the Interim Financing Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners’ interest in such real property leases.

## **SERVICE AND NOTICE**

47. The Monitor shall (i) without delay, publish in one national Canadian newspaper a notice containing the information prescribed under the CCAA, (ii) within five (5) days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and

the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

49. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: [www.alvarezandmarsal.com/alderbridge](http://www.alvarezandmarsal.com/alderbridge).

50. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: [www.alvarezandmarsal.com/alderbridge](http://www.alvarezandmarsal.com/alderbridge).

51. Notwithstanding paragraphs 48 and 50 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## **GENERAL**

52. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

54. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America; to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

55. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

56. The Petitioners may (subject to the provisions of the CCAA and the BIA and upon ten (10) business days notice to Romspen) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determine that such a filing is appropriate.

57. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

58. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all

affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

59. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

60. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

61. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of JOHN SANDRELLI  
 Party  Lawyer for the Petitioners

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**Schedule "A"**

(List of Counsel)

<b>Counsel Name</b>	<b>Appearing For</b>
Peter Rubin	Romspen Investment Corporation



**Schedule "B"**

<b>Secured Party</b>	<b>Debtor</b>	<b>BC PPR Base Reg. No.; Reg. Date; and Expiry</b>	<b>Vehicle Collateral</b>	<b>Make</b>	<b>Serial number</b>
ATCO STRUCTURES & LOGISTICS LTD.	ALDERBRIDGE WAY LIMITED PARTNERSHIP	760494M Feb. 1, 2022	Manufactured or Mobile Home 2018	OFFICE 10X52 / -	152187860
		Feb. 9, 2023	Manufactured or Mobile Home 2019	OFFICE 10X24 / -	124198005
			Manufactured or Mobile Home 2015	OFFICE 10X24 / -	124155827

NO. \_\_\_\_\_  
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

PETITIONERS

---

---

**ORDER MADE AFTER APPLICATION  
INITIAL ORDER**

---

---

DENTONS CANADA LLP  
BARRISTERS & SOLICITORS  
20th Floor, 250 Howe Street  
Vancouver, British Columbia V6C 3R8  
Attn: John Sandrelli