

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

-and-

HORSESHOE VALLEY LANDS LTD.

Respondent

**SECOND SUPPLEMENTARY MOTION RECORD OF THE RECEIVER,
ROSEN GOLDBERG INC.**

January 11, 2017

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I N D E X

Tabs Document

1. Notice of Motion
2. Second Supplementary Report to the First Report of Rosen Goldberg Inc. dated January 11, 2017
- A. Appendix "1" - Affidavit of Mark Hilson sworn July 22, 2016 (without exhibits)
- B. Appendix "2" - Affidavit of Mark Hilson sworn November 15, 2016 (without exhibits)
- C. Appendix "3" - Redacted Affidavit of Bill Ulicki sworn November 21, 2016 (without exhibits)
- D. Appendix "4" - Affidavit of Jim Cooper sworn November 16, 2016 (without exhibits)
- E. Confidential Appendix "1" - Summary of the Receiver's Analysis
- F. Appendix "5" - Monitor's Memorandum dated August 26, 2016
- G. Confidential Appendix "2" - Land Services Group of CBRE Canada Opinion dated December 17, 2014
- H. Confidential Appendix "3" - Updated CBRE Opinion dated December 21, 2015

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

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 Horseshoe Valley Lands Ltd. and Horseshoe Ridge Homes Inc. (the “**Debtors**”) will make a motion before a Judge of the Ontario Superior Court of Justice, Commercial List, on Friday, January 13, 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:

- (a) An Order abridging the time for service of the Notice of Motion and the Motion Record, if necessary, and declaring that this motion is properly returnable on Friday, January 13, 2016, and dispensing with further service thereof;
- (b) Directions regarding the request by Lotco Limited (“**Lotco**”) to conduct examinations of five (5) individuals in connection with the Receiver’s motion to

disclaim the Agreement of Purchase and Sale dated as of July 6, 2016 entered into by Horseshoe Valley Lands Ltd., as Seller, and Garo Bostajian, in trust for a Lotco (the “**Lotco APS**”) and in support of a cross- motion by Lotco to compel the Receiver to complete the Lotco APS ;

- (c) sealing the Confidential Appendices to the Receiver’s Second Supplementary Report;
- (d) sealing the affidavit of Jim Cooper sworn November 16, 2016, in its entirety, subject to the Receiver replacing same with a redacted version thereof in the court file; and
- (e) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Lotco wishes to examine five (5) witnesses on the pending motions. Romspen objects;
- (b) The Receiver has not tendered or relied upon any evidence from the witnesses Lotco proposes to examine;
- (c) The Receiver has recommended the disclaimer of the Lotco APS on the basis that the purchase price appears to be below fair market value, and the Receiver has obtained a higher and better offer to purchase the property subject to the Lotco APS from First View Homes (Scarborough) Inc.;
- (d) The Receiver is of the view that the First View Offer is commercially reasonable and wishes to complete the sale to Firstview for the benefit of the estates;
- (e) The confidential appendices to the Second Supplementary Report contain commercially sensitive information, the disclosure of which could prejudice realizations

- (f) In the affidavit of Jim Cooper sworn November 16, 2016, there are extensive references to the purchase price payable under the Lotco APS both in the body of the affidavit and the exhibits thereto. There are also a number statements contained therein as to Mr. Cooper's information and belief regarding the value of the lands subject to the Receiver's administration. Given the commercially sensitive nature of the information, the Receiver recommends that Cooper's affidavit be sealed in its entirety and replaced with a redacted version thereof in the court file. The redacted version would delete references to the purchase price payable under the Grandview APS, Mr. Cooper's information and belief regarding the value of the lands, and Exhibits "A", "B", "C", "D" and "H", all of which contain commercially sensitive information; and
- (g) such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used in support of this motion:

- (a) the First Report of Rosen Goldberg Inc. in its capacity as Receiver of Horseshoe Valley Lands Ltd., dated December 19, 2016 and the Appendices thereto;
- (b) the Supplementary Report to the First Report dated December 20, 2016;
- (c) the Second Supplementary Report to the First Report dated January 11, 2017; and
- (d) such further and other material as counsel may advise and this Honourable Court may permit.

Date: January 11, 2017

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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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Lawyers for Rosen Goldberg Inc. in its capacity as Receiver
of Horseshoe Valley Lands Ltd.

IN THE MATTER OF THE RECEIVERSHIP OF

Horseshoe Valley Lands Ltd.

Second Supplementary Report to the First Report of Rosen Goldberg Inc.



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 SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF ROSEN GOLDBERG INC.**

1. This Second Supplementary Report to the Receiver's First Report sets out the factual background in respect to a procedural issue which has arisen in two (2) pending motions: (a) a motion by the Receiver for approval of the Firstview APS and, concomitantly, for authorization to disclaim the Grandview APS (aka the Lotco APS); and (b) a motion by Lotco to compel the Receiver to complete the Grandview APS. The procedural issue concerns whether and, to what extent, Lotco should be permitted to conduct examinations of five (5) individuals on the pending motions.

2. This Second Supplementary Report is also being filed in support of an Order sealing the affidavit of Jim Cooper sworn November 16, 2016 in its entirety and replacing same in the court file with a redacted version thereof.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

3. Capitalized terms not defined herein have the meanings ascribed to them in the Receiver's First Report dated December 19, 2016 and its Supplementary Report dated December 20, 2016.

I. APPROPRIATENESS OF EXAMINATIONS

4. The five (5) individuals Lotco wishes to examine are:

	Proposed Witness	Relationship to Proceedings
1.	Mark Hilson	Mr. Hilson is a Managing General Partner of Romspen. Mr. Hilson swore two (2) affidavits in support of Romspen's application to appoint the Receiver. A copy of his Affidavit sworn July 22, 2016 (without exhibits) is attached as Appendix 1 . A copy of his Affidavit sworn November 15, 2016 (without exhibits) is attached as Appendix 2 .
2.	Bill Ulicki	Mr. Ulicki is a consultant with the special projects group of Romspen FC Homes, a company related to Romspen. Mr. Ulicki swore an affidavit, dated November 21, 2016 on Romspen's application to appoint the Receiver, a redacted copy of which is attached (without exhibits) is attached as Appendix 3 .
3.	Jim Cooper	Mr. Cooper is the President of HVL. Mr. Cooper swore an affidavit dated November 16, 2016, a copy of which is attached (without exhibits) is attached as Appendix 4 .
4.	Brendan Bissell	Mr. Bissell is a lawyer at Goldman Sloan Nash & Haber LLP. Mr. Bissell represented Romspen in negotiating the Forbearance Agreement between Romspen and HVL. Mr. Bissell has not sworn an affidavit in these proceedings.
5.	William Friedman	Mr. Friedman is a lawyer with Friedman Law Professional Corporation. Mr. Friedman represented HVL, HRH and the guarantors of the Romspen loan to HVL dother than Judy Boville in negotiating the Forbearance Agreement between Romspen and HVL. Mr. Friedman has not sworn an affidavit in these proceedings.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

5. Insofar as the Receiver's pending motion is concerned, the Receiver has not tendered or relied upon the prior affidavits of Messrs. Hilson, Ulicki or Cooper. The Receiver has recommended that the Firstview APS be approved, and that it be authorized to disclaim the Grandview APS, on the basis that the Firstview APS is a higher and better offer and will maximize recoveries for the estate of HVL. The Receiver has prepared a comparison of the Firstview APS and the Grandview APS, which outlines the benefits to the estate of accepting the Firstview APS. A summary of the Receiver's analysis is attached as **Confidential Appendix 1**. Given the commercially sensitive nature of the analysis, the Receiver seeks a sealing Order in respect to same, pending completion of a sale transaction.

6. Prior to its appointment as Receiver, Rosen Goldberg Inc. was appointed as monitor (the "**Monitor**"), to monitor the business and affairs of HVL pursuant to the terms of a Forbearance Agreement dated August 1, 2016 among Romspen, HVL, and other parties related to HVL.

7. On August 22, 2016, the Monitor met with Mr. Cooper, the President of HVL and Carmen Fruci, a consultant to HVL, and discussed the Debtor's ongoing major activities and initiatives, including the Grandview APS. The Monitor subsequently spoke at length, separately, with Mr. Fruci. Following those discussions, the Monitor prepared a memorandum dated August 26, 2016, a copy of which is attached as **Appendix 5** (the "**Monitor's Memo**").

8. Among other things, the Monitor's Memo records the Monitor's understanding that the purchase price under the Grandview APS was below the market value of the Single Family Lots, based on offers which Mr. Fruci advised the Monitor were previously received and rejected by Mr. Cooper, as well as offers which Mr. Fruci advised were expected to be submitted in the near future.

9. The Monitor was never asked to consent, nor did it ever consent, to the Grandview APS.

II. EVIDENCE OF VALUE OF THE LANDS

10. There are significant development hurdles respecting the Lands. The two (2) most significant issues involve sewage treatment and water storage, both which need to be resolved



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

before further development can take place. The solution to these issues involve multiple parties, including the Township of Oro Medonte, the Ministry of the Environment and Climate Change and abutting property owners. At present, no permanent or interim resolutions exist and none are anticipated in the near future. The Receiver intends to pursue resolutions of these issues before embarking on a marketing and sales process. At present, it is not all clear what may be realized from the Lands or whether Romspen will be made whole.

11. In considering the existing value of the Lands, although no current or recent appraisals exist, a broker's opinion of value dated December 17, 2014 (the "**CBRE Opinion**") prepared by Land Services Group of CBRE Canada ("**CBRE**"), was obtained by Romspen. A copy of the CBRE Opinion is attached as **Confidential Appendix 2**.¹ Given the commercially sensitive nature of the CBRE Opinion, the Receiver seeks a sealing order in respect to same, pending the sale of the Lands.

12. In the CBRE Opinion, the Lands are broken down into sections 1 through 8. The Receiver notes that subsequent to the delivery of the CBRE Opinion, the 27 townhouses identified in section 1(b) and section 5 of the CBRE Opinion were sold.

13. On December 21, 2015, CBRE delivered an update of its opinion addressed to HVL (the "**Updated CBRE Opinion**"), a copy of which is attached as **Confidential Appendix 3**.² Given the commercially sensitive nature of the Updated CBRE Opinion, the Receiver also seeks a sealing order in respect to same, pending the sale of the Lands.

14. The Updated CBRE Opinion is expressed to be "heavily dependent" on information which Mr. Cooper provided to CBRE on December 16, 2015. The most notable change in the Updated CBRE Opinion related to the lands identified in section 2, the value of which had

¹ The CBRE Opinion is annexed as Exhibit "B" to Mr. Cooper's Affidavit sworn November 16, 2016. If a sealing Order is made in respect to Mr. Cooper's Affidavit, the CBRE Opinion will be redacted in the copy of the redacted Affidavit which the Receiver intends to place in the court file.

² The Updated CBRE Opinion is also included in Exhibit "B" to Mr. Cooper's Affidavit sworn November 16, 2016. If a sealing Order is made in respect to Mr. Cooper's Affidavit, the Updated CBRE Opinion will also be redacted in the copy of the redacted Affidavit which the Receiver intends to place in the court file.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

purportedly tripled since the original CBRE Opinion was rendered a year earlier. According to the Updated CBRE Opinion, an interim sanitary solution had been identified and approved conceptually by the municipality. As hereinabove noted, in fact no permanent or interim resolutions exist with respect sewage treatment and water storage which would enable the section 2 lands to be developed further, and none are anticipated in the near future.

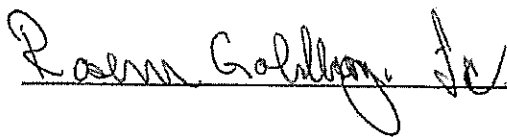
III. SEALING OF COOPER AFFIDAVIT

15. Upon further review of the affidavit of Jim Cooper sworn November 16, 2016, the Receiver notes that there are extensive references to the purchase price payable under the Grandview APS both in the body of the affidavit and the exhibits thereto. There are also a number statements contained therein as to Mr. Cooper's information and belief regarding the value of the Lands. Given the commercially sensitive nature of the information, the Receiver recommends that Cooper's affidavit be sealed in its entirety and replaced with a redacted version thereof in the court file. The redacted version would delete references to the purchase price payable under the Grandview APS, Mr. Cooper's information and belief regarding the value of the Lands, and Exhibits "A", "B", "C", "D" and "H", all of which contain commercially sensitive information and, which if disseminated, could suppress recoveries.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 11th day of January 2017.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER AND MANAGER OF
HORSESHOE VALLEY LANDS LTD. AND NOT IN A
PERSONAL OR CORPORATE CAPACITY**



APPENDIX “1”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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**

**AFFIDAVIT OF MARK HILSON
(sworn July 22, 2016)**

I, MARK HILSON, of the City of Toronto, Province of Ontario, HEREBY MAKE
OATH AND SAY AS FOLLOWS:

1. I am a managing general partner of Romspen Investment Corporation ("Romspen") and therefore have knowledge of the matters in this affidavit. Where any portion of this affidavit is made on information and belief, I have stated the source of that information and believe it to be true.

The parties

2. Romspen carries on business as the trustee of the Romspen Mortgage Investment Fund,

which is comprised of amounts contributed by private investors in that fund. Romspen and that Fund are therefore not institutional entities or lenders like a bank or similar commercial lenders, and Romspen's actions are as a result dedicated to the protection and promotion of the investors' contributions to the fund.

3. Horseshoe Valley Lands Ltd. ("HVL") is a corporation that owns land in the area around the Horseshoe Valley Resort. A copy of a corporate profile report for HVL is attached to this affidavit as **Exhibit "A"**.

4. HVL was set up under plans to develop its land for residential building of homes and townhomes to offer for sale. HVL marketed its lands for sale through Horseshoe Ridge Homes Inc. ("HRH"), which is a company affiliated with HVL and I believe is owned by the same shareholders. A copy of HVL's planned development as set out on its website is attached to this affidavit as **Exhibit "B"**.

5. HVL's planned development has only progressed to a small extent. Much of the property remains without the municipal services necessary to build and develop the land to then offer it for sale. In fact the sewage allocation required to sell lots and construct homes is not even a certainty and the best case scenario for municipal sewage capacity and allocation will not occur for at least five years. There are 29 detached houses and 19 townhomes yet to be built for which approvals have been given and hundreds more subject to further planning and development work.

6. Of the houses and townhomes yet to be built, my understanding from Jim Cooper of HVL is that 19 are the subject of pre-construction agreements of purchase and sale.

Romspen's loan to HVL

7. Romspen's current loan to HVL was by mortgage loan extension agreement dated January 7, 2016 (the "Loan Agreement"), a copy of which is attached to this affidavit as **Exhibit "C"**.
8. The Loan Agreement amended and restated a loan facility that Romspen had granted to HVL in May of 2010, and which had been amended several times since.
9. The funds loaned by Romspen to HVL under the Loan Agreement were secured by a mortgage over all of HVL's real property. A copy of the mortgage in favour of Romspen for the Loan Agreement is attached to this affidavit as **Exhibit "D"**.
10. The funds loaned by Romspen to HVL under the Loan Agreement were also secured by a general security agreement previously granted over all of HVL's personal property in connection with earlier loan agreements. A copy of the general security agreement previously granted to Rompsen and relied upon in the Loan Agreement is attached to this affidavit as **Exhibit "E"**.
11. As of June 10, 2016, the amounts owing to Romspen by HVL under the Loan Agreement were \$21,341,892.11, comprised of principal of \$21,052,244.53, interest of \$276,159.73, outstanding charges of \$3,676.85 and legal costs of \$9,831.00. Interest has continued to accrue since that date at the rate of \$6,802.40 per day, and legal costs have also increased due to the expenses incurred in bringing this application.

HVL's financial difficulties

12. I believe that HVL's financial difficulties are a combination of various things including but not limited to:

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- a) The inability to raise working capital by way of contributions from shareholders or other investors due to the economics and uncertainties of the project;
- b) Poor decision making, unrealistic assumptions, and disorganization on the part of its management; and
- c) An ongoing dispute with its former president, Julie Boville, which is creating an atmosphere of distrust, fear and anxiety at the development project. Ms. Boville and her current husband, John Kennedy, live in a home at the project and the animosity between her, her husband and Jim Cooper appears to cause each to provide inconsistent and distressing information to homeowners and others regarding the financial health of the overall development, ongoing construction and after sales service work, which is to the detriment of the project and to Romspen's security position in that collateral.

13. In particular, in or around November of 2015 I understand that the other shareholders of HVL and HRH took steps to remove Ms. Boville as president and to replace her with Mr. Cooper. Since that time, I have been advised by each of them that the dispute between Ms. Boville and HVL is now in the hands of lawyers.

14. In addition to the dissention among the shareholders and principals of HVL, I have noted that HVL and HRH have been unable to build homes and townhomes on time and on budget. Instead, based on reports of costs incurred and the sale price on homes already sold that have been provided to me by Mr. Cooper and others at HVL, the prices that have been paid for homes built so far have been less than what HVL and HRH spent to build them.

15. Our concerns about HVL's viability are not new. Romspen permitted HVL and HRH some time to attempt to improve their organization and efficiency, including by agreeing to the

new Loan Agreement in January of this year, but the ongoing failure to meet obligations, advance construction and control costs while maximizing revenue has now become critical.

16. I and the rest of Romspen's management now no longer have any faith or confidence in the management of HVL and HRH to properly care for and develop the assets that comprise Romspen's collateral under the Loan Agreement. In particular:

- a) Romspen has learned from HVL that the townhouse units most recently completed and sold by HVL were sold at prices that resulted in a loss of more than \$100,000 per unit as a result of insufficient cost control and inadequate pricing;
- b) Romspen found out in a review of HVL's payables that Mr. Cooper was attempting to take a monthly management fee of \$20,000 plus HST per month, which had been used for him and two other people previously, entirely for himself after the departure of those other people from HVL's management;
- c) HVL's lands are only currently serviced for sewage for the 29 single family homes and 19 townhomes already approved, whereas the proposed treatment plans by the municipality require that developers contribute to that infrastructure on a *pro rata* basis, which would mean that HVL's remaining lands would pay at least 50% of the cost to construct the sewage treatment facility. Romspen has learned, however, that the *pro forma* financial projections prepared by HVL do not include any provision for such payment and the cost to construct a new sewage treatment facility will exceed \$10M and likely be closer to \$15M;
- d) HVL had been proposing to generate approximately \$800,000 of revenue from the development of 8 additional semidetached lots to be purchased by way of a lot addition

from a neighbouring land owner, but Romspen has learned since May that HVL inadvertently allowed that purchase arrangement to lapse and now the neighbouring developer will not continue with that arrangement;

- e) HVL has been planning on selling approximately 190 golf course lots in future phases that command a price premium of approximately \$40-50,000 over internal lots. Romspen has learned, however, since May that the golf course lands have now been listed for sale by their owner as residential development lands, for which the property is zoned, and will result in lost revenue of approximately \$8,550,000 as the 190 HVL lots at issue will no longer command this premium. HVL had not reported to this to Romspen even though the golf course lands owner advised that they made Mr. Cooper aware of their plans around February 2016; and
- f) HVL entered into agreements to construct 19 townhomes at prices that will be far less than the combined cost of construction, services, levies, permit fees, other soft costs and land because HVL and HRH, among other things, undersold and over-specified the homes. Romspen's estimate is that HVL would lose up to approximately \$100,000 per home at the prices in those agreements.

17. As a result, it is my belief and Romspen's position that the only way to properly protect Romspen's collateral is to seek the appointment of a receiver by the Court to oversee the completion of the construction in progress and to then develop a plan to obtain value, whether by managing and continuing HVL and HRH's planned development, by selling the assets, or otherwise.

18. To the extent that a receiver of HVL's assets needs to borrow funds, Romspen is prepared

to advance those funds under a receivers' borrowing certificate.

HVL's default

19. HVL defaulted on its obligations to Romspen under the Loan Agreement as of May 30, 2016 when HVL failed to contribute \$3,000,000 by that date to pay down the amounts owing to Romspen, which HVL was required to do pursuant to clause 9(a) of the Loan Agreement.

20. Romspen made demand on HVL and served a Notice of Intention to Enforce Security on June 13, 2016, a copy of which is attached to this Affidavit as **Exhibit "F"**. No funds were paid to Romspen in respect of the loan to HVL after that time.

Other secured creditors of HVL

21. I am unaware of any other secured creditors of HVL.

22. Attached at **Exhibit "G"** to this affidavit are the parcel registers for all of the lands subject to the mortgage granted in favour of Romspen. Aside from some registrations of transfers of title for sales that have been completed, there are no other mortgages or charges registered on title.

23. Attached as **Exhibit "H"** to this affidavit is a *Personal Property Security Act* search for HVL. It similarly discloses no registrations other than by Romspen.

Romspen's security position is declining

24. The Loan Agreement and mortgage in favour of Romspen require monthly payment of interest on the outstanding amounts. Prior to May 30, HVL was making those payments to Romspen by using parts of the monthly advances that Romspen made to HVL under the revolving

credit facility that forms part of the Loan Agreement.

25. Since May 30, however, Romspen has refused to advance any further funds to HVL in view of HVL's breach of the requirement to pay \$3 million. HVL has not made any interest payments to Romspen under the Loan Agreement and mortgage since that time. I therefore believe that Romspen's security position is being compromised by the increasing level of debt owed by HVL to Romspen on account of the accruing interest.

26. The problems caused by this increased level of debt are worsened because the value of the collateral under the Loan Agreement may be declining in value due to HVL's inability to continue with its planned development and the factors noted above.

Need for a receiver

27. I believe that a court appointed receiver is necessary to properly protect the interests of Romspen and the other stakeholders of HVL because there is ongoing construction, particularly in house construction and lot servicing work, which is required in order to continue to advance the project and to ensure that future development and building can continue. Romspen is only prepared to lend further amounts for additional work if the further amounts advanced can be protected by the security of a first-ranking receiver's charge over the assets of HVL.

28. In addition, I believe that a receiver is also necessary to review and report on the issues in connection with pre-construction agreements of purchase and sale that HVL entered into with prospective purchasers for the 19 townhomes noted above. The interest of those purchasers may be in conflict with the interests of Romspen as a creditor of HVL, which will likely therefore be best dealt with in a court proceeding.

29. Further, I believe from advice given to me by Mr. Cooper that HVL and HRH are facing significant warranty claims from homes that have been sold. Since Romspen provided the security which has been posted with the Tarion Warranty Corporation, it may be necessary for a receiver to review, and where appropriate, take steps to address proper warrantable claims so that the security posted is not drawn down by even more expensive remediation steps managed by Tarion.

30. I am advised by Brendan Bissell, who acts for Romspen in this matter, that the first available date on the Ontario Superior Court of Justice, Commercial List is August 2, 2016. Romspen is accordingly proceeding with this application on that date.

31. In the interim, however, Romspen has concerns about the deteriorating position of HVL's project, including the possibility of non-payment to needed employees and contractors, which could delay or stop ongoing work such as planning, engineering, after sales service work and sales activity, as well as site servicing work required for subsequent house construction. Romspen has therefore appointed Rosen Goldberg Inc. as a private receiver pending the hearing of this application so that Romspen may make protective disbursements through its private receiver to the appropriate persons. A copy of Romspen's letter of appointment in that regard to Rosen Goldberg Inc. is attached as **Exhibit "I"**.

Consent to act as receiver

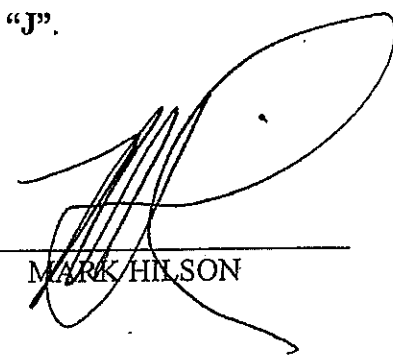
32. Rosen Goldberg Inc. has consented to act as receiver of HVL if so appointed by the Court.

A copy of that consent is attached to this affidavit as **Exhibit "J"**.

SWORN before me at the City of Toronto,
In the Province of Ontario
this 22nd day of July, 2016

A Commissioner for taking oaths, etc.

Annessa Cenerini, a Commissioner, etc.,
Province of Ontario, for
Goldman Sloan Nash & Haber LLP,
Barristers and Solicitors.
Expires September 13, 2017.



MARK HILSON

APPENDIX “2”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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**

AFFIDAVIT OF MARK HILSON

**I, MARK HILSON, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:**

1. I am a managing general partner of the Applicant, Romспен Investment Corporation (“Romспен”) and, as such, have knowledge of the matters to which I hereinafter depose.

2. This affidavit is supplementary to my affidavit sworn July 22, 2016 (the “First Hilson Affidavit”), which I swore in support of Romспен’s receivership application against the respondent Horseshoe Valley Lands Ltd. (“HVL”) returnable August 2, 2016 (the “Receivership Application”). Any capitalized words in this affidavit have the same definition as in the First Hilson Affidavit.

The Forbearance Agreement

3. The Receivership Application was initially returnable on August 2, 2016. It was adjourned *sine die*, with Romspen and HVL entering into a forbearance agreement (the “**Forbearance Agreement**”) that provided for, among other things, two significant payments to be made by HVL to Romspen on September 30 and November 15, 2016, and a consent by HVL to the Receivership Order proposed in the Receivership Application in the event of a default under the Forbearance Agreement. Attached hereto and marked as **Exhibit “A”** to this Affidavit is a copy of the executed Forbearance Agreement dated August 1, 2016, and a copy of the separately-executed consent to the within application (Schedule C to the Forbearance Agreement) signed by counsel for HVL (the “**Consent**”).

4. Pursuant to term 3 of the Forbearance Agreement, the sum of \$3,200,000.00 “less applicable costs” was payable by HVL to Romspen on or before September 30, 2016 (the “**First FA Payment**”). That payment was not made, and there is a dispute between Romspen and HVL regarding whether the non-payment constitutes a default under the Forbearance Agreement, and the resulting current amount owing by HVL to Romspen.

5. However, pursuant to Term 5 of the Forbearance Agreement, the sum of \$3,000,000.00 is payable by HVL to Romspen on or before November 15, 2016 (the “**Second FA Payment**”).

6. Therefore, regardless of whether or not HVL’s failure to make the First FA Payment constitutes a default under the Forbearance Agreement, failure to make the Second FA Payment is a further default (Romspen’s position is also that there were other defaults under the Forbearance Agreement over and the above First FA Payment and the Second FA Payment, but for the purposes

of this affidavit and the reliance being placed on the Consent, it is only focusing on the Second FA Payment).

7. In addition, the Forbearance Agreement did not extend the maturity date under the Loan Agreement (Exhibit C to the First Hilson Affidavit), and accordingly the balance owing by HVL to Romspen under the Loan Agreement matured on November 1, 2016. That said, pursuant to the Term 8 of the Forbearance Agreement, Romspen and HVL agreed that Romspen would "forbear from exercising its rights and remedies under the Credit Documents ... until the earlier of: (i) November 15, 2016 (the "Forbearance Termination Date") and (ii) occurrence of a further default under the Credit Documents or this [Forbearance] Agreement (a "Forbearance Default") ...". As a result, the entire debt under the Loan Agreement is due and owing on November 15, 2016, such that default under the Second FA Payment results in much more than only \$3,000,000.00 being outstanding (the term "Credit Documents" in the Forbearance Agreement included the Loan Agreement).

8. Pursuant to the Forbearance Agreement, HVL acknowledged that the amount outstanding under the Loan Agreement as of June 13, 2016 was \$21,341,892.11, with a *per diem* from and after June 10, 2016, of \$6,802.40. As of November 15, 2016, the amount outstanding under the Loan Agreement is \$23,118,424.73 (which takes into consideration the First FA Payment not being made, but does not include all professional costs to date). Attached hereto and marked as **Exhibit "B"** to this affidavit is a copy of a Romspen statement setting out this amount (which is not intended to be a payout statement).

The Parcel Abstracts

9. The mortgage that secures the funds loaned by Romspen to HVL attached at Exhibit D to the First Hilson Affidavit (the "**Mortgage**"), was registered in the Land Registry Office for the Land Titles Division of Simcoe (#51) as instrument number SC1282515 on or about February 12, 2016. At paragraph 22 and at Exhibit G to the First Hilson Affidavit, I intended to set out the parcel registers for all of the lands subject to the mortgage granted by HVL in favour of Romspen. Through inadvertence, the parcel registers that were attached at Exhibit G by Romspen's former lawyers in this proceeding were not the correct parcel registers.
10. As set out in the Mortgage, the charge was originally registered over title to 62 separate parcels of land owned by HVL.
11. Since the date of registration, the Mortgage has been discharged over 5 of the 62 parcels covered by the Mortgage. Attached hereto and marked as **Exhibit "C"** to this affidavit are copies of the parcel abstract for PINs 74055-0268, -0269, -0280, -0318 and -0378, from which the Mortgage has been discharged.
12. The registered Mortgage document refers to three PINs with the notation "Affects Part of Prop.", being PINs 74055-0274, -0224 and -0213. Attached hereto and marked as **Exhibit "D"** to this Affidavit are copies of the abstracts for these three PINs.
13. As set out in the parcel abstracts, of these three PINs, only 74055-0274 was owned by HVL. The other two properties were owned by Skyline Horseshoe Valley Inc. ("**Skyline**"), which is not a related party to HVL.

14. Further, all three of these PINs are currently inactive, and have been split as follows:

- (a) 74055-0224 became 74055-0379, -0380 and -0381;
- (b) 74055-0213 became 74055-0382 and -0383;
- (c) 74055-0274 became 74055-0384 and 0385.

15. PIN 74055-0383 is an active PIN, and it continues to be owned by Skyline. That property is not the subject of the within application. Attached hereto and marked as **Exhibit "E"** to this affidavit is a copy of the parcel register for PIN 74055-0383.

16. PINs 74055-0381 and -0384 were consolidated into one PIN bearing number 74055-0386, which is owned by Skyline, is not subject to the Mortgage, and is not the subject of the within application. Attached hereto and marked as **Exhibit "F"** to this affidavit are copies of the parcel registers for PINs 74055-0381 and -0384, and for the current PIN 74055-0386.

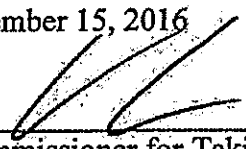
17. PINs 74055-0379, -0380, -0382 and -0385 were consolidated into one PIN bearing number 74055-0387, which is owned by HVL, is subject to the Mortgage, and is the subject of the within application. Attached hereto and marked as **Exhibit "G"** to this affidavit are copies of the parcel registers for PINs 74055-0379, -0380, -0382, -0385, and for the current PIN 74055-0387.

18. Now shown to me and marked as **Exhibit "H"** to this affidavit are copies of the parcel registers for the lands that are currently subject to the Mortgage, including PIN 74055-0387. Aside from charges registered in favour of Romspen, there are no other mortgages or charges registered on title.

19. However, 29 of the parcels set out in Exhibit H hereto are the subject of a caution registered against title by Lotco Limited as Instrument No. SC1346637 on or about September 29, 2016 the "Caution"). Attached hereto and marked as Exhibit "I" to this affidavit is a copy of the Caution.

20. This supplementary affidavit is sworn in support of Romspen's application for, among other things, an order appointing Rosen Goldberg Inc. as receiver and manager without security over all of HVL's assets, undertakings and property, and for no improper purpose.

SWORN BEFORE ME)
 at the City of Toronto,)
 in the Province of Ontario)
 on November 15, 2016)



 Commissioner for Taking Affidavits
Richard Thomas Vincent Berry



 MARK HILSON

APPENDIX “3”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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**

AFFIDAVIT OF BASIL (BILL) ULICKI

I, **BASIL (BILL) ULICKI**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a consultant with the Special Projects group of Romspen FC Homes, a related party to Romspen Investment Corporation ("**Romspen**") and, as such, I have knowledge of the matters to which I hereinafter depose.
2. I am swearing this affidavit in response to the Affidavit of Jim Cooper ("**Cooper**") sworn November 16, 2016 (the "**Cooper Affidavit**"). In preparing this affidavit, I have reviewed, among other things, the Affidavits of Mark Hilson sworn July 22, 2016 (the "**First Hilson Affidavit**"),

and November 15, 2016 (the "**Second Hilson Affidavit**"). I have continued to use the defined terms from the First Hilson Affidavit and the Second Hilson Affidavit.

The Grandview APS

3. In paragraph 4 of the Cooper Affidavit, and Exhibit A thereto, Cooper sets out an agreement dated July 21, 2016, between HVL and Garo Bostajian (Grandview Homes) in Trust for a company to be incorporated ("**Grandview**") for the purchase and sale of 29 lots that are a part of the lands covered by the receivership application herein (the "**Grandview APS**").
4. Romspen served its Application Record herein on or about July 22, 2016, returnable August 2, 2016. Three days prior to Romspen's service of the Application Record (that is, on July 19, 2016), HVL's lawyer, Bill Friedman, wrote to Romspen's lawyer at the time, Brendan Bissell of Goldman Sloan Nash & Haber ("**GSNH**"). It was under cover of this letter that Romspen received the Grandview offer for the 29 lots (though, as noted below, in a different form than the final version set out in the Grandview APS). Attached hereto and marked as **Exhibit "A"** to this Affidavit is a copy of Mr. Friedman's letter dated July 19, 2016, and the attachments thereto, being an exclusive listing agreement between HVL and CBRE Limited ("**CBRE**") dated July 18, 2016 (the "**CBRE Listing Agreement**"), and an agreement of purchase and sale between HVL and Grandview (the "**Grandview Offer**").
5. The Grandview Offer appears to have been an offer to purchase made by Grandview on July 4, 2016, and "signed back" by HVL, with several handwritten changes, on July 6, 2016.

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6. In his cover letter dated July 19, 2016, Mr. Friedman states that the Grandview Offer “is conditional for a period of 10 business days following acceptance of this agreement by [HVL]”, and that “[HVL] intends to sign the agreement with Grandview.”
7. Mr. Friedman also asked to schedule a meeting between Romspen and HVL. That meeting (the “**Settlement Meeting**”) was scheduled for July 28, 2016.
8. Cooper states at paragraph 6 of his affidavit (and incorrectly as set out above) that Romspen was provided with a copy of the Grandview APS on July 19, 2016. He goes on to state that in the period from July 19, 2016 until the date the agreement was to close (originally September 22, extended to September 28, 2016), Romspen did not “suggest that the Grandview offer was improvident or that it objected to same”. This latter statement is also incorrect. As set out in greater detail below, both Cooper and Carmen Fruci (“**Fruci**”, a consultant retained by HVL) were told that the Grandview APS was for below fair market value. Further, Cooper was told that the Grandview APS was in direct violation of a condition of sale that Romspen had put on HVL lands (and that Cooper had agreed to), being that there could not be any commission payable to a broker as part of the sale.
9. Prior to the Settlement Meeting (and in fact prior to September 22, 2016, the initial closing date under the Grandview APS), Romspen was not asked to consent to the Grandview Offer or the Grandview APS, and it did not consent and has never consented to the Grandview Offer or the Grandview APS. Even if the Grandview Offer was, as described by Mr. Friedman, open for acceptance by HVL, given Mr. Friedman’s statement that it remained conditional for 10 business days, that meant that the conditional period ran until the day after Romspen’s Receivership

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Application (August 1, 2016 was a holiday, so using July 20, 2016 as the first business day, the 10th business day was August 3, 2016).

10. Under cover of e-mail dated July 26, 2016, being two days before the Settlement Meeting, Mr. Friedman provided Mr. Bissell with, among other things, a new version of an agreement of purchase and sale signed by HVL and Grandview on July 21, 2016, and with an acceptance date of July 22, 2016 (the Grandview APS). Again, there was a 10 day conditional period for Grandview's due diligence. Attached hereto and marked as Exhibit "B" to this Affidavit is a copy of Mr. Friedman's e-mail dated July 26, 2016, and the attachments thereto, including the Grandview APS in the same form as that attached as Exhibit A to the Cooper Affidavit.

11. The Grandview APS was for \$3,250,000.00 for 29 lots, which is approximately \$112,000.00 per lot, before transaction costs. It also provided for a real estate broker commission of 3.5%.

The Settlement Meeting and the Adjournment of the Romspen Application

The Settlement Meeting

12. The Settlement Meeting took place on July 28, 2016. Steve Mucha and I attended on behalf of Romspen, along with Romspen's lawyers, Mr. Bissell and Walter Traub of GSNH. Cooper attended on behalf of HVL, along with HVL's lawyers, Mr. Friedman and Judy Hamilton. During this meeting, Cooper and Mr. Friedman both advised that the Grandview APS was still conditional.

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13. The sale price in the Grandview APS was below what Grandview had previously offered (and Cooper had rejected) earlier in the year (see para. 14 below), and required payment of a real estate commission, which Mr. Hilson and I had specifically advised Cooper was unacceptable during a previous meeting on May 17, 2016 (the "May 17 Meeting"). At the May 17 Meeting, Cooper had agreed not to enter into any listing agreement that would require payment of a real estate commission. Attached hereto and marked as Exhibit "C" to this Affidavit is an e-mail trail that Fruci forwarded to me on or about November 1, 2016, which includes an e-mail from me dated May 16, 2016 to Cooper and Fruci, and copied to Messrs. Friedman, Traub, Mucha and Hilson, with Cooper's comments on my e-mail in red.

14. My e-mail set out discussion points for the May 17 Meeting, including anticipated lot sales. Cooper's comments include having received a "lowball offer" from Grandview in September, 2015 for [REDACTED] for "31 SF serviced lots + the turnover of the construction of the 19 TH", and an offer of [REDACTED] for 30 SF lots". Cooper states that this subsequent offer from Grandview equalled [REDACTED] per lot, and that he "deferred on" it.

15. The acronym "SF" refers to single-family lots, as opposed to "TH" (townhouse) or "semi" (lots intended to be used for semi-detached houses). Based on my review of the Grandview APS, all 29 of those lots are single-family lots.

16. The email chain on May 16, 2016 (Exhibit C) was not the first time that Cooper had referred to the prior offer from Grandview as a "lowball offer". Attached hereto and marked as Exhibit "D" to this Affidavit are copies of two more e-mails from Cooper to me (and copied to others) dated January 31, 2016.

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17. In the first e-mail, at paragraph 7, Cooper refers to Grandview having made "a lowball offer of [REDACTED]" for 31 single family lots and 8 semi-detached lots, plus a right of first refusal on a future development referred to as Phase 4. In the second e-mail, Cooper provides his valuation of the 8 semi-detached lots at [REDACTED]. Accordingly, and leaving aside the right of first refusal for valuation purposes, the "lowball offer" from Grandview valued the 31 single family lots at approximately [REDACTED].

18. Further, in the second e-mail, Cooper stated that the 31 lots were worth [REDACTED].

19. At the Settlement Meeting, I reminded Cooper that during the May 17 Meeting, he had agreed not to list any of HVL's lots with a broker, given that he had already spoken with all of the builders. I also told Cooper that the price per lot in the Grandview APS was below what he had advised Romspen was the fair market value per lot.

The Outline of the Forbearance Agreement

20. At paragraph 11 of the Cooper Affidavit, Cooper states that Romspen was aware that the closing of the Grandview APS was going to be the source of payment of the first \$3,200,000.00. This is not true. As noted above, I stated at the Settlement Meeting that Romspen would not agree to a deal that involved paying a real estate commission.

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21. My understanding of the First FA Payment of \$3,200,000.00 due September 30, 2016, was that this would be the baseline of the amount that Romspen would have to receive, net of all costs and expenses, from a sale of land in September. This understanding is confirmed by the general forbearance terms (the "**General Forbearance Terms**") that were negotiated and eventually agreed to between counsel over the long weekend between the Settlement Meeting and the first return of the within application. Attached hereto and marked as **Exhibit "E"** to this Affidavit is a copy of Mr. Bissell's e-mail to Mr. Friedman and Ms. Hamilton dated July 29, 2016, the draft General Forbearance Terms attached thereto, and a copy of Mr. Friedman's response by way of e-mail and letter dated July 31, 2016, and the attachments thereto.

22. Among other things, Mr. Bissell had drafted the forbearance terms such that the payment due September 30, 2016 would be in the amount of \$3,200,000.00. In Mr. Friedman's response, he inserted (in handwriting) after "\$3.2 million", the words "less real estate commissions, legal fees and disbursements plus HST relating thereto".

23. Mr. Bissell responded to Mr. Friedman by way of e-mail and letter dated August 1, 2016, and enclosed a marked up version of the forbearance terms. Regarding the September payment, the condition required by Romspen was "HVL to pay a minimum of \$3.2 million (net of all costs) to Romspen on or before September 30, 2016 arising out of the sale of part of the property, or otherwise." [emphasis in original to indicate revisions]. Regarding the Monitor's consent to sale of land, the condition was that "[Rosen Goldberg Inc.]'s written consent shall be required to any sale of land by or on behalf of HVL." Attached hereto and marked as **Exhibit "F"** to this Affidavit is a copy of Mr. Bissell's e-mail to Mr. Friedman dated August 1, 2016, enclosing a letter from Mr. Bissell to Mr. Friedman dated August 1, 2016, and revised General Forbearance Terms.

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24. Mr. Friedman responded to Mr. Bissell by way of e-mail dated August 1, 2016. In his response, Mr. Friedman advised that he had reviewed Mr. Bissell's letter of August 1, 2016, and the revised forbearance terms with his client, and that they were acceptable. Attached hereto and marked as **Exhibit "G"** to this Affidavit is a copy of Mr. Friedman's e-mail to Mr. Bissell dated August 1, 2016, and the revised General Forbearance Terms attached thereto (the latter document being the same version of the document attached to Mr. Bissell's e-mail to Friedman earlier that day).

25. Given the parties' agreement to the General Forbearance Terms, the application herein returnable August 2, 2016 was adjourned *sine die* to a date to be set at a 9:30 a.m. attendance. Attached hereto and marked as **Exhibit "H"** to this Affidavit is a copy of the endorsement of Justice Newbould dated August 2, 2016.

26. Pursuant to Term 13 of the General Forbearance Terms, the parties agreed to enter into a formal forbearance agreement that included the General Forbearance Terms. This formal forbearance agreement, which became the Forbearance Agreement (Exhibit A to the Second Hilson Affidavit), was drafted between August 21 and September 20, 2016.

Continued Efforts to Sell the 29 Lots

27. Throughout July and into August, 2016, efforts were being made to sell the 29 lots that are the subject of the Grandview APS. During that time, I was advised by Fruci, and verily believe, that he was in discussions with Firstview Homes (discussed further under the heading "Firstview Offer") and with Derek Watson of Watson Homes. Further, Judy Boville ("**Boville**"), a former principal of HVL, had engaged a broker, Sean Smith ("**Smith**"). Smith presented an offer for the 29 lots that were the subject of the Grandview APS on or about August 12, 2016, and a revised

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offer on or about August 19, 2016, in the amounts of [REDACTED] and [REDACTED] [REDACTED]. Attached hereto and marked as **Exhibit "I"** to this Affidavit is my exchange of e-mails with Boville from July 26 to August 11, 2016, the last of which copies Smith, and e-mails from Smith attaching offers to purchase the 29 lots, the first to Fruci and me dated August 12, 2016, and the second to me, Cooper and Fruci dated August 19, 2016.

28. As noted in my exchange of e-mails with Boville on August 9, 2016, I advised Boville, in response to her inquiry about the Grandview APS, that Romspen "has to agree to any significant decisions and has no obligation to discharge".

29. As noted above under the "Settlement Meeting" heading, Romspen was not told at the Settlement Meeting that the Grandview APS was no longer conditional. It was not until August 17, 2016, in response to my e-mail to Cooper asking how he intended to deal with the first of the new offers that had been received through Smith, that Cooper responded by stating "there is a firm deal with deposit in place and this closes on September 22, 2016." Cooper was referring to the Grandview APS that Romspen had advised was not acceptable. Attached hereto and marked as **Exhibit "J"** to this Affidavit is a copy of my exchange of e-mail with Cooper dated August 17, 2016.

Drafting The Forbearance Agreement – August 21 to September 9, 2016

30. Mr. Bissell sent Mr. Friedman the first draft of the Forbearance Agreement by way of e-mail dated August 21, 2016. Attached hereto and marked as **Exhibit "K"** to this Affidavit is a copy of Mr. Bissell's e-mail dated August 21, 2016, and the draft Forbearance Agreement.

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31. Term 3 of the Forbearance Agreement deals with the First FA Payment. The Forbearance Agreement was originally drafted to read “[HVL] agrees that it shall pay to [Romspen] on or before September 30, 2016 at least \$3,200,000.00 net of all costs, arising out of the sale of property subject to the Security [which includes the Mortgage] or otherwise” (the “**First FA Payment Term**”).
32. Term 6 of the Forbearance Agreement deals with the appointment of the Monitor. Among other things, this term was originally drafted to state that “the Monitor’s consent will be required for any sale of land by [HVL]...” (the “**Monitor’s Consent Requirement**”).
33. Mr. Friedman provided his revisions by way of e-mail dated August 29, 2016. Attached hereto and marked as **Exhibit “L”** to this Affidavit is a copy of Mr. Friedman’s e-mail dated August 29, 2016, and the draft Forbearance Agreement with his revisions thereto noted in track changes.
34. Mr. Friedman revised the First FA Payment Term, but did not change the word “net”. He did, however, added language after “net” so that it read “net of all applicable costs, including, without limitation, real estate commissions, and legal fees and disbursements arising out of the sale of property subject to the Security or otherwise and to be applied against the outstanding Loan.” [emphasis in original to note Mr. Friedman’s changes].
35. Mr. Friedman made no changes to the Monitor’s Consent Requirement.

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36. Mr. Bissell sent Mr. Friedman a revised draft Forbearance Agreement, and a blackline of the document showing what was and was not accepted, by way of e-mail dated September 1, 2016. Attached hereto and marked as **Exhibit "M"** to this Affidavit is a copy of Mr. Bissell's e-mail to Mr. Friedman dated September 1, 2016, and the attachments thereto.

37. In the revised draft document, Mr. Bissell accepted Mr. Friedman's modification to the First FA Payment Term.

38. Mr. Friedman then provided a track change version of the further revised draft Forbearance Agreement by way of e-mail dated September 9, 2016. Attached hereto and marked as **Exhibit "N"** to this affidavit is a copy of Mr. Friedman's e-mail dated September 9, 2016, and the attachment thereto.

39. Regarding the First FA Payment Term, Mr. Friedman removed the words "net of" and inserted "less". Regarding the Monitor's Consent Requirement, Mr. Friedman added a condition that would have meant that the Monitor's consent to the sale of land was only required "if the purchase price of such sale is not sufficient to pay [Romspen] the amount then due and owing to [Romspen]."

The Confidential APS and the Forbearance Agreement –September 13 to 20, 2016

40. On or about September 12, 2016, while the FA was still being drafted, HVL made Romspen aware of a potential sale of substantially all of HVL's property (that is, all lots save for the 29 subject to the Grandview APS, and 19 townhomes subject to individual agreements of purchase and sale) at a purchase price sufficient to pay out the entire debt owed to Romspen, with a closing date of November 10, 2016. Attached hereto and marked as **Exhibit "O"** to this

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Affidavit is a copy of the agreement of purchase and sale in this regard, with identifying information about the purchaser removed (the "Confidential APS").

41. Romspen was prepared to consent to the Confidential APS.

42. By way of e-mail dated September 13, 2016, Mr. Bissell provided his response to Mr. Friedman's proposed changes to the Forbearance Agreement received on September 9, 2016, and a revised Forbearance Agreement that, among other things, took into account Romspen's consent to the Confidential APS. Attached hereto and marked as **Exhibit "P"** to this Affidavit is a copy of Mr. Bissell's e-mail dated September 13, 2016, and the revised Forbearance Agreement attached thereto.

43. Regarding the First FA Payment Term, Mr. Bissell removed the word "less" and reinserted "net of". In his covering e-mail, Mr. Bissell reminded Mr. Friedman that the General Forbearance Terms that the parties had agreed to on August 1, 2016 did not use the word "less".

44. Regarding the Monitor's Consent Requirement, Mr. Bissell removed the wording inserted by Mr. Friedman, which would have imposed a restriction on the land sales to which the Monitor's written consent was required. However, given Romspen's consent to the Confidential APS, Mr. Bissell specifically carved out that transaction from the Monitor's Consent Requirement. As set out below, this was the only agreement of purchase and sale carved out from the Forbearance Agreement.

45. Mr. Friedman responded to Mr. Bissell by way of e-mail dated September 15, 2016. Attached hereto and marked as **Exhibit "Q"** to this Affidavit is a copy of Mr. Friedman's e-mail dated September 15, 2016, with the attachments thereto.

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46. Mr. Friedman again replaced the words "net of" with the word "less" in the First FA Payment Term. Mr. Friedman accepted the deletion of his change to the Monitor's Consent Requirement, such that the only sale of HVL's land that did not require the Monitor's written consent was the Confidential APS.

47. As set out in the Second Hilson Affidavit, the final version of the Forbearance Agreement does use the word "less" in the First FA Payment Term. However, it was never Romspen's intention that by accepting this language, it was also agreeing to the Grandview APS. That is why, with the exception of the specifically excluded Confidential APS, no sale of land, including the Grandview APS, would take place without the Monitor's written consent.

The Monitor's Position vis-à-vis the Grandview APS

48. I am advised by Brahm Rosen of Rosen Goldberg Inc. (the Monitor) that at no time was the Monitor ever asked to consent, nor did the Monitor ever give its consent, in writing or otherwise, to the Grandview APS.

49. Mr. Rosen advises that on or about August 22, 2016, he met with Cooper to discuss, among other things, HVL's ongoing major activities, and prepared a memorandum following this meeting (the "Monitor's Memo"). Attached hereto and marked as Exhibit "R" to this Affidavit is a copy of the Monitor's Memo dated August 26, 2016.

50. In the Monitor's Memo, the Monitor states, among other things, that the purchase price that HVL agreed to in the Grandview APS is "below the market value for these lots."

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51. I am advised by Mr. Rosen and do verily believe that he provided a copy of the Monitor's Memo to Cooper on or about August 30, 2016. Mr. Rosen further advises that after he provided a copy of the Monitor's Memo to Cooper, other than a meeting on October 7, 2016 when the Monitor's signature was required on a cheque, Cooper refused all of the Monitor's further approaches to meet or speak regarding HVL, notwithstanding Term 8 of the General Forbearance Terms, which stated that the Monitor would have "unfettered access to all consultants, contractors and employees of HVL and Horseshoe Ridge Homes Inc. [HRH, the company affiliated with HVL through whom HVL marketed its lands, as set out in the First Hilson Affidavit] for information and advice", Term 11 of the General Forbearance Terms, which stated that "HVL staff and contractors shall take direction from [the Monitor] as to the appropriate matter(s) of which specific employees and contractors should have carriage of and/or devote their attention and energies to", and the related Terms in the Forbearance Agreement, being Terms 6 (a) and (d).

52. Now shown to me and marked as Exhibit "S" to this affidavit are two e-mail chains between Cooper and Mr. Rosen dated August 30 to 31, 2016, and August 31 to September 1, 2016. The e-mail chains show that Cooper was refusing to take direction from the Monitor.

53. The e-mail from Cooper to the Monitor dated August 31, 2016 sent at 7:43 p.m. confirms that Cooper received the Monitor's Memo. As noted in the Monitor's Memo, the Monitor considered the Grandview APS to be below market value. One of the duties listed in the Monitor's Memo was "Re-evaluation of Grandview deal and options", which was to be undertaken by Fruci. Cooper references the "duties" portion of the Monitor's Memo in his e-mail.

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54. Cooper's e-mail also states "...my major concern is the Grandview sale. It is in the Forbearance as a paydown...". This is not correct. The Grandview APS is not "in" either the General Forbearance Terms (which had been agreed to by the time of Cooper's e-mail), or the Forbearance Agreement (finalized subsequent to Cooper's e-mail), "as a paydown" or otherwise. While it was the intention that the First FA Payment would be made by the sale of HVL land, nowhere was the Grandview APS, or any deal with Grandview, "in the Forbearance as a paydown". Under the Forbearance Agreement, HVL could have asked for Monitor's consent to sell some of its land for \$3,200,000.00, with the proceeds of sale (less transaction costs) paid to Romspen. As an example, if HVL wanted to sell [REDACTED], which is the approximate fair market value as per Cooper's e-mail from January 31, 2016 (see Exhibit D), the proceeds of that sale, less transaction costs, would have been paid to Romspen, if it was approved in writing by the Monitor.

55. In hindsight, it appears that Cooper and HVL were trying to slide approval of the Grandview APS in through the back door when drafting the Forbearance Agreement. On this point, Mr. Friedman's attempt on September 9, 2016 (see Exhibit N) to change the Monitor's Consent Requirement to add the caveat that consent would only be required "if the purchase price of such sale is not sufficient to pay [Romspen] the amount then due and owing to [Romspen]" appears to be another attempt to try to carve out the Grandview APS from requiring the Monitor's consent.

56. Romspen refused to add this carve out to the Monitor's Consent Requirement. In fact, as set out above, there is only one transaction that Romspen agreed to carve out, and that was the Confidential APS because its terms were acceptable to Romspen.

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57. Based on my review of the documents in this matter, Romspen was never specifically asked to carve out the Grandview APS from the Monitor's Consent Requirement. In fact, neither HVL nor its lawyers ever specifically asked Romspen to include the Grandview APS in the Forbearance Agreement. Romspen did not believe that the Grandview APS represented fair market value for the lots it purported to sell, and would have refused any request to include it in the Forbearance Agreement as a transaction that it consented to or otherwise approved.

The Firstview Offer

58. Now shown to me and marked as **Exhibit "T"** to this affidavit is a copy of an Agreement of Purchase and Sale listing HVL and Vendor and First View Homes (Scarborough) Inc. ("**Firstview**") as Purchaser (the "**Firstview APS**"). The Firstview APS is an offer made by Firstview to HVL on or about October 26, 2016 for the same 29 lots as in the Grandview APS, but at a purchase price of [REDACTED] (approximately [REDACTED] per lot, which is approximately [REDACTED] more per lot than the Grandview APS).

59. The Firstview APS is acceptable to Romspen.

60. [REDACTED]
[REDACTED]
[REDACTED]

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61. Now shown to me and marked as Exhibit "U" to this Affidavit is a spreadsheet comparing the Grandview APS and the Firstview APS, and showing the net benefit of the Firstview APS over the Grandview APS. While the Firstview APS is for [REDACTED] more than the Grandview APS, the net gain over the Grandview APS is [REDACTED]

The Second FA Payment

62. At paragraph 24 of the Cooper Affidavit, Cooper states that the Second FA Payment, due on November 15, 2016, came with the "clear understanding" that if it was made, the term in the Loan Agreement would be extended. To the extent that Cooper is alleging that this was discussed by the parties and agreed upon, it is a complete fabrication. Never during the Settlement Meeting, or afterwards, did Romspen advise HVL that if it made the Second FA Payment, it would be entitled to a further extension. While the Forbearance Agreement is silent on the issue of extending the term of the Loan Agreement, the General Forbearance Terms, and specifically Term 7, is clear:

7. Subject to the performance of the Obligor's [which term includes HVL] obligations under this agreement and, without limiting the generality of the foregoing, the absence of a Forbearance Termination Event, the Romspen loan will be extended by way of forbearance to November 15, 2016.

63. The term under the Loan Agreement expired on November 1, 2016. The purpose of the Second FA Payment was to extend the date for payout of the balance outstanding under the Loan Agreement from November 1, 2015 to November 15, 2015.

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64. The Forbearance Agreement required the Second FA Payment to be paid by way of equity injection or by subordinated debt. At paragraph 17 of the Cooper Affidavit, Cooper alleges that unidentified investors “became very hesitant” about injecting equity as a result of the Grandview APS not closing. At paragraph 19, Cooper states that “several other builders” – also unidentified – were willing to enter into a joint venture with HVL, but “walked away due to the dispute with Romspen over the Grandview transaction”.

65. While Cooper has not identified who the investors were, I am aware of only one such group, being HVL’s shareholders. By way of voicemail message to me dated November 11, 2016, one of the shareholders, Roy Brown (“Brown”), advised that he would “be back to you guys [Romspen] after you do what you gotta do”. I understood from this voicemail message that this investor group was not willing to inject any additional equity until after Romspen’s Application had been heard. Attached hereto and marked as Exhibit “V” to this Affidavit is a transcribed copy of Brown’s voicemail message to me dated November 11, 2016, and a transcript of the earlier message referred to in that message (which is a voicemail message from Brown to Mark Hilson dated November 10, 2016).

66. By way of e-mail dated November 17, 2016, Brown advised, among other things, that “...at this point, any revised offer we may want to table for [HVL’s] consideration we would want to ensure [Romspen] was on board and accepting of whatever terms and conditions were agreed by [HVL] and our group.” Attached hereto and marked as Exhibit “W” to this affidavit is a copy of Mr. Brown’s e-mail to me dated November 17, 2016.

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67. I spoke with Brown on or about November 18, 2016. During this conversation, Brown advised me, among other things, that his group does not have any reliable information regarding the financial viability of HVL's development project, including servicing at the site. This issue is dealt with further below under the heading "Servicing Problems".

68. HVL's difficulty in obtaining an equity partner has nothing to do with Romspen's refusal to permit the Grandview APS to close at below fair market value. At least as early as May, 2016, HVL was having difficulty in raising equity. As set out in Cooper's e-mail comments from May 16, 2016 (see Exhibit C hereto), this was because "Boville/Kennedy" – Boville is a former principal of HVL – were "broadcasting" the fact that Romspen had made demand on HVL, and because HVL's financial statements as at December 31, 2015 "showed a loss of \$3,358,546 attributable to [HVL's] construction arm." Regarding these difficulties, Cooper concluded that it was "next to impossible to find new equity from our LP's or anyone else until the operations of our company can be turned around." [emphasis added].

69. At paragraph 18 of the Cooper Affidavit, Cooper states that Best Homes had agreed to "this proposal", though it is not clear what "proposal" he is referring to. The term sheet attached to the Cooper Affidavit as Exhibit F is for a \$3,100,000.00 loan, and is subject to review and acceptance by Romspen (the "Best Homes Term Sheet").

70. The first time I saw the Best Homes Term Sheet was when it was attached to the Cooper Affidavit, which I received in the evening of November 16, 2016, shortly after it was served on Romspen's lawyers. I am not aware of Romspen having been given the Best Homes Term Sheet before it was served as an exhibit to the Cooper Affidavit.

71. Among other things, the Best Homes Term Sheet required Romspen to extend the term of its loan to HVL for 12 months. Since this term is not acceptable to Romspen, it would never have agreed to the Best Homes Term Sheet.

Servicing Problems

72. At paragraph 8 of the Cooper Affidavit, Cooper refers to a CBRE valuation as of December 17, 2014, updated on December 21, 2015, which he attaches as Exhibit B. The valuations are for \$30 million and \$35 million respectively. However, the valuations are based on assumptions that cannot be verified, or are incorrect, being the sewage treatment allocation.

73. At paragraph 21 of the Cooper Affidavit, Cooper states that water and sewer are “in process”, and specifically that the municipal council passed a resolution instructing staff to proceed to implement the interim subsurface treatment facility. This is simply not true. No such resolution has been passed, and staff is not implementing an interim facility. In fact, the interim sewage plan has not yet even been approved.

74. Now shown to me and marked as **Exhibit “X”** to this Affidavit is an e-mail from Mark Rogowski (“**Rogowski**”, an engineering consultant to HVL) to Fruci dated November 21, 2016, including the attachments thereto, which Fruci forwarded to me on the same date.

75. In his e-mail, Rogowski appears to respond to the paragraphs of the Cooper Affidavit that address servicing. Rogowski states that “water and sewage is not presently in place”, and that while the township has committed to servicing “in principle”, funding of the servicing “needs to be established prior to any approval.” Further, regarding the anticipated timeline at paragraph 22 of the Cooper Affidavit, in which he states that servicing could start “in fall of 2017 and would

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provide for the first 73 of the 500 serviced lots to be built with interim sewage”, Rogowski clarifies that approvals for “roads sewer SWM [storm water management] and grading” could be reached by late fall 2017, but the “other above items (temporary WWTP [waste water treatment plant] and water storage) timelines are still inconclusive”.

76. The Monitor confirmed in the Monitor’s Memo (Exhibit R) that there is no capacity in the sole sewage treatment facility, which is a “major issue for all future development”. In the Memo, the Monitor also identified Fruci as the HVL employee who should have primary responsibility for “Dealing with Township, consultants engineers regarding all phases of development” and for “Dealing with all sewage related issues”.

77. On or about November 21, 2016, Fruci sent me an e-mail setting out the milestones that need to be met regarding servicing on the project. Attached hereto and marked as **Exhibit “Y”** to this Affidavit is a copy of Fruci’s e-mail to me dated November 21, 2016.

78. In his e-mail, Fruci advises, at point 7, that provision for the construction of water storage and associated pumps must occur before underground services can be approved and/or installed. As set out in point 5, any interim or permanent services can only be installed with MOE (Ministry of the Environment) approval, which, assuming it is given without revision, is not likely to take place before the fall of 2017. In the circumstances, the best case scenario would see houses being built on the currently-unserved lots in the spring of 2018. Further, because of “half load restrictions” on vehicles imposed by the township until May 1 of each year, which prohibit fully loaded trucks from operating on township roads, an analysis would have to be undertaken before deciding whether it would be of benefit to start work prior to May 1, 2018.

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79. At paragraph 20, Cooper refers to an e-mail exchange with Sabi Ashan ("Ashan", described as a real estate broker) in the afternoon of November 15, 2016, as proof that "Romspen" advised Joe Giannace ("Giannace") of Firstview that Cooper had not been truthful about the availability of water and sewage. Cooper states that this purported misinformation meant that Giannace "didn't want to pursue" a purchase of 50% interest in HVL with "1029 approved lots" for \$6,000,000.00.

80. In the e-mails attached to the Cooper Affidavit, Ashan does not state that "Romspen" advised Giannace that Cooper had been untruthful. At 2:42 p.m., Cooper sent Ashan an e-mail regarding a conversation from "the other day" in which Ashan stated that "Joe said there was no water or sewage re our lands". Cooper states that he believes "someone has gone out of their way to discredit me", and that he is "sure it is Romspen who Joe has talked to".

81. Ashan's response, sent at 4:20 p.m., does not state that someone from Romspen made statements to Giannace that Cooper was untruthful. Ashan's response is simply "That is a reasonable conclusion."

82. I have made inquiries of Mr. Murcha and Mr. Hilson, and they advise that they have never spoken with Giannace regarding HVL properties. I spoke with Giannace on or about October 19, 2016, and during our conversation Giannace advised that he was interested in making an offer for the 29 lots that are the subject of the Grandview APS (which he eventually did, see the Firstview APS at Exhibit O). I never discussed any other HVL properties with Giannace, and I did not discuss the above water and sewage servicing problems with the HVL lots, nor did I ever tell Giannace that Cooper had not been truthful about availability of water and sewage. I am not aware

of any employee of Romspen advising Giannace that Cooper had not been truthful about the availability of water and sewage.

83. Now shown to me and marked as Exhibit "Z" to this Affidavit is a Declaration from Giannace declared November 21, 2016 (the "Giannace Declaration").

84. I received the Giannace Declaration from Fruci on or about November 21, 2016. In the Giannace Declaration, Giannace states that apart from the Firstview Offer, "there has never been any discussion between [Giannace] or any officer or director of First View to purchase any interests in the remaining lands owned by "HVL". Giannace further states that "[t]here has never been any commitment made by First View or any of its officers, to Horseshoe or any other parties to purchase a 50% interest in any lands owned by [HVL]".

85. I make this affidavit in support of in support of Romspen's application for, among other things, an order appointing Rosen Goldberg Inc. as receiver and manager without security over all of HVL's assets, undertakings and property, and for no improper purpose.

SWORN BEFORE ME

at the City of Toronto,
in the Province of Ontario
on November 21, 2016



Commissioner for Taking Affidavits



BASIL (BILL) ULICKI

JOEL MICKELSON
Barrister & Solicitor
162 Cumberland Street, Suite 300
Toronto ON M5R 3N5
Direct Line: 416.928.4870

APPENDIX “4”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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**

**AFFIDAVIT OF JIM COOPER
(Sworn November 16, 2016)**

I, James Cooper, of the City of Burlington, in the Region of Halton, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am an officer and director of Horseshoe Valley Lands Ltd. (HVL) and as such have knowledge of the matters to which I hereinafter depose. Where I have obtained information from other individuals, I have named those individuals and verily believe the information provided by them to be true.
2. This affidavit is in response to the application of Romspen Investment Corporation for a Receivership.

3. It is my believe that Rompsen should not be entitled to rely on the consent to the Receivership provided to them by HVL because Rompsen has acted in bad faith and has been dishonest in the performance of the Forbearance Agreement entered into between HVL and Rompsen on August 1, 2016. I believe that Rompsen's actions are directly related to Horseshoe's inability to perform its obligations under the Forbearance Agreement.

4. On or about July 21, 2016, Horseshoe Valley Lands Limited entered into an agreement of purchase and sale with Garo Bostajian (Grandview Homes) in Trust for a company to be incorporated to sell 29 serviced lots in the development for an amount of [REDACTED] (the "Grandview APS"). The first deposit was \$50,000 and the second was \$200,000. Attached as **Exhibit "A"** is a copy of the Grandview APS and deposit cheques.

5. At that time that we entered into the Grandview APS, we were in default of our forbearance agreement with Rompsen which required HVL to make a payment on May 30, 2016 of \$3,200,000.

6. A copy of the Grandview APS was sent to Rompsen on July 19, 2016. At no time from July 19, 2016 until the date of the closing of the Agreement did Rompsen suggest that the Grandview offer was improvident or that it objected to same.

7. Rompsen served its application for a Receivership on July 22, 2016 returnable August 2, 2016.

8. CBRE who is seeing mid-level Toronto builders move into the area of the Horseshoe Valley Lands Development listed the Horseshoe Valley Lands Development for sale in August 2016 for [REDACTED]. With the additional 19 serviced townhouse lots with a value of [REDACTED] and the Grandview lots referred to below, the total value of the security was [REDACTED]. Rompsen also engaged CBRE for their opinion of value of the Horseshoe Valley Development which came in at [REDACTED] as at December 17, 2014. The list price was based on their updated valuation as at December 21, 2015 of [REDACTED]. Attached as Exhibit "B" is the CBRE valuation.

9. The security value was the reason we approached Rompsen to negotiate additional forbearance on the loan so that the lands could be sold as a going concern and that HVL could continue to develop the project and/or explore various options for joint venture projects that I had been discussing with various builders such as Chestnut Hill Homes and Best Homes, Geranium Homes, The Conservatory Group and Alliance Homes. All of these companies expressed a strong interest in becoming joint venture partners in the project which would provide us the working capital required to not only service the loan but benefit the limited partners.

10. On August 1, 2016, the parties agreed to enter into a Forbearance Agreement. In that Agreement, Rompsen specifically agreed that the next payment due under the loan would be shortly following the closing date of the Grandview APS, and those proceeds would be the purchase price less real estate fees and commissions. Rompsen had been provided with the Grandview APS.

11. We advised Rompsen and Rompsen was aware that the closing date of the Grandview APS was September 22, 2016 and that this sale was the source of the funds that would form the payment

to Rompsen due on or before September 30, 2016. The Forbearance Agreement was specifically drafted to take this into account.

12. On the closing date of September 22, 2016, Grandview provided us with the closing funds and the deposits in trust totaling [REDACTED]. The only item required to complete the transaction on September 22, 2016 was the discharge of Rompsen's mortgage and security relating to the lots being conveyed to the purchaser on closing. Attached as Exhibit "C" is a copy of the certified cheque for the closing funds and a copy of the trust ledger showing the funds in the Friedman Law Professional Corporation trust account.

13. On the day of closing, Rompsen refused to discharge its security against the 29 lots and allow for the transfer. Grandview tendered the purchase price, and HVL was unable to transfer clear title because of Rompsen's refusal to lift the security.

14. By agreement between Grandview and HVL, the closing date was extended to September 28 in order to obtain the discharge of the security. Despite being advised of the extension, Rompsen continued to refuse to provide the required discharges, notwithstanding continuous and numerous requests made by HVL and their lawyers to do so. Attached as Exhibit "D" is a copy of a letter from my lawyer, Bill Friedman to Walter Traub dated September 30, 2016 confirming that Rompsen's refusal to lift the security on closing prevented HVL from complying with its obligations to make the September 30, 2016 payment.

15. As a direct result of Rompsen failing to lift the security to allow the Grandview APS to close, Grandview registered cautions against the 29 lots and has stated its intention to bring an action for specific performance.

16. Horseshoe Valley Lands has also been sued by Hassey Realty for failure to pay commissions on the Grandview Sale. Attached as **Exhibit "E"** is a copy of the statement of claim.

17. As a direct result of Rompsen failing to lift the security to allow us to transfer title to Grandview, the investors who had been willing to inject the \$3,000,000 in equity by November 15, 2016 in accordance with the Forbearance agreement became very hesitant about injecting this equity. The proposal being reviewed with a number of builders, including Best Homes, entailed a joint venture participation in our development lands for a further \$3,000,000, which meant that a total of \$6,000,000 was being negotiated with the funds being used to reduce the Rompsen debt.

18. Best Homes had agreed to this proposal and in fact had verbally confirmed on three occasions on November 15, 2016 that they were proceeding with the term sheet and providing the funds to be held in trust pending the negotiation of the extension terms with Rompsen. Attached as **Exhibit "F"** is a copy of the term sheet outlining the transaction.

19. Since November 1, 2016, I had discussions with several other builders who were willing to enter into a joint investment with HVL in place of the investors who had walked away due to the dispute with Rompsen over the Grandview transaction and therefore the ultimate level of the debt to be serviced. These investors agreed to Rompsen's terms that any security for their investment be behind Rompsen's security. We had lengthy negotiations with Geranium Homes who have done

complete cash flow projections on the complete project showing land and building profits totaling [REDACTED]. Attached as **Exhibit "G"** is a copy of the preliminary land and housing proforma prepared by Geranium Homes.

20. I have been told that Rompsen advised a potential investor that I had not been truthful about the availability of water and sewage for Phase 4 and future development. Sabi Ashan, a real estate broker had discussions with the Joe Giannace principal of Firstview, about purchasing a 50% interest in Horseshoe Valley with 1029 draft approved lots for [REDACTED] in addition to his purchase of the 29 Grandview Lots for [REDACTED]. This would have given us additional working capital over and above what was required under the Forbearance Agreement with Rompsen. Joe Giannace had been advised by Rompsen that there was no water or sewage for our next Phase 4 which was not correct. I was told that Joe didn't want to pursue the transaction because I had not been truthful about water and sewage. Attached as **Exhibit "H"** is an email from Sabi confirming that conversation.

21. This is not correct as both water and sewer are in process. The municipal council passed a resolution instructing staff to proceed to implement the interim subsurface treatment facility. The 2016 Capital Budget of the Township also allocates \$2.3 million for the Highlands water storage facilities. The township is fully committed to providing servicing for the project. Attached as **Exhibit "I"** is a copy of the municipal budget showing the budgeting already prepared for the interim sewage plan.

22. I am assured by the planner, Rudy & Associates that the targeted completion date of March 2017 for the draft plan approval for Phase 4 is reasonable and doable. Following draft plan

approval, another five months the Ministry of Environment would be able to approve the engineering plans. The servicing could then start in fall of 2017 and would provide for the first 73 of the 500 serviced lots to be built with interim sewage. A sales campaign for a builder could start already in March 2017 on completion of the draft plan. The value of the Phase 4 with 73 lots is [REDACTED] with servicing costs of [REDACTED].

23. Given the behavior of Rompsen to date, and precisely because they keep denying that servicing is essentially complete, I believe that it will instruct the Receiver to sell the lots without completing the sewage and water servicing as has already been worked out, which will significantly undercut the sale price. With real estate values skyrocketing, it would be imprudent not to complete the servicing that HVL has invested in completing over the last year.

24. The \$3,000,000 payment due November 15, 2016 under the Forbearance Agreement was negotiated with the clear understanding that if that was made, then the loan term would be extended. It makes no commercial sense to have a \$3,000,000 payment due on the same day the entire loan is due. That payment was being made on the condition of a loan extension.

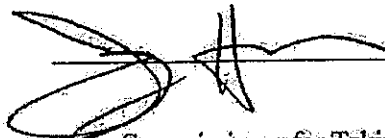
25. I have serious concerns with the accounting of the loan debt by Rompsen. As of November 3, 2016, Rompsen confirmed that the outstanding loan debt was \$20,378,002.03 in their certificate of advance. Attached as **Exhibit "J"** is a copy of the certificate of advance.

26. However, their statement suggest that between November 3, 2016 and the date of Mark Hillson's affidavit, there have been additional interest charges in the amount of \$1,380,132.85. I

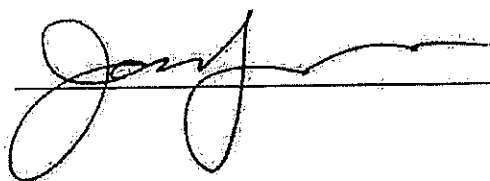
do not understand how this amount was calculated as interest was always charged and compounded pursuant to the terms of the mortgage loan.

27. I swear this affidavit in response to the Applicant's motion to appoint a receiver and not for any improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 16th day of November, 2016.



Commissioner for Taking Oaths, Etc.

} 

CONFIDENTIAL
APPENDIX “1”

APPENDIX “5”



MEMORANDUM

TO: Romspen Investment Corporation (Bill Ulicki)

FROM: Rosen Goldberg Inc. (Brahm Rosen)

DATE: August 26, 2016

SUBJECT: Horseshoe Valley Lands Ltd. ("HVL" or "Company")

This is our initial memorandum regarding HV based on preliminary discussion with the principal and review of information provided primarily by HV.

I BACKGROUND

- HV is a land development company with various tracts of lands North of the Barrie area surrounding Horseshoe Valley Resort ("Resort") ;
- The Company is structured as limited partnership and there are a number of investors;
- HV had been managed primarily by Julie Boville and Jim Cooper (who together own the majority of the General Partner), until Ms. Boville's departure from management. We understand that a claim has been commenced against Ms. Boville.
- Several years ago HVL engaged Mr. Carmen Fruci to assist with the development process;
- The Company has previously developed 27 townhomes which resulted in a loss in excess of \$2.3 million. These losses continue to grow due to the significant number of deficiencies that were identified by the purchasers, which continue to be remedied;
- HV's first ranking lender is Romspen Investment Corporation ("RIC"), who is currently owed approximately \$21.4 million. The loan is in default. RIV and HV have negotiated terms of a forbearance agreement, in which among the terms are milestones whereby HV is required to pay down the loan;
- The RIC indebtedness includes deposit of \$860,000 posted with Tarion in respect of the development of the townhomes referenced above;
- Skyline Horseshoe Valley Inc ("Skyline") is the owner of the resort and other adjacent lands. Additionally Skyline owns the sole sewage treatment facility that is serving the area. We understand that there is no further capacity in respect of the Skyline facility which is a major issue for all further development. A temporary solution and a long term solution needs to be developed by the impacted parties in order to move forward. We are advised that these discussions have been ongoing, but need to be accelerated;
- A master servicing study has been initiated by the township and the various landowners to determine the best solution for long term sewage treatment. We understand that the landowner groups may not share the same goals with respect to the completion of this study so



ROSEN GOLDBERG
CONSULTANTS & ASSOCIATES INC.

the study has been delayed due to an unresolved conflict amongst the parties relating to "extra" charges by the consultant.

II CURRENT ACTIVITIES

The following, inter alia, are some of the ongoing major activities and initiatives of HV:

- HV has recently entered into a purchase and sale agreement with Grandview Homes for the sale of 29 single family lots for \$3.2 million. We understand that conditions have been waived and that a closing date has been established for September 22, 2016. We understand that this agreement was entered into without the knowledge and consent of RIC and the purchase price agreed to is below the market value for these lots;
- The Company has entered into a listing agreement with CBRE to sell all of its lots. CBRE has commenced its marketing activities;
- HV continues to deal with the Township, planners and engineers regarding the further development of its lands;
- Ongoing dealings with the short term sewage systems issues with the Township;
- The Company, through a subsidiary has entered into agreements to sell nineteen townhomes. The closings are scheduled to take place in October 2016. We understand that these sales will generate a significant loss to HVL;
- Completion of the remediation of the deficiencies of the 27 townhomes;
- Completion of the construction of the Quinney custom home. We understand that the funding for this project is from the purchaser, but the profits, if any, will accrue to HVL;
- Dealing with LCs held by Township and conditions to obtain release;
- Dealings with Tarion and Hydro, specifically in respect of deposits being held;
- Ongoing activities to find a partner and raise capital to satisfy the RIC indebtedness and the terms of the forbearance agreement.

III Recommendation regarding Division of Responsibilities

There are many priority issues that must be dealt with in a short period of time with limited resources. Based on our preliminary review we would recommend the following based on the knowledge and expertise of the parties. Please note that this is a fluid situation and will require ongoing adjustment.

Activity	Primary Responsibility
Dealing with financial matters including budgets, cash flows communications with Limited Partners etc.	Jim Cooper
Dealing with deficiencies of townhomes	Jim Cooper and Carmen Fruci
Dealing with sale of lands(CBRE)	Jim Cooper
Identifying partners, raising capital	Jim Cooper
Dealing with Boville litigation	Jim Cooper
Dealing with Tarion matters	Jim Cooper
Dealing with Township, consultants engineers regarding all phases of development	Carmen Fruci



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ATTORNEYS AT LAW

Termination of sale of 19 units and related legal issues	Jim Cooper
Re-evaluation of Grandview deal and options	Carmen Fruci
Dealing with all sewage related issues	Carmen Fruci
Evaluating LC's and ability to reduce of have refunded	Carmen Fruci
Office relocation to sales office	Jim Cooper
All construction related matters	Carmen Fruci

We would pleased to discuss at your convenience.

CONFIDENTIAL
APPENDIX “2”

CONFIDENTIAL
APPENDIX “3”

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

SECOND SUPPLEMENTARY MOTION
RECORD OF THE RECEIVER,
ROSEN GOLDBERG INC.

DICKINSON WRIGHT LLP

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Lawyers for Rosen Goldberg Inc. in its capacity as Receiver
of Horseshoe Valley Lands Ltd.