

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

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY, ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

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

**ROMSPEN INVESTMENT CORPORATION**

Applicant

- and -

**HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.**

Respondents

**MOTION RECORD OF ROSEN GOLDBERG INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**  
*(Distribution Motion returnable August 14, 2017)*

Date: August 3, 2017

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## INDEX

### **Tabs Document**

- 1 Notice of Motion
- 2 Third Report of Rosen Goldberg Inc. dated August 2, 2017
- A Appendix "A" - Appointment Order dated November 29, 2016
- B Appendix "B" - Order dated December 22, 2016
- C Appendix "C" - Receiver's Second Report
- D Appendix "D" - Order dated March 14, 2017
- E Appendix "E" - Statement of Receipts and Disbursements as at July 10, 2017

# TAB 1

Court File No. CV-16-11468-00CL

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

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

Applicant

- and -

**HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.**

Respondents

**NOTICE OF MOTION**

**ROSEN GOLDBERG INC.**, in its capacity as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. (“**HVL**”) and Horseshoe Ridge Homes Inc. (“**HRH**” and together with HVL, the “**Debtors**”) will make a motion to a Judge of the Commercial List, on Monday, August 14, 2017, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, in Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR:**

1. if necessary, an Order abridging the time for service and filing of this Notice of Motion and the Motion Record such that the Motion is properly returnable on August 14, 2017 and dispensing with further service thereof;
2. an Order approving an interim distribution to Romspen Investment Corporation

(“**Romspen**”) in the amount of \$1.5 million;

3. an Order authorizing the Receiver to distribute to Romspen, if and when received, such amount as the Receiver considers appropriate from the funds received on account of vendor take back mortgage granted by the Receiver to First View Homes (Scarborough) Inc. (“**First View**”) on April 12, 2017 in the amount of \$2.595 million (the “**VTB Mortgage**”), without further Order of this Honourable Court; and
4. such further relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. Romspen is the Debtors’ only secured creditor and is owed in excess of \$23 million;
2. Pursuant to the Approval and Vesting Order of the Honourable Mr. Justice Wilton-Siegel dated February 28, 2017, the Receiver sold to First View 29 single family home lots (the “**HVL Lots**”), comprising a portion of the lands owned by HVL subject to the Receiver’s administration, for a sale price of \$3.995 million;
3. First View’s purchase of the HVL Lots was funded, in part, by the VTB Mortgage;
4. The Receiver has received two payments under the VTB Mortgage in the aggregate amount of \$1.855 million. A final payment of \$740,000 is due on September 15, 2017;
5. The Receiver is currently holding \$2.169 million and is in a position to make an interim distribution to Romspen of \$1.5 million;
6. The Receiver is dealing with offers received in respect of the Court-approved sale process for the Townhouse Lots and expects to bring a motion for Court approval of an offer in the near term;



7. Section 249 of the *Bankruptcy and Insolvency Act*; and
8. Rules 3.02(1), 16.08 and 41.05 of the *Rules of Civil Procedure*.

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

1. The Third Report of the Receiver dated August 2, 2017; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: August 3, 2017

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**TO: SERVICE LIST**

**ROMSPEN INVESTMENT CORPORATION**  
Applicant

-and-  
Respondents

**HORSESHOE VALLEY LANDS LTD.**

Court File No. CV-16-11468-00CL

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**NOTICE OF MOTION**

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in its capacity as Court-appointed Receiver

# TAB 2



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11468-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

**HORSESHOE VALLEY LANDS LTD.**  
**and HORSESHOE RIDGE HOMES INC.**

Respondents

**THIRD REPORT OF ROSEN GOLDBERG INC.**

**I. INTRODUCTION**

1. By Order of the Honourable Mr. Justice Newbould dated November 29, 2016 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver and manager (“**Receiver**”) of all of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. (“**HVL**”), acquired for or used in connection with a business carried on by HVL. A copy of the Appointment Order is attached as **Appendix “A”**.



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

2. The ambit of the Receiver's administration was subsequently expanded to include all of the assets, undertakings and properties of Horseshoe Ridge Homes Ltd. ("HRH") by Order of the Honourable Justice Wilton-Siegel dated December 22, 2016, a copy of which is attached as **Appendix "B"**.

3. HVL and HRH are hereinafter referred to, collectively, as the "**Debtors**".

## **II. PURPOSE OF THIS REPORT**

4. This report is being filed in support of a motion to authorize the Receiver to distribute \$1.5 million to Romspen Investment Corporation ("**Romspen**") and to report on the Receiver's recent activities.

## **III. RESTRICTIONS**

5. In preparing this report, the Receiver has relied upon information from third party sources (collectively, the "**Information**"). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance with respect to the Information.

## **IV. BACKGROUND**

6. At the time of the Receiver's appointment, HVL's assets consisted of vacant lands (the "**Lands**") in the Township of Oro-Medonte, in the vicinity of the Horseshoe Valley Resort. The



Lands are described in greater detail in paragraph 6 of the Receiver's Second Report dated March 8, 2017, a copy of which is attached (without appendices) as **Appendix "C"**.

7. Prior to the Receiver's appointment, HVL had been developing the Lands for residential use.

8. The Appointment Order was granted upon the application of Romspen, the Debtors' only secured creditor, who was owed in excess of \$23 million.

#### V. COMPLETION OF SALE OF TOWNHOUSE LOTS TO FIRST VIEW

9. Pursuant to an Approval and Vesting Order of the Honourable Mr. Justice Wilton-Siegel dated February 28, 2017, which dealt with a portion of the Lands, the Receiver completed the sale of 29 single family lots owned by HVL to First View Homes (Scarborough) Inc. ("**First View**") on April 12, 2017 for the aggregate sale price of \$3.995 million. On closing, the Receiver took back a mortgage of \$2.595 million over the Lands sold (the "**VTB Mortgage**").

10. To date, the Receiver has received the first two payments under the VTB Mortgage in the aggregate amount \$1.855 million. A final payment of \$740,000 is due on September 15, 2017.

#### VI. RETURN OF PURCHASERS' DEPOSITS

11. HRH is an affiliate of HVL and was registered as a builder with Tarion Warranty Corporation. Pursuant to an agreement between HVL and HRH, HVL granted HRH exclusive rights to build and sell homes on the Lands.

12. In the spring of 2015, HRH entered into preconstruction agreements of purchase and sale with home buyers to build and sell freehold townhomes (the "**Pre-Construction Agreements**") on 19 townhouse lots (the "**Townhouse Lots**").



13. At the time of the Receiver's appointment, construction of the townhomes had not begun.

14. On March 14, 2017 the Honourable Mr. Justice Newbould authorised and approved the Receiver's disclaimer of the Pre-Construction Agreements and authorised the Receiver to return the purchasers' deposits that were being held by HRH in connection with the Pre-Construction Agreements to the purchasers. A copy of the Order is attached as **Appendix "D"**. All of the Deposits were subsequently returned to the purchasers by the Receiver.

## VII. SALES PROCESS

15. As described in the Receiver's Second Report, the Receiver has undertaken a sales process in respect of the Townhouse Lots. The Receiver is in the process of dealing with offers and expects to bring a motion for court approval of an offer in the near term.

16. The Receiver is currently considering sales process options in respect of the remaining Lands and intends to bring a motion for approval of a sales process in the near future.

## VIII. RECEIPTS AND DISBURSEMENTS

17. The Receiver's statement of receipts and disbursements as of July 10, 2017 is attached **Appendix "E"**. The Receiver is currently holding \$2.169 million.

## IX. PROPOSED DISTRIBUTION TO ROMSPEN

18. The Receiver proposes to distribute the sum of \$1.5 million to Romspen and to reserve the balance of funds on hand to cover the costs of the ongoing development activities and the costs of the Receiver's administration.



- 5 -

ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

19. The Receiver has obtained an opinion from its independent counsel regarding Romspen's security. Subject to the customary qualifications, the Receiver's counsel has opined that Romspen's security is valid and enforceable.

20. In order to avoid a further motion for authorization to distribute the balance of funds payable under the VTB Mortgage if and when received, the Receiver also seeks authorization to distribute to Romspen such further sums as it considers appropriate from the proceeds of the VTB Mortgage, without further order of this Honourable Court.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 2nd day of August, 2017.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER OF  
THE ASSETS OF HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.**





# TAB A

Court File No. CV-16-11468-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
JUSTICE *NEUBOLD* )  
)

TUESDAY, THE 29<sup>TH</sup>  
DAY OF NOVEMBER, 2016

BETWEEN:

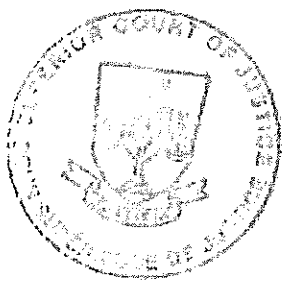
**ROMSPEN INVESTMENT CORPORATION**

**Applicant**

- and -

**HORSESHOE VALLEY LANDS LTD.**

**Respondent**



**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended,  
and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**ORDER  
(appointing Receiver)**

**THIS MOTION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Mark Hilson sworn July 22, 2016 (the "**First Hilson Affidavit**") and the Exhibits thereto, the supplementary affidavit of Mark Hilson sworn November 15, 2016 (the "**Second Hilson Affidavit**") and the Exhibits thereto, including the

- 2 -

consent to the within application executed by the Debtor's lawyer, as set out at Exhibit "A" to the Second Hilson Affidavit, the affidavit of Jim Cooper sworn November 16, 2016 and the exhibits thereto, the Affidavit of Bill Ulicki sworn November 21, 2016 and the exhibits thereto, and the affidavit of Paul Grespan sworn November 25, 2016, and the exhibit thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, and counsel for Lotco Limited, no one else appearing for any other person on the service list, although properly served with the Supplementary Application Record as appears from the affidavit of Patricia Keane sworn November 15, 2016, filed, and the Second Supplementary Application Record as appears from the affidavit of Patricia Keane sworn November 25, 2016, and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record dated July 22, 2016, and the Supplementary Application Record dated November 15, 2016 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- 3 -

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- 4 -

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to make an assignment into bankruptcy on behalf of the Debtor;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and,
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- 5 -

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

- 7 -

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.



### **CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

- 9 -

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or

anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

- 12 -

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [http://www.rosengoldberg.com/company-files.php?company\\_id=30](http://www.rosengoldberg.com/company-files.php?company_id=30).

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

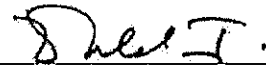
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

- 13 -

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 29 2016

PER / PAR: 

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
  
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
  
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
  
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
  
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:



Court File No. CV-16-11468-00CL  
HORSESHOE VALLEY LANDS LTD.  
Respondent

- and -

ROMSPEN INVESTMENT CORPORATION  
Applicant

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

Proceedings commenced at Toronto

**ORDER**  
(appointing receiver)

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden** (LSUC #38239M)  
(416) 593-1221 (Tel)  
(416) 593-5437 (Fax)  
Email: [egolden@blaney.com](mailto:egolden@blaney.com)

**Chad Kopach** (LSUC #48084G)  
(416) 593-1221 (Tel)  
(416) 593-5437 (Fax)  
Email: [ckopach@blaney.com](mailto:ckopach@blaney.com)

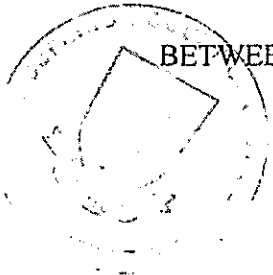
Lawyers for the Applicant

**TAB B**

Court File No. CV-16-11468-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) THURSDAY, THE 22<sup>nd</sup>  
JUSTICE WILTON-SIEGEL ) DAY OF DECEMBER, 2016



BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

**Applicant**

- and -

**HORSESHOE VALLEY LANDS LTD.**

**Respondent**

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended,  
and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

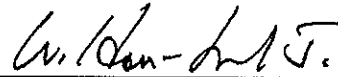
**ORDER  
(To Add a Respondent)**

**THIS MOTION** made by the Applicant for an Order abridging the time for service of the notice of motion and motion record herein, and adding Horseshoe Ridge Homes Inc. ("HRH") as a Respondent to the within Application, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Receiver, the Affidavit of Bill Ulicki sworn December 16, 2016 and the Exhibits thereto, and the consent of HRH, and on hearing the submissions of counsel for the Applicant and counsel for the Respondent and HRH, no one else

appearing for any other person on the service list, although properly served with the motion record as appears from the affidavit of Beverly Rusk sworn December 19, 2016, filed,


1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, and the Motion Record dated December 16, 2016 is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Romspen is hereby granted leave to amend the Notice of Application herein in the form attached hereto as Schedule "1".
3. **THIS COURT ORDERS** that the title of proceedings in this Application be amended by adding the words "and HORSESHOE RIDGE HOMES INC." after the words "HORSESHOE VALLEY LANDS LTD."



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LE / DANS LE REGISTRE NO:

DEC 22 2016

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Schedule "1"

Court File No. CV-16-111468-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**ROMSPEN INVESTMENT CORPORATION**

**Applicant**

- and -

**HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.**

**Respondents**

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended,  
and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**AMENDED NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

A **LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge of the Commercial List on Tuesday the 2<sup>nd</sup> day of August, 2016 at 10:00 a.m. time or as soon after that time as the application can be heard at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date:

Issued by :

---

Local Registrar  
Superior Court of Justice  
(Commercial List)  
330 University Avenue  
Toronto, ON M5G 1R7

**TO:           HORSESHOE VALLEY LANDS LTD.**  
1101 Horseshoe Valley Road, Comp. 50  
Barrie, ON L4M 4Y8

**AND TO:   HORSESHOE RIDGE HOMES INC.**  
1101 Horseshoe Valley Road, Comp. 50  
Barrie, ON L4M 4Y8

**AND TO:   The Service List**

**The Service List**  
(as of July 22, 2016)

<p><b>GOLDMAN SLOAN NASH &amp; HABER LLP</b> 480 University Ave., Suite 1600 Toronto, ON M5G 1V2 Fax: (416) 597-3370</p> <p><b>R. Brendan Bissell</b> Tel: (416) 597-6489 Email: <a href="mailto:bissell@gsnh.com">bissell@gsnh.com</a></p> <p><b>Sanja Sopic</b> Tel: (416) 597-7876 Email: <a href="mailto:sopic@gsnh.com">sopic@gsnh.com</a></p> <p>Lawyers for the Applicant</p>	<p><b>DICKINSON WRIGHT LLP</b> 199 Bay Street, Suite 2200 Toronto, ON M5L 1G4</p> <p><b>David Preger</b> Tel: (416) 646-4606 Email: <a href="mailto:dpreger@dickinson-wright.com">dpreger@dickinson-wright.com</a></p> <p><b>Lisa Corne</b> Tel: (416) 646-4608 Email: <a href="mailto:lcorne@dickinson-wright.com">lcorne@dickinson-wright.com</a></p> <p>Lawyers for Rosen Goldberg Inc.</p>
<p><b>ROSEN GOLDBERG INC.</b> 5255 Yonge Street, Suite 804 Toronto, ON M2N 6P4</p> <p><b>Brahm Rosen</b> Tel: (416) 224-4210 Email: <a href="mailto:brosen@rosengoldberg.com">brosen@rosengoldberg.com</a></p> <p>Proposed Receiver</p>	<p><b>HORSESHOE R.E. MANAGEMENT INC.</b> 1101 Horseshoe Valley Road RR#1, Compartment 50 Barrie, ON L4M 4Y8</p> <p>Guarantor</p>
<p><b>HORSESHOE VALLEY LIMITED PARTNERSHIP IV</b> 1101 Horseshoe Valley Road RR#1, Compartment 50 Barrie, ON L4M 4Y8</p> <p>Guarantor</p>	<p><b>HORSESHOE RIDGE HOMES INC.</b> 1101 Horseshoe Valley Road RR#1, Compartment 50 Barrie, ON L4M 4Y8</p> <p>Guarantor</p>
<p><b>1466832 ONTARIO INC.</b> c/o Corporate Services Department 250 University Ave., Suite 700 Toronto, ON M5H 3E5</p> <p>Guarantor</p>	<p><b>SOUTH TREMIN INVESTMENTS INC.</b> 4504 Tremineer Avenue Burlington, ON L7L 1H7</p> <p>Guarantor</p>

<p><b>HORSESHOE LANDS DEVELOPMENT CORPORATION</b>  1101 Horseshoe Valley Road  RR#1, Compartment 50  Barrie, ON L4M 4Y8</p> <p>Email: <a href="mailto:jkennedy1125@icloud.com">jkennedy1125@icloud.com</a></p> <p>Guarantor</p>	<p><b>HORSESHOE VALLEY LIMITED PARTNERSHIP</b>  1101 Horseshoe Valley Road  RR#1, Compartment 50  Barrie, ON L4M 4Y8</p> <p>Guarantor</p>
<p><b>JULIE BOVILLE</b>  50 Highland Drive  Oro-Medonte, ON L0L 2L0</p> <p>Guarantor</p>	<p><b>JAMES COOPER</b>  4504 Tremineer Avenue  Burlington, ON L7L 1H7</p> <p>Email: <a href="mailto:jimccooper01@gmail.com">jimccooper01@gmail.com</a></p> <p>Guarantor</p>
<p><b>CANADA REVENUE AGENCY</b>  c/o Department of Justice  Ontario Regional Office  The Exchange Tower, Box 36  130 King Street West, Suite 3400  Toronto ON M5X 1K6</p> <p>Diane Winters  <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p> <p>Rakhee Bhandari  <a href="mailto:rakhee.bhandari@justice.gc.ca">rakhee.bhandari@justice.gc.ca</a></p> <p>Lawyers for Canada Revenue Agency</p>	<p><b>ONTARIO MINISTRY OF FINANCE</b>  Office of Legal Services  33 King Street West, 6<sup>th</sup> Floor  Oshawa, ON L1H 8H5</p> <p>Kevin J. O'Hara  <a href="mailto:Kevin.ohara@ontario.ca">Kevin.ohara@ontario.ca</a></p> <p>Lawyers for the Ministry of Finance (Ontario)</p>
<p><b>FRIEDMAN LAW PROFESSIONAL CORPORATION</b>  150 Ferrand Drive, Suite 802  Toronto, ON M3C 3E5</p> <p><b>William Friedman</b>  Tel: (416) 496-3340  Email: <a href="mailto:wf@friedmans.ca">wf@friedmans.ca</a></p> <p>Lawyers for the Respondents and the Guarantors other than Julie Boville</p>	<p><b>HORSESHOE VALLEY LANDS LTD.</b>  1101 Horseshoe Valley Road  RR#1, Compartment 50  Barrie, ON L4M 4Y8</p> <p>Email: <a href="mailto:jimccooper01@gmail.com">jimccooper01@gmail.com</a></p> <p>Respondent</p>



appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■, 2016 filed, and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to make an assignment into bankruptcy on behalf of the Debtor;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
  - (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000, and
    - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
  - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
  - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
  - (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless



otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ■'.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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ROMSPEN INVESTMENT CORPORATION

Applicant

and HORSESHOE VALLEY LANDS LTD.

Respondent

Court File No. CV-16-11468-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED NOTICE OF APPLICATION

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Lawyers for the Applicant

## SCHEDULE "A"

Court File No. CV-16-

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) WEEKDAY, THE #  
JUSTICE ) DAY OF MONTH, 20YR  
)

BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

**Applicant**

- and -

**HORSESHOE VALLEY LANDS LTD.**

**Respondent**

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended,  
and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**ORDER  
(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Hilson sworn July 22, 2016 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one else appearing for no one

## APPLICATION

1. The Applicant, Romspen Investment Corporation (“**Romspen**”) makes Application for an Order substantially in the form of the draft Order attached as Schedule “A” for, among other things:
  - a) An Order abridging the time for service of this Application, validating the manner of service and declaring that this Application is properly returnable before the Court;
  - b) An Order appointing Rosen Goldberg Inc. (“**RGI**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate (collectively, the “**Property**”) of Horseshoe Valley Lands Ltd. (the “**Debtor**”) and Horseshoe Ridge Homes Inc. (“**HRH**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”) and;
  - c) Such further and other relief as counsel may advise and this Honourable Court deems just.
  
2. The grounds for the Application are:
  - a) Romspen is the primary secured operating lender for the Debtor;
  - b) Since 2010, the Debtor has operated as a developer of premises in the Horseshoe

Valley area of the City of Barrie;

- c) The Debtor's business in that regard is comprised of constructing and selling residential housing units at the Property. The Debtor has marketed some of the units at the Property for sale through HRH, and HRH currently holds deposits in this regard on behalf of the Debtor;
- d) The Property consists of blocks of land that have been partially developed, as well as land that is undeveloped;
- e) The Debtor's further development of the Property is hampered by the Debtor's inability to pay its debts as they come due, including servicing of the loans by Romspen and further construction costs for the units at the Property;
- f) Romspen issued on the Debtor and HRH demand letters and notices of intention to enforce security pursuant to section 244 of the BIA on June 13, 2016;
- g) The Debtor has failed to remedy its default under its credit facilities with Romspen since the notice sent on June 13, 2016;
- h) The Debtor does not have the funding to continue its operations, is insolvent, and is generally unable to meet its liabilities as they come due;
- i) Romspen is no longer prepared to continue to fund the operations of the Debtor and is only prepared to provide further necessary funding through a court-appointed Receiver with a mandate to realize upon the Property;
- j) The appointment of a Receiver is just, equitable, and in the interests of the



stakeholders of the Debtor and HRH:

- k) The provisions of the BIA, including subsection 243(1);
  - l) The provisions of the CJA, including section 101; and
  - m) Such further and other grounds as counsel may advise and this Honourable Court accepts.
3. The following documentary evidence will be used at the hearing of the Application;
- a) The Affidavit of Mark Hilson and the exhibits thereto;
  - b) The consent of RGI to act as the Receiver; and
  - c) such further and other documentary evidence as counsel may provide and this Honourable Court accepts.

Dated: July 22, 2016

**GOLDMAN, SLOAN, NASH & HABER LLP**  
Barristers and Solicitors  
Suite 1600  
480 University Avenue  
Toronto, ON M5G 1V6

**R. Brendan Bissell (LSUC No.: 40354V)**  
**Sanja Sopic (LSUC No.: 66487P)**

Tel: (416) 597-9922

Fax: (416) 597-3370

Lawyers for the Applicant,  
Romspen Investment Corporation

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

BETWEEN

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

Court File No. CV-16-  
HORSESHOE VALLEY LANDS LTD.

Respondent

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

Proceedings commenced at Toronto

**ORDER**  
(appointing receiver)

**GOLDMAN SLOAN NASH & HABER LLP**  
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Lawyers for the Applicant,  
Romspen Investment Corporation

**ROMSPEN INVESTMENT CORPORATION**

and **HORSESHOE VALLEY LANDS LTD.**

Court File No. CV-16-11468-00CL

Applicant

Respondent

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

Proceeding commenced at Toronto

**ORDER  
(To Add a Respondent)**

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Lawyers for the Applicant

**TAB C**



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11468-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.

Respondents

SECOND REPORT OF ROSEN GOLDBERG INC.

I. INTRODUCTION

1. By Order of the Honourable Mr. Justice Newbould dated November 29, 2016 (the "Appointment Order"), Rosen Goldberg Inc. was appointed receiver and manager ("Receiver")



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- 2 -

of all of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. ("HVL"), acquired for or used in connection with a business carried on by HVL. A copy of the Appointment Order is attached as **Appendix "A"**.

2. The ambit of the Receiver's administration was subsequently expanded to include all of the assets, undertakings and properties of Horseshoe Ridge Homes Ltd. ("HRH") by Order of the Honourable Justice Wilton-Siegel dated December 22, 2016, a copy of which is attached as **Appendix "B"**.

3. HVL and HRH are hereinafter referred to, collectively, as the "**Debtors**".

## II. THE PURPOSES OF THIS REPORT

4. This report is filed to set out the factual background which should assist the Court in:
- (a) approving the Receiver's activities and proposed activities described in this report;
  - (b) authorizing the Receiver to disclaim nineteen (19) agreements of purchase and sale agreements entered into by HRH in respect of the Townhouse Lots (hereinafter defined);
  - (c) ordering that **Confidential Appendix 1** to this report be sealed until the sale of the Townhouse Lots is completed;
  - (d) authorizing the Receiver to return the Deposits (hereinafter defined) to the homebuyers of the Townhouse Lots;
  - (e) approving a marketing and sales process in respect of the Townhouse Lots;
  - (f) increasing the Receiver's authorized borrowings limit pursuant to paragraph 20 of the Appointment Order from \$500,000 to \$1 million; and





ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- 3 -

(g) approving the Receiver's statement of receipts and disbursements for the period of November 16, 2016 to February 28, 2017 attached as Appendix "E" to this report.

### III. RESTRICTIONS

5. In preparing this report, the Receiver has relied upon information from third party sources (collectively, the "**Information**"). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance with respect to the Information.

### IV. BACKGROUND

6. HVL's assets consist of vacant lands (the "**Lands**") in the Township of Oro-Medonte, in the vicinity of the Horseshoe Valley Resort. The Lands include:

- (a) 29 single family lots, on the south side of Horseshoe Valley Road (the "**Single Family Lots**"). The Single Family Lots are currently under contract to be sold by the Receiver pursuant to an Approval and Vesting Order of the Honourable Justice Wilton-Siegel dated February 28, 2017. The sale is expected to be completed shortly;
- (b) 19 townhouse lots on the south side of Horseshoe Valley Road, 9 of which are serviced and 11 of which are unserviced (the "**Townhouse Lots**");
- (c) 1 unserviced single family lot on the south side of Horseshoe Valley Road;



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- 4 -

- (d) 1 unserviced commercial/institutional lot on the south side of Horseshoe Valley Road;
  - (e) 67 acres approved for 789 residential units on the south side of Horseshoe Valley Road;
  - (f) 109.9 acres zoned 50% rural agricultural and 50% environmental on the north side of Horseshoe Valley Road;
  - (g) 3.91 acres zoned for agricultural uses on the south side of Horseshoe Valley Road; and
  - (h) 52.75 acres, substantially all of which are zoned for residential development, on the north side of Horseshoe Valley Road.
7. Prior to the Receiver's appointment, HVL had been developing the Lands for residential use.
8. The Appointment Order was granted upon the application of Romspen Investment Corporation ("Romspen"), the Debtors' only secured creditor, who was owed in excess of \$23 million.

#### V. PROPOSED DISCLAIMER OF TOWNHOUSE AGREEMENTS

9. HRH is a company affiliated with HVL and is a registered builder with Tarion Home Warranty Corporation. The Receiver understands that pursuant to an agreement between HVL and HRH, HVL granted HRH exclusive rights to build and sell homes on the Lands.
10. In the spring of 2015, HRH entered into preconstruction agreements of purchase and sale with homebuyers to build and sell nineteen (19) freehold townhomes on the Townhouse Lots



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INSOLVENCY & RESTRUCTURING

- 5 -

(the “Townhouse Agreements”). A copy of one of the Townhouse Agreements is attached for reference as **Appendix “C”**.

11. At the time of the Receiver’s appointment, construction of the townhomes had not begun. The Townhouse Lots remain vacant.

12. At the time the Townhouse Agreements were entered into, the Townhouse Lots were subject to, among other prior mortgages registered in favour of Romspen, a mortgage in the principal face amount of \$26 million registered on July 29, 2014.<sup>1</sup> Copies of the parcel registers which comprise the Townhouse Lots are attached as **Appendix “D”**. A copy of the Romspen mortgage registered on July 29, 2014 is attached as **Appendix “E”**.

13. Accordingly, in terms of the relative priority between the homebuyers’ under the Townhouse Agreements and Romspen under its mortgage security over the Townhouse Lots, the homebuyers’ rights came into effect after Romspen was a registered mortgagee over the Townhouse Lots.

14. According to the Receiver’s preliminary analysis which is attached as **Confidential Appendix “1”**, it would appear that if the townhomes were built and sold at the prices contemplated under the Townhouse Agreements, the Debtors would incur significant financial losses.<sup>2</sup> Given the commercially sensitive nature of the analysis and in order to avoid suppressing realizations from the sale of the Townhouse Lots, the Receiver recommends that **Confidential Appendix “1”** be sealed until a sale of the Townhouse Lots is completed.

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<sup>1</sup> The mortgage remains on title to the Townhouse Lots, although a subsequent mortgage in the principal face amount of \$26 million was registered against the Townhouse Lots in favour of Romspen on February 29, 2016.

<sup>2</sup> The analysis excludes receivership-related expenses and financing costs that would be associated with the Receiver completing construction of the townhomes.



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INSOLVENCY & RESTRUCTURING

- 6 -

15. Since its appointment, the Receiver has had communications with sixteen (16) of the nineteen (19) homebuyers to discuss the status of the project. As a result of those discussions, all of the homebuyers with whom the Receiver has communicated have indicated their wishes to obtain the return of their Deposits (hereinafter defined) and the termination of their Townhouse Agreements as they are anxious to make alternate arrangements, given the rising real estate market.

16. In all of the circumstances, the Receiver recommends that it be authorized to disclaim the Townhouse Agreements.

#### VI. PROPOSED RETURN OF DEPOSITS

17. HRH received a total of \$470,000 in deposits (the "Deposits") from homebuyers under the Townhouse Agreements.<sup>3</sup> A list of the Deposits paid by homebuyers is attached for reference as **Appendix "F"**.

18. At the time of the Receiver's appointment, the Deposits were segregated in a separate account maintained by HRH at the Bank of Nova Scotia, which was used exclusively for holding the Deposits and was described in the Debtors' books and records as "HRH Bank Account - in trust". Based on the Receiver's review of the bank records there were no transactions in the account apart from the receipt of the Deposits.

19. As it would appear that the Deposits have maintained the characteristics of trust funds throughout, the Receiver recommends that it be authorized to return the Deposits to the homebuyers in conjunction with disclaiming the Townhouse Agreements.

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<sup>3</sup> Eighteen (18) homebuyers paid deposits of \$25,000 each. One (1) homebuyer paid a deposit of \$20,000.



**VII. PROPOSED MARKETING AND SALE PROCESS FOR TOWNHOUSE LOTS**

20. After considering the available options, including a sale by tender and a listing process, the Receiver believes that the most effective way to maximize realizations in respect of the Townhouse Lots will be to initiate a tender process. Since its appointment, the Receiver has been contacted by numerous interested parties. The Receiver intends to augment the existing level of interest by sending a teaser to its database of prospects and placing newspaper advertisements nationally and locally.

21. The Receiver believes that a tender process of approximately twelve (12) weeks, with an eight (8) week marketing period, will allow sufficient time to adequately canvass the market, according to the following timeline:

	Receiver's Proposed Actions
Week 1	<ul style="list-style-type: none"> <li>- Develop list of potentially-interested parties</li> <li>- Prepare teaser and confidentiality agreement for distribution to potentially-interested parties</li> <li>- Prepare marketing and information package for distribution to interested parties who have signed confidentiality agreements</li> <li>- Create a customized on-line data room to be accessed by interested parties who have signed confidentiality agreements</li> <li>- Gather financial and other due-diligence information for upload to the data room</li> <li>- Prepare form of offer</li> </ul>
First day, week 2	<ul style="list-style-type: none"> <li>- Place newspaper advertisement in the Globe and Mail (National Edition) and National Post, as well as local papers and industry publications</li> </ul>
Weeks 2 through 8	<ul style="list-style-type: none"> <li>- Contact potentially interested parties and advise regarding the</li> </ul>



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

- 8 -

	<p>opportunity, including distribution of teaser</p> <ul style="list-style-type: none"> <li>- Facilitate due-diligence of interested parties by distributing confidentiality agreement, arranging for access to on-line data room, distributing information package, responding to requests for additional information, arranging and conducting tours of property</li> </ul>
Final day, week 8	- Deadline for offers from prospective purchasers
First day, week 9	- Selection of successful purchaser
Week 9	- Finalize purchase agreement (if not already finalized)
Week 10	- Conditional period (if required) for the successful purchaser
First day, week 11	- Deadline for waiver of conditions by successful purchaser
As soon as possible after waiver of conditions	- Court approval of purchase agreement and vesting order

#### VIII. PROPOSED INCREASE IN BORROWINGS

22. At present, the Receiver's borrowings limit is \$500,000 pursuant to paragraph 20 of the Appointment Order. As at February 28, 2017, the Receiver had borrowed a total of \$295,000. The borrowings have been used, among other things, to pay trades and consultants in connection with remedying construction deficiencies with two (2) custom homes, which HRH built and sold prior to the Receiver's appointment, and to pay development expenses associated with the



ROSEN GOLDBERG  
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- 9 -

Lands.<sup>4</sup> The Receiver's statement of receipts and disbursements for period of November 29, 2016 to February 28, 2017 is attached for reference as **Appendix "G"**.

23. The Receiver will continue to incur expenses on an ongoing basis. It has entered into an agreement to clear trees from a portion of the Lands at a cost of \$48,000 and intends to enter into a paving contract shortly. In order to meet its obligation going forward the Receiver seeks an increase in borrowings limit to \$1 million.

#### VIV. RECOMMENDATIONS

24. On the basis of the foregoing, the Receiver recommends that this Honourable Court:
- (a) approve the Receiver's activities and proposed activities described in this report;
  - (b) authorize the Receiver to disclaim the Townhouse Agreements;
  - (c) order that **Confidential Appendix 1** to this report be sealed until the sale of the Townhouse Lots is completed;
  - (d) authorize the Receiver to return the Deposits to the homebuyers of the Townhouse Lots;
  - (e) approve the marketing and sales process in respect of the Townhouse Lots outlined herein;
  - (f) increase the Receiver's borrowings limit to \$1 million; and
  - (g) approve the Receiver's statement of receipts and disbursements for the period of November 29, 2016 to February 28, 2017 attached as **Appendix "H"** to this report.

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<sup>4</sup> There is approximately \$200,000 owing to HRH by the homebuyers of the homes on account of the purchase prices payable by them. The Receiver is remedying the deficiencies in order to recover the amounts outstanding.



ROSEN GOLDBERG  
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All of which is respectfully submitted,

Dated at Toronto, Ontario, this 8th day of March, 2017.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER OF  
THE ASSETS OF HORSESHOE VALLEY LANDS LTD.  
and HORSESHOE RIDGE HOMES INC.**

*Rosen Goldberg Inc.*  
\_\_\_\_\_

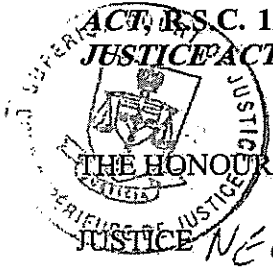


**TAB D**

Court File No. CV-16-11468-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE

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



THE HONOURABLE MR. )  
JUSTICE NEWBOLD )  
)

TUESDAY, THE 14<sup>th</sup>  
DAY OF MARCH, 2017

BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

Applicant

-and-

**HORSESHOE VALLEY LANDS LTD.**  
**and HORSESHOE RIDGE HOMES INC.**

Respondents

**ORDER**

THIS MOTION, made by Rosen Goldberg Inc., in its capacity as receiver and manager (the "Receiver") of the assets, undertakings and properties of Horseshoe Valley Lands Ltd. and Horseshoe Ridge Homes Inc. (the "HRH") for the relief set out in the Receiver's Notice of Motion, was heard this day at the Courthouse, 330 University Avenue, Toronto, Ontario.

- 2 -

ON READING the Receiver's Notice of Motion, the Receiver's Second Report dated March 8, 2017 (the "Second Report") and the Receiver's Supplementary Report dated March 13, 2017 (the "Supplementary Report") and on hearing the submissions of counsel for the Receiver and counsel for Romspen Investment Corporation, no one appearing for any other person on the service list, although served as appears from the affidavit of service of Jennifer Samuels sworn March 9, 2017 and the affidavit of service of Laura Micoli, sworn March 13, 2017, filed,

1. THIS COURT ORDERS that the time for service of the Receiver's Notice of Motion, the Second Report and the Supplementary Report is hereby abridged and validated, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that, subject to paragraph 4 hereof, the Second Report and the Supplementary Report, and the activities and proposed activities of the Receiver referred to therein, are hereby approved.

3. THIS COURT ORDERS that the Receiver's disclaimer of the agreements of purchase between HRH and the purchasers listed in Schedule "A" hereto is hereby authorized and approved.

✓  
~~4. THIS COURT ORDERS that the hearing of the Receiver's motion for authorization to disclaim the agreements of purchase between HRH and the purchasers listed in Schedule "B" hereto shall be heard on \_\_\_\_\_, 2017. ~ 25~~

5. THIS COURT ORDERS that Confidential Appendix 1 to the Second Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall remain under seal until further Order of this Court.

6. THIS COURT ORDERS that the Receiver is hereby authorized to return the deposits to the purchasers listed in Schedule "A" hereto held by HRH.

- 3 -

7. THIS COURT ORDERS that that the Receiver is hereby authorised to return deposits to any purchasers listed in Schedule "B" hereto who may hereafter notify the Receiver in writing that they do not oppose the Receiver's disclaimer of their agreement of purchase and sale with HRH.

8. THIS COURT ORDERS that the marketing and sales process in respect of the Townhouse Lots described in the Second Report is hereby approved subject to the proviso that the claims of purchasers listed in Schedule "B" hereto, other than those who may hereafter notify the Receiver in writing that they do not oppose the Receiver's disclaimer of their agreement of purchase and sale with HRH, shall not be disclaimed or vested out without further Order of this Court.

9. THIS COURT ORDERS that Receiver's borrowing limit prescribed in paragraph 20 of the Order of the Honourable Mr. Justice Newbould dated November 29, 2016 is hereby increased from \$500,000 to \$1,000,000.00.

10. THIS COURT ORDERS that the Receiver's statement of receipts and disbursements for the period of November 16, 2016 to February 28, 2017 attached as Appendix "E" to the Second Report is hereby approved.

  
\_\_\_\_\_

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAR 14 2017

PER / PAR:



## Schedule "A"

Lot No	Block	Full Name(s)
1	J	Radu Miron and Mihaela Miron
2	J	Donna Nikitin and Ture Nikitin
3	J	Debra and Todd Bossie
4	J	Susan Crawford and Michael Crawford
5	K	Mary Cleverdon and Wayne Cleverdon
6	K	Brian M. Peters & Janice A. Peters
7	K	Lorie Jane Pigat
8	K	Greg Slater
9	L	Robert McColm
11	L	Tina Gonneau & Bob Hannah
12	L	Oleh Kupraty and Christine Kupraty
14	M	Robert Daley and Christine Daley
15	M	Barry Cooper and Nancy Cooper
17	N	Larry West and Judith West
19	N	Michael Frederiksen and Linda Frederiksen

## Schedule "B"

Lot No	Block	Full Name(s)
10	L	Mathew Desroches
13	M	Jeff Catteau and Lori Catteau
16	N	Peter Bowman and Judith Bowman
18	N	Norman Grant Hobson and Jane L. Hobson

**ROMSPEN INVESTMENT CORPORATION**

Applicant

-and-

**HORSESHOE VALLEY LANDS LTD. AND HORSESHOE  
RIDGE HOMES LTD.**

Respondents

Court File No. CV-16-11468-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

**DICKINSON WRIGHT LLP**

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199 Bay Street

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Toronto, Ontario, M5L 1G4  
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Tel: (416) 646-4608

Lawyers for the Receiver Rosen Goldberg Inc.

# T A B E



Rosen Goldberg Inc.; Court Appointed Receiver and Manager of;  
**Horseshoe Valley Lands Ltd.**  
 Statement of Receipts and Disbursements  
 for the period November 29, 2016 to July 10, 2017

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**Receipts**

Sale of property	3,330,714
Receiver's borrowings	377,041
Accounts receivable	102,677
Amounts received from Bank of Nova Scotia	17,821
Insurance refund	3,408
	<u>3,831,661</u>

**Disbursements**

Management and development costs	622,697
Repayment of receiver's borrowings	363,400
Repairs and maintenance	171,957
HST paid	151,997
Receiver's fees	121,000
Legal fees	111,915
Realty taxes	34,760
Payroll and deductions	32,642
Interest on receiver's borrowings	20,110
Insurance	14,450
Utilities	7,533
Lender's fees	4,800
Advertising	4,684
Office and general	375
Filing fee	140
	<u>1,662,460</u>

Excess of receipts over disbursements	<u><u>2,169,201</u></u>
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The statement of receipts and disbursements is prepared on the cash basis and does not include the obligations of the Receiver, if any.

**ROMSPEN INVESTMENT CORPORATION**  
Applicant

-and-  
Respondents

**HORSESHOE VALLEY LANDS LTD.**

Court File No. CV-16-11468-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT  
TORONTO**

**MOTION RECORD**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

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Lawyers for Rosen Goldberg Inc.,  
in its capacity as Court-appointed Receiver