

**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, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED**

**BETWEEN:**

**ROMSPEN INVESTMENT CORPORATION**

**Applicant**

**- and -**

**6711162 CANADA INC., 1794247 ONTARIO INC., 1387267 ONTARIO INC.,  
1564168 ONTARIO INC., 2033387 ONTARIO INC., HUGEL LOFTS LTD.,  
ALTAF SOORTY, ZORAN COCOV and CASINO R.V. RESORTS INC.**

**Respondents**

**MOTION RECORD**

**(Receiver's Motion returnable November 24, 2015)**

November 19, 2015

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**ROMSPEN INVESTMENT CORPORATION**  
Applicant

-and-

**6711162 CANADA INC. et al**  
Respondents

Court File No. CV-14-10470-00CL

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

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

**MOTION RECORD**

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Rosen Goldberg Inc.



**Tab 1**

**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, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C. 30, AS AMENDED**

**BETWEEN:**

**ROMSPEN INVESTMENT CORPORATION**

Applicant

- and -

**6711162 CANADA INC., 1794247 ONTARIO INC., 1387267 ONTARIO INC.,  
1564168 ONTARIO INC., 2033387 ONTARIO INC., HUGEL LOFTS LTD.,  
ALTAF SOORTY, ZORAN COCOV and CASINO R.V. RESORTS INC.**

Respondents

**NOTICE OF MOTION  
(Returnable November 24, 2015)**

Rosen Goldberg Inc. (the “Receiver”), in its capacity as receiver of the assets, undertakings and properties of the Respondents (the “Debtors”) will make a Motion to a Judge of the Commercial List on Tuesday, November, 24, 2015, 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, if necessary, abridging the time for service and validating service of this Notice of Motion and Motion Record, and dispensing with further service hereof such that this Motion is properly returnable on Tuesday, November 24, 2015;

- (b) an Order approving the actions and proposed actions of the Receiver as set out in its Third and Final Report dated November 19, 2015 (the “**Third Report**”), and approving the Third Report;
- (c) a declaration regarding the amount outstanding in respect of the indebtedness owing by the Debtors to Romspen Investment Corporation;
- (d) an Order approving the fees and disbursements of the Receiver and its counsel as set out in the Third Report;
- (e) an Order approving the Receiver’s interim statement of receipts and disbursements;
- (f) after payment of the fees and disbursements of the Receiver and its counsel, in the amounts approved by the court, an Order authorizing and directing the Receiver to distribute the funds remaining in its hands as follows:
  - (i) to Romspen, the amount owing in respect of the Receiver’s borrowings;
  - (ii) to Court, to the credit of this proceeding, pending further Order of this Court, \$114,569 representing the holdback required pursuant to the *Construction Lien Act* in respect of the Marine Condo Land; and
  - (iii) the balance to Romspen Investment Corporation.
- (g) an Order discharging Rosen Goldberg Inc. as Receiver of the undertakings, property and assets of the Debtors;
- (h) an Order releasing Rosen Goldberg Inc. from any and all liability it now has or may have by reason of, or in any way arising out of, the acts or omissions of

Rosen Goldberg Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part; and

- (i) such further relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) In accordance with the previous Orders of the Court (the "Approval Order"), the Receiver has completed the sale of certain of the Debtors' assets, property, and undertakings and expects to complete an additional and final sale prior to November 30, 2015;
- (b) The Receiver has substantially completed the administration of the Debtors' estate and now wishes to distribute the funds in its hands realized from the sale of the Debtors' assets to the secured creditors in accordance with the priority of their claims;
- (c) The Receiver has obtained independent legal opinions confirming the validity, enforceability and priority (subject to certain exceptions) of the security held by Romspen Investment Corporation, and certain other liens and charges registered against the Debtors' Property;
- (d) The Receiver is of the view that its fees and disbursements and those of its legal counsel, are reasonable and recommends approval thereof to this court;
- (e) Rules 3.02 and 16.08 of the *Rules of Civil Procedure*; and
- (f) Such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) The Third Report of Rosen Goldberg Inc. dated November 19, 2015, and the Appendices attached thereto; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

November 19, 2015

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Court File No. CV-14-10470-00CL

**ONTARIO**  
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**Tab 2**

*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, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, C. C.30, AS AMENDED**

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

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**Respondents**

**THIRD AND FINAL REPORT OF ROSEN GOLDBERG INC.**

**November 19, 2015**

## I INTRODUCTION

1. By Order of the Honourable Justice D.M. Brown dated May 5, 2014, Rosen Goldberg Inc. (formerly SF Partners Inc.) was appointed receiver and construction lien trustee (in such capacities, the “Receiver”) of the assets, undertakings and properties of 6711162 Canada Inc., 1794247 Ontario Inc., 1387267 Ontario Inc., 1564168 Ontario Inc., 2033387 Ontario Inc. and Hugel Lofts Ltd. (collectively, the “Corporate Debtors”), and of a parcel of real estate (and the proceeds arising therefrom) owned by Altaf Soorty and Zoran Cocov (collectively, the “Individual Debtors”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, section 101 of the *Courts of Justice Act* and section 68 of the *Construction Lien Act* (the “Receivership Order”). A copy of the Receivership Order is attached as **Appendix “A”**.
2. Pursuant to Articles of Amendment filed with Industry Canada, effective January 1, 2015, the legal name of SF Partners Inc. was changed to Rosen Goldberg Inc.
3. The Corporate Debtors and the Individual Debtors are hereinafter referred to collectively as the “Debtors”.
4. This Third and Final Report is filed with this Honorable Court for the following purposes:
  - (a) to report on and seek approval of the Receiver’s activities since the date of its Second Report;
  - (b) to seek the Court’s approval of this Third and Final Report, and the Receiver’s conduct and activities described herein;
  - (c) to seek the Court’s approval with respect to the Receiver’s proposed distribution as set out in this Third and Final Report;



- (d) to provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from May 5, 2014 to November 16, 2015;
- (e) to obtain approval of the fees and disbursements of the Receiver and its legal counsel in these proceedings; and
- (f) to obtain the discharge of Rosen Goldberg Inc. from the powers, duties and obligations attendant to its appointment as Receiver, including as a term of the Order discharging it, the release and discharge from any and all liability which the Receiver now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part

## **II TERMS OF REFERENCE**

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

### III BACKGROUND

6. At the time the Receivership Order was made, the assets subject to the Receiver's administration consisted of:
  - (a) a partially-constructed 4-storey residential condominium building with approximately 53 units, on one (1) parcel of land, municipally known as 151 Marina Park Avenue in Midland, Ontario (the "**Marine Condo Land**");
  - (b) 16.3 acres of vacant land, on two (2) parcels, municipally known 586 Victoria Street and 650 Vindin Street, in Midland, Ontario (the "**Midland Land**");
  - (c) 76.68 acres of land, on five (5) parcels, in Ramara, Ontario (the "**Ramara Lands**");  
and
  - (d) 3.69 acres of land, on six (6) parcels, in Cambridge, Ontario (the "**Cambridge Lands**").
7. The Marine Condo Land, the Midland Land, the Ramara Lands and the Cambridge Lands are hereinafter referred to collectively as the "**Properties**".
8. All of the Properties were blanketed by a mortgage in favour of Romspen in the face amount of \$16 million, and a general assignment of rents in favour of Romspen. With the exception of two (2) of the six (6) parcels in Cambridge, one (1) of the five (5) parcels in Ramara and the Marine Condo Land, Romspen's mortgage was (and remains as against the unsold Properties) first-ranking. Romspen also held an assignment of a first mortgage in favour of Laurentian Bank of Canada in the face amount of \$3.1 million over the Marine Condo Land. Romspen's blanket mortgage was second-ranking behind the Laurentian Bank first mortgage over the Marine Condo Land.



**The Marine Condo Land and the Midland Land**

9. The Marine Condo Land and the Midland Land were owned by Hugel Lofts Ltd. Both properties are located near downtown Midland, adjacent to a marina, with nearby access to Georgian Bay. The Marine Condo Land was previously marketed as “Marina Park”.
10. Prior to the Receiver’s appointment, the condominium project on the Marine Condo Land was at a standstill due to the registration of the following construction liens:

<b>Construction Liens</b>					
	<b>Lien Claimant</b>	<b>Amount Claimed</b>	<b>Date of Registration</b>	<b>Date of Registration of Certificate of Action</b>	<b>PIN(s)</b>
1.	Norton Electric Corporation (Canada)	\$330,204	2013/12/11	2014/01/24	58452-0395 LT
2.	Fitrust Plumbing and Drain Services Ltd.	\$72,245	2013/12/11	2014/01/29	58452-0395 LT
3.	4536631 Canada Inc.	\$146,819	2013/12/13	2014/01/29	58452-0395 LT 58452-0389 LT 58452-0394 LT
4.	Sierra Construction (Woodstock) Limited	\$1,479,670	2013/12/19	2014/02/06	58452-0395 LT
5.	Roofco Ontario Inc.	\$44,837	2013/12/19	2014/02/04	58452-0395 LT 58452-0389 LT 58452-0394 LT
6.	S. Charlebois and Haulage and Excavating Ltd.	\$177,092	2013/12/20	2014/02/06	58452-0395 LT 58452-0389 LT 58452-0394 LT

11. As of this date, none of the lien claimants have sought to lift, or asked the Receiver to consent to lift, the stay of proceedings imposed under the Receivership Order in order to prosecute their actions.

#### **The Ramara Lands**

12. Of the five (5) parcels which comprise the Ramara Lands, two (2) are owned by 6171162 Canada Inc., two (2) are owned by 179257 Ontario Inc. and one (1), which is a shoreline parcel, is owned by the Individual Debtors.
13. The shoreline parcel is subject to a first mortgage held by the Toronto Dominion Bank (“TD”) in the face amount of \$568,750. Romspen’s mortgage ranks immediately behind TD, but is otherwise first-ranking over the Ramara Lands.
14. Romspen is the sole *PPSA* registrant over 671162 Canada Inc. and 1794247 Ontario Inc. in connection with general security agreements. It holds subordinate-in-time *PPSA* registrations over the Individual Debtors in connection with general security agreements.

#### **The Cambridge Lands**

15. Of the six (6) parcels comprising the Cambridge Lands, two (2) are owned by 1387267 Ontario Inc., three (3) are owned by 1564168 Ontario Inc. and one (1) is owned by 2033387 Ontario Inc.
16. Romspen’s mortgage is first ranking against the parcels owned by 1387267 Ontario Inc. and second ranking against the parcels owned by 1564168 Ontario Inc. and 2033387 Ontario Inc., behind a first mortgage held by Pezzack Financial Services Inc. and The Canada Trust Company in the principal amount of \$300,000.
17. Romspen is the sole *PPSA* registrant over 1387267 Ontario Inc. and 154168 Ontario Inc. in connection with general security agreements. Its *PPSA* registration over 2033387

Ontario Inc. (also filed in connection with a general security security) is subordinate in time only to a registration in favour of Her Majesty in Right of Ontario represented by the Ministry of Finance.

### **Orders of Justice Conway**

18. In its Second Report dated June 2, 2015, a copy of which is attached (without exhibits) as **Appendix “B”**, the Receiver recommended the approval of a series of proposed transactions, all of which were in fact approved by Orders of Justice Conway dated June 8, 2015.
19. Summarized briefly, the proposed transactions which Justice Conway approved were as follows:
  - a paydown of the Romspen Indebtedness by the Individual Debtors of \$4,299,500 (the **“Paydown”**), which the Receiver was holding in trust;
  - a \$4,000,000 credit bid on the part of Romspen for the Marine Condo Land, allocated on the basis of \$3,500,000 for the land and \$500,000 for a letter of credit held by the Town of Midland for off-site work;
  - a \$2,000,000 credit bid on the part of Romspen for the Midland Land;
  - a company owned and controlled by the Individual Debtors purchasing the Ramara Lands from the Receiver, for a purchase price equivalent to the cost of:  
(a) assuming all prior ranking claims, including the TD mortgage in the face amount of \$568,750 over one of the Ramara parcels; and (b) assuming the Romspen Indebtedness following the release of the Paydown to Romspen;
  - the Paydown being immediately released by the Receiver to Romspen upon an approval and vesting order being granted in respect of the Ramara Lands;

- the Receiver being discharged as receiver over the Individual Debtors contemporaneously with the closing of the purchase of the Ramara Lands;
  - the Cambridge Lands remaining under the administration of the Receiver until it is sold or further directions are sought.
20. Copies of the Orders of Justice Conway dated June 8, 2015 approving the foregoing are attached collectively as **Appendix “C”**.

#### **IV RECEIVER’S ACTIVITIES**

##### **Distributions**

21. In accordance with the June 8, 2015 Order of Justice Conway dealing with distributions, the Paydown was released to Romspen and payment was made to Rona Inc.

##### **Completion of Sales of Marine Condo Land and Midland Land**

22. The sale by the Receiver of the Marine Condo Land to RIC (Marine Condo) Inc., a Romspen affiliate, was completed on June 30, 2015. A copy of the Receiver’s Certificate dated June 30, 2015 certifying the completion of the sale transaction in respect of the Marine Condo Land is attached as **Appendix “D”**.
23. The sale by the Receiver of the Midland Land to RIC (Midland Land) Inc. was completed on June 30, 2015. A copy of the Receiver’s Certificate dated June 30, 2015 certifying the completion of the sale transaction in respect of the Midland Land is attached as **Appendix “E”**.

### **Non-Completion of Sale of Ramara Lands**

24. Pursuant to the Order of Justice Conway dated June 8, 2015 dealing with the Ramara Lands, a sale of the Ramara Lands by the Receiver to 193425 Ontario Inc. (“193”), a corporation controlled by the Individual Debtors, was approved on the terms set out in an agreement of purchase and sale dated May 27, 2015 (the “**Ramara APS**”). A copy of the Ramara APS is attached as **Appendix “F”**.
25. Under the Ramara APS, the purchase price payable by 193 for the Ramara Lands is equal to the aggregate of the cost of: (a) assuming all prior ranking claims, including the TD mortgage in the face amount of \$568,750 over one of the Ramara parcels; and (b) assuming the Romspen Indebtedness following the release of the Paydown to Romspen.
26. On August 14, 2014, Romspen, through its lawyers, Garfinkle Biderman, delivered a draft Loan Modification and Assumption Agreement to 193’s lawyers, Anderson and Wylde. A copy of Garfinkle Biderman’s email of August 14, 2015 and the enclosures therewith is attached as **Appendix “G”**.
27. Subsequently, 193, the individual Debtors and Romspen were unable to come to terms with respect to 193’s assumption of the Romspen Indebtedness.

### **New Workout Plan**

28. On October 26, 2014, Zoran Cocov, one of the Individual Debtors, contacted the Receiver to advise, for the first time, that rather than complete the Ramara APS on the basis of assuming of the Romspen indebtedness, 193 had obtained financing from another lender, Goldy Metals, and wished to proceed with paying out the Romspen Indebtedness in full immediately and obtaining the Receiver’s discharge, including without limitation the Receiver’s discharge over the Cambridge Lands (the “**New Workout Plan**”).

29. The Receiver and its counsel worked intensively with the Individual Debtors, 193, Goldy Metals, their respective counsel, and Romspen, to assist in facilitating and implementing the New Workout Plan as quickly as possible.
30. To expedite Goldy Metals advancing the required financing to repay the Romspen Indebtedness prior to the Receiver's discharge, it was proposed that Romspen assign its security to Goldy Metals immediately, including its mortgage security over the Cambridge Lands. Romspen was agreeable to doing so provided that the Debtors were prepared to confirm that Romspen's calculation of the Romspen Indebtedness is correct and waive and release any claims they may have against Romspen in connection therewith.
31. Unfortunately, during the course of the Receiver's administration, the Receiver, and in particular its counsel, Dickinson Wright LLP, have been subjected to extensive, incendiary criticism, unfounded accusations of preferring the interests of Romspen over the Debtors and veiled threats of litigation.
32. Copies of e-mails received from Altaf Soorty expressing criticisms of the Receiver and Dickinson Wright LLP are attached as **Appendix "H"**. Mr. Soorty's criticisms are unfounded and evince a profound misunderstanding of, and contempt for, the Receiver's role and the receivership process. During the course of its administration, the Receiver has undertaken intensive efforts to assist and facilitate the Debtors in restructuring their obligations in a manner which enables them to retain control of the Ramara Lands and the Cambridge Lands and see another day.
33. In light of the Debtors' request that the Receiver obtain its discharge immediately in connection with the New Workout Plan, including its discharge over the Cambridge Lands, the Receiver required, as a term of the Discharge Order, a provision releasing and discharging it from any and all liability which it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its

capacity as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part. The Receiver further required the Debtors' agreement not to oppose the approval of its fees and disbursements and the fees and disbursements of its counsel. The Debtors refused to agree.

34. Had the Debtors successfully come to terms with Romspen regarding 193's assumption of the existing Romspen Indebtedness, the Receiver would have been in a position to seek approval of its and Dickinson Wright LLP's fees, while retaining a charge for its fees over the Cambridge Lands and would have been in a position to rely on the Receiver's Charge over the Cambridge Lands as security for such fees.
35. In an effort to facilitate the implementation of the New Workout Plan, the Receiver now seeks an Order of the Court approving its fees and disbursement and those of its counsel. As well, the Receiver requests an Order granting the Receiver its discharge and releasing the Receiver from all claims and liabilities other than those rising from willful misconduct or gross negligence.

#### **Concerns Raised Regarding Calculation of Romspen Indebtedness**

36. On November 14, 2015, Dickinson Wright LLP received an e-mail from Mr. Cocov requesting various information regarding the calculation of the Romspen Indebtedness. Dickinson Wright and the Receiver have expended significant time in reviewing the concerns expressed in Mr. Cocov's e-mail and responding to Mr. Cocov's queries. Copies of Mr. Cocov's e-mail and of Dickinson Wright LLP's responses thereto are attached as **Appendix "I"**. The Receiver has reviewed Romspen's calculation of the Romspen Indebtedness and is of the view that the calculation appears to be correct.

#### **V RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

37. Attached as **Appendix "J"** is the Receiver's Interim Statement of Receipts and Disbursements for the period from May 5, 2014 to November 16, 2015, which indicates a

cash balance on hand of \$285,775.00. Total cash receipts were \$10,557,933.00 and total cash disbursements were \$521,672.00, prior to the interim distributions made by the Receiver to the secured creditors and lien claimant.

## **VI PROFESSIONAL FEES**

38. The total fees and disbursements of the Receiver in connection with the administration of the estate amount to \$208,367.90, exclusive of HST, as of November 17, 2015. The Receiver expects to incur additional fees and disbursements in completing its administration in the amount of \$11,300.00, not including legal fees. Particulars of the Receiver's fees and disbursements including hours spent, hourly rates and total fees are set out in Exhibits "A" and "B" to the Affidavit of Brahm Rosen sworn November 17, 2015, a copy of which is attached as **Appendix "K"**.
39. The total fees and disbursements of Dickinson Wright LLP as legal counsel to the Receiver for the period from June 26, 2014 through November 17, 2015 amount to \$179,655.41, exclusive of HST. Particulars of the hours spent, hourly rates, and total fees and disbursements of Dickinson Wright LLP are set out in Exhibits "A" and "B" to the Affidavit of Lisa Come sworn November 19, 2015. A copy of the Affidavit of Lisa Come is attached as **Appendix "L"**. In addition, Dickinson Wright LLP has informed the Receiver that it estimates additional fees and disbursements through completion of the administration including the costs of closing the final sale transaction, in the amount of approximately \$25,000.

## **VII PROPOSED FINAL DISTRIBUTION**

40. As was detailed in the Receiver's Second Report, the Receiver was advised by the quantity surveyor in respect of the Marine Condo Land condominium project that the amount of the statutory holdback required in respect of the Marine Condo Land project is \$114,569.00.





41. The Receiver is holding the sum of \$114,569.00 from the cash portion of the purchase price paid in respect of the Marine Condo Lands. Subject to the approval of the Court, the Receiver proposes to pay that amount representing the holdback into Court to the credit of this proceeding subject to further Order of the Court to be obtained by the lien claimants and/or Hugel Lofts Ltd.
42. As set out in the Receiver's Second Report, the Receiver has obtained an opinion from its counsel on the validity and priority of Romspen's security. Subject to the customary qualifications, the Receiver's counsel has opined that Romspen's security is valid and enforceable and has priority as against the Ramara Lands, subject only to a mortgage in favor of the Toronto-Dominion Bank on one of the parcels owned by the Individual Debtors (the "TD Charge").
43. Accordingly, the Receiver proposes to pay the balance of funds remaining in its hands, following completion of the sale of the Ramara Lands, and after payment of its fees and those of its legal counsel, in an amount approved by the Court, as follows:
  - (a) to Romspen, the amount owing under the Receiver's Certificates in respect of the Receiver's borrowings;
  - (b) into Court, \$114,569.00, in respect of the Marine Condo Lands holdback required to be maintained under the *Construction Lien Act*; and
  - (c) the balance to Romspen.

## **IX RECEIVER'S DISCHARGE**

44. As the Receiver's administration of this estate is substantially complete, and in order to avoid the costs of making a further Motion to the Court in order to obtain the Receiver's discharge, the Receiver is presently seeking an Order discharging Rosen Goldberg Inc. from the powers, duties and obligations attendant to its appointment as Receiver. The Receiver is proposing that the Discharge Order become effective on the day that the



Receiver files with the Court a certificate in which the Receiver certifies that it has distributed all funds in its possession, prepared a final statement of receipts and disbursements, a copy of which is to be attached to the Receiver's certificate; and has completed its administration of the receivership.

**X CONCLUSION**

45. The Receiver respectfully requests that the Court grant an Order which provides for the following:

(d) approval of the Receiver's Third Report and the activities of the Receiver described herein;

(e) approval of the Interim Statement of Receipts and Disbursements;

(f) approval of the Receiver's proposed distributions as set out herein;

(g) approval of the accounts of the Receiver and its legal counsel as set out herein; and

(h) discharge of Rosen Goldberg Inc. from the powers, duties and obligations attendant to its appointment as Receiver, effective upon the filing of the Receiver's Discharge Certificate indicating that the Receiver has completed its administration.



All of which is respectfully submitted,

Dated at Toronto, Ontario, this 19<sup>th</sup> day of November, 2015.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER OF  
6711162 CANADA INC., 1794247 ONTARIO INC.,  
1387267 ONTARIO INC., 1564168 ONTARIO INC.,  
2033387 ONTARIO INC., HUGEL LOFTS LTD.,  
ALTAf SOORTY and ZORAN COCOV;  
NOT IN A PERSONAL OR CORPORATE CAPACITY**

Rosen Goldberg Inc.

# Appendix A



of the Respondents acquired for, or used in relation to a business carried on by them, was heard on Friday, May 2, 2014 at 330 University Avenue, Toronto, Ontario.

**ON READING:**

- (a) the affidavit of Wesley Roitman sworn April 4, 2014, and the exhibits thereto;
- (b) the affidavit of Altaf Soorty sworn April 17, 2014, and the exhibits thereto;
- (c) the affidavit of Zoran Cocov sworn April 17, 2014, and the exhibit thereto;
- (d) the reply affidavit of Wesley Roitman sworn April 21, 2014 and the exhibits thereto;
- (e) the affidavit of Altaf Soorty sworn April 23, 2014, and the exhibits thereto;
- (f) the affidavit of Altaf Soorty, sworn April 28, 2014, and the exhibit thereto;
- (g) the affidavit of Altaf Soorty sworn April 28, 2014, and the exhibits thereto, filed in the proceedings in Court File No. CV-14-10529-00CL;
- (h) the responding affidavit of Wesley Roitman, sworn May 1, 2014, and the exhibits thereto, filed in the proceedings in Court File No. CV-14-10529-00CL; and
- (i) the reply affidavit of Altaf Soorty sworn May 2, 2014, and the exhibits thereto, filed in the proceedings in Court File No. CV-14-10529-00CL,

and on hearing the submissions of counsel for the Applicant, counsel for 6711162 Canada Inc., 1794247 Ontario Inc., 1387267 Ontario Inc., 1564168 Ontario Inc., 2033387 Ontario Inc., Hugel Lofts Ltd. and Casino R.V Resorts Inc., counsel for Altaf Soorty and Zoran Cocov and counsel for Pezzack Financial Services Inc. and The Canada Trust Company, no one appearing for any other person although duly served as appears from the affidavits of service, and on reading the consent of SF Partners Inc. to act as the Receiver,

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that, subject to paragraph 3 of this Order, pursuant to section 243(1) of the BIA, section 101 of the CJA and section 68 of the CLA, SF Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Respondents 6711162 Canada Inc., 1794247 Ontario Inc., 1387267 Ontario Inc., 1564168 Ontario Inc., 2033387 Ontario Inc., Hugel Lofts Ltd., Altaf Soorty and Zoran Cocov (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

3. THIS COURT ORDERS that, notwithstanding anything else contained in this Order, the Receiver's appointment over the Respondents Altaf Soorty and Zoran Cocov shall be limited only to the real property listed in Schedule "A" hereto and the proceeds arising therefrom.

## **RECEIVER'S POWERS**

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

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

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



- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to

enter into occupation agreements for any property owned or leased by the Debtors;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

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

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

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

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

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

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

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

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

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

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

#### **PIPEDA**

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

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

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first

charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and, in the case of the Property of 1564168 Ontario Inc. and 2033387 Ontario Inc., the mortgage registered in favour of Pezzack Financial Services Inc. and The Canada Trust Company.

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

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

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

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and, in the case of the Property of 1564168 Ontario Inc. and 2033387 Ontario Inc., the mortgage registered in favour of Pezzack Financial Services Inc. and The Canada Trust Company.

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

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

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

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [http://www.sfgroup.ca/company-files.php?company\\_id=14](http://www.sfgroup.ca/company-files.php?company_id=14).

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



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

**GENERAL**

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

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

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

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

31. THIS COURT ORDERS that, if the parties cannot settle the costs of this application and the application in Court File No. CV-14-10529-00CL, the Applicant may serve and file written costs submissions together with a Bill of Costs, by May 16, 2014 and any party against whom costs are sought may serve and file responding written submissions by May 29, 2014. The costs submissions shall not exceed three pages in length, excluding the bill of costs.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order

**CASINO R.V RESORTS INC.**

33. THIS COURT ORDERS that leave is granted to add Casino R.V Resorts Inc. as a Respondent to this application.

34. THIS COURT ORDERS that, notwithstanding paragraph 33 of this Order, this application is dismissed against Casino R.V Resorts Inc. and, for greater certainty, the term "Debtors" defined in paragraph 2 of this Order shall exclude Casino R.V Resorts Inc.

**SEALING OF CONFIDENTIAL EXHIBITS**

35. THIS COURT ORDERS that Confidential Exhibits 1, 2 and 3 to the Affidavit of Wesley Roitman sworn May 1, 2014 filed in the proceedings in Court File No. CV-14-10529-00CL be and are hereby sealed pending further Order of this Court.



G. Argyropoulos, Registrar  
Superior Court of Justice

ENTERED AT / INSCRIT A TORONTO  
ON / RECORD  
LE / DANS LE REGISTRE NO.

MAY 30 2014



## SCHEDULE "A"

**PIN** 58696-0219 LT

**Description** Consolidation of various properties – Pt Lot 3 Con BF Rama Pt 1, 51R25909; T/W RO 130544 except 2nd T/W; T/W R-O-W over Pts 6 & 7 51R30563 and Pt 4 51R30736 as in SC286231, Part Lt 3 Con BF Rama Pt 5 40R645, T/W RAM141949, T/W RAM174031; Ramara

**Address** 4271/4275 Hopkins Bay Road

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that SF Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 6711162 Canada Inc., 1794247 Ontario Inc., 1387267 Ontario Inc., 1564168 Ontario Inc., 2033387 Ontario Inc., Hugel Lofts Ltd., Altaf Soorty and Zoran Cocov acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 5<sup>th</sup> day of May, 2014 (the "Order") made in an application having Court file number CV-14-10470-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 2014.

SF PARTNERS INC., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

**ROMSPEN INVESTMENT CORPORATION**  
Applicant

-and- **6711162 CANADA INC. et al**  
Respondents

Court File No. CV-10-10470-00CL

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

**ORDER**

**ZALDIN AND FINE LLP**  
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Tel: (416) 868-1431  
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Lawyers for the Applicant

# Appendix B

*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, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, C. C.30, AS AMENDED**

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

**ROMSPEN INVESTMENT CORPORATION**

Applicant

-and-

**6711162 CANADA INC., 1794247 ONTARIO INC., 1387267 ONTARIO INC.,  
1564168 ONTARIO INC., 2033387 ONTARIO INC., HUGEL LOFTS LTD.,  
ALTAF SOORTY, ZORAN COCOV and CASINO R.V RESORTS INC.**

Respondents

**SECOND REPORT OF ROSEN GOLDBERG INC.**

**June 2, 2015**



## I INTRODUCTION

1. By Order of the Honourable Mr. Justice D.M. Brown dated May 5, 2014, Rosen Goldberg Inc. (formerly SF Partners Inc.) was appointed receiver and construction lien trustee (in such capacities, the “Receiver”) of the assets, undertakings and properties of 6711162 Canada Inc., 1794247 Ontario Inc., 1387267 Ontario Inc., 1564168 Ontario Inc., 2033387 Ontario Inc. and Hugel Lofts Ltd. (collectively, the “Corporate Debtors”), and of a parcel of real estate (and the proceeds arising therefrom) owned by Altaf Soorty and Zoran Cocov (collectively, the “Individual Debtors”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, section 101 of the *Courts of Justice Act* and section 68 of the *Construction Lien Act* (the “Receivership Order”). A copy of the Receivership Order is attached as **Appendix “A”**.
2. Pursuant to Articles of Amendment filed with Industry Canada, effective January 1, 2015, the legal name of SF Partners Inc. was changed to Rosen Goldberg Inc.
3. The Corporate Debtors and the Individual Debtors are hereinafter referred to collectively as the “Debtors”.
4. This Second Report is filed with this Honourable Court for the following purposes:
  - a) to report on and seek approval of the Receiver’s actions to date and of its proposed actions as hereinafter described;
  - b) to recommend and seek approval of three (3) agreements of purchase and sale of property, which are the subject of the Receiver’s administration, and to obtain approval and vesting orders in connection therewith;
  - c) to authorize the Receiver to release the sum of \$4,299,500, which it is currently holding in trust, to Romspen Investment Corporation (“Romspen”); and

- d) to seek the Receiver's discharge over the Individual Debtors immediately upon the completion of one (1) of the agreements of purchase and sale.

## II TERMS OF REFERENCE

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

## III BACKGROUND

6. The assets subject to the Receiver's administration consist of:
- a) a partially-constructed 4-storey residential condominium building with approximately 53 units, on one (1) parcel of land, municipally known as 151 Marina Park Avenue in Midland, Ontario (the "Marine Condo Land");
  - b) 16.3 acres of vacant land, on two (2) parcels, municipally known 586 Victoria Street and 650 Vindin Street, in Midland, Ontario (the "Midland Land");
  - c) 76.68 acres of land, on five (5) parcels, in Ramara, Ontario (the "Ramara Lands"); and



- d) 3.69 acres of land, on six (6) parcels, in Cambridge, Ontario (the “Cambridge Lands”).
7. The Marine Condo Land, the Midland Land, the Ramara Lands and the Cambridge Lands are hereinafter referred to collectively as the “Properties”.
8. All of the Properties are blanketed by a mortgage in favour of Romspen in the face amount of \$16 million, and a general assignment of rents in favour of Romspen. With the exception of two (2) of the six (6) the parcels in Cambridge, one (1) of the five (5) parcels in Ramara and the Marine Condo Land, Romspen’s mortgage is first-ranking. Romspen also holds an assignment of a first mortgage in favour of Laurentian Bank of Canada in the face amount of \$3.1 million over the Marine Condo Land. Romspen’s blanket mortgage is second-ranking behind the Laurentian Bank first mortgage over the Marine Condo Land.

#### **The Marine Condo Land and the Midland Land**

9. The Marine Condo Land and the Midland Land are owned by Hugel Lofts Ltd. Both properties are located near downtown Midland, adjacent to a marina, with nearby access to Georgian Bay. The Marine Condo Land was previously marketed as “Marina Park”.
10. Romspen is the sole *PPSA* registrant over Hugel Lofts Ltd. in connection with a general security agreement.
11. Prior to the Receiver’s appointment, the condominium project on the Marine Condo Land was at a standstill due to the registration of the following construction liens:



Construction Liens					
	Lien Claimant	Amount Claimed	Date of Registration	Date of Registration of Certificate of Action	PIN(s)
1.	Norton Electric Corporation (Canada)	\$330,204	2013/12/11	2014/01/24	58452-0395 LT
2.	Fritrust Plumbing and Drain Services Ltd.	\$72,245	2013/12/11	2014/01/29	58452-0395 LT
3.	4536631 Canada Inc.	\$146,819	2013/12/13	2014/01/29	58452-0395 LT 58452-0389 LT 58452-0394 LT
4.	Sierra Construction (Woodstock) Limited	\$1,479,670	2013/12/19	2014/02/06	58452-0395 LT
5.	Roofco Ontario Inc.	\$44,837	2013/12/19	2014/02/04	58452-0395 LT 58452-0389 LT 58452-0394 LT
6.	S. Charlebois Haulage and Excavating Ltd.	\$177,092	2013/12/20	2014/02/06	58452-0395 LT 58452-0389 LT 58452-0394 LT

12. As of this date, none of the lien claimants have sought to lift, or asked the Receiver to consent to lift, the stay of proceedings imposed under the Receivership Order and prosecute their actions.

**The Ramara Lands**

13. Of the five (5) parcels which comprise the Ramara Lands, two (2) are owned by 6171162 Canada Inc., two (2) are owned by 179257 Ontario Inc. and one (1), which is a shoreline parcel, is owned by the Individual Debtors.



14. The shoreline parcel is subject to a first mortgage held by the Toronto Dominion Bank ("TD") in the face amount of \$568,750. Romspen's mortgage ranks immediately behind TD, but is otherwise first-ranking over the Ramara Lands.
15. Romspen is the sole *PPSA* registrant over 671162 Canada Inc. and 1794247 Ontario Inc. in connection with general security agreements. It holds subordinate-in-time *PPSA* registrations over the Individual Debtors in connection with general security agreements.

#### **The Cambridge Lands**

16. Of the six (6) parcels comprising the Cambridge Lands, two (2) are owned by 1387267 Ontario Inc., three (3) are owned by 1564168 Ontario Inc. and one (1) is owned by 2033387 Ontario Inc.
17. Romspen's mortgage is first ranking against the parcels owned by 1387267 Ontario Inc. and second ranking against the parcels owned by 1564168 Ontario Inc. and 2033387 Ontario Inc., behind a first mortgage held by Pezzack Financial Services Inc. and The Canada Trust Company in the principal amount of \$300,000.
18. Romspen is the sole *PPSA* registrant over 1387267 Ontario Inc. and 154168 Ontario Inc. in connection with general security agreements. Its *PPSA* registration over 2033387 Ontario Inc. (also filed in connection with a general security security) is subordinate in time only to a registration in favour of Her Majesty in Right of Ontario represented by the Ministry of Finance.

#### **IV RECEIVER'S ACTIVITIES**

##### **Sales Process**

19. On October 24, 2014, Justice Newbould approved the sales process (the “Sales Process”) which the Receiver proposed in its First Report dated July 11, 2014 (the “Sales Process Order”). Copies of the First Report, and the Supplement thereto dated October 24, 2014, (without exhibits) are attached as **Appendix “B”**. A copy the Sales Process Order is attached as **Appendix “C”**.

#### **Implementation of the Sales Process**

20. In implementing the Sales Process, the Receiver did the following:
- Compiled a list of potentially interested parties;
  - Distributed a teaser to potentially interested parties;
  - Placed newspaper advertisements in the national editions of The Globe and Mail and National Post on October 30, 2014 and November 6, 2014;
  - Placed advertisements in the following local newspapers: Huronia Business Times, Orillia Packet and Times, Cambridge Times and Midland Mirror;
  - Had its counsel prepare forms of Offer to Purchase in respect of each of the Properties;
  - Established a virtual data room with relevant information regarding the Properties;
  - Received 73 responses to its advertisements;
  - Sent out 47 confidentiality agreements for signature and passwords to gain access to the data room;



- Communicated and met with numerous prospective purchasers; and
- Communicated with Sierra Construction (Woodstock) Limited, one of the lien claimants of the Marine Condo Land, to gauge its interest in purchasing the Properties in Midland.

21. A total of twenty one (21) tours were conducted of various Properties by prospective purchasers. Certain prospective purchasers undertook multiple visits to certain Properties.

#### **Further Activities**

22. Since its First Report the Receiver also undertook the following activities:

- Ongoing site visits;
- Dealt with insurance;
- Dealt with securing the Properties;
- Dealt with ongoing repairs and maintenance issues;
- Met with representatives of the Town of Midland regarding the status of the receivership and a letter of credit which the Town is holding in relation to the condominium project on the Marine Condo Land;
- Communicated with its counsel; and
- Ongoing communications and meetings with the Individual Debtors and with Romspen.



23. The Receiver's interim statement of receipts and disbursements is attached as **Appendix "D"**.

## **V OUTCOME OF SALES PROCESS**

### **Marine Condo Land and Midland Land**

24. After its appointment, the Receiver met with Ian Greenan, a representative of Sierra Construction (Woodstock) Limited ("Sierra"), a lien claimant over the Marine Condo Land, who had previously acted as the general contractor of the condominium project. Mr. Greenan indicated that he would consider making an offer to purchase the Marine Condo Land in order to protect Sierra's position.
25. In December of 2014, the Receiver re-established contact with Mr. Greenan to canvass his interest in submitting an offer. Mr. Greenan indicated that he had no interest.
26. On January 15, 2015, Mr. Greenan contacted the Receiver to seek an update on the status of the Sales Process. Further calls were received from Mr. Greenan on January 20 and 22, 2015, during which Mr. Greenan inquired whether an offer to purchase the Marine Condo Land had been received. The Receiver advised that it was continuing to assess the offers, and advised that Mr. Greenan could still submit an offer if he wished. No offer was forthcoming.
27. On January 9, 2015, the Receiver received an offer to purchase the Marine Condo Land from Shafiq Punjani, in trust, for a purchase price of \$3,750,000, with a ten (10) day conditional period. Concurrent with Mr. Punjani's offer, the Receiver received a separate offer to purchase the Midland Land for a purchase price of \$4,750,000 from Zoran Cocov, in trust. Mr. Cocov's offer was conditional for ten (10) days and was also conditional upon the Receiver accepting, and the Court approving, Mr. Punjani's offer.





28. On January 16, 2015, the Receiver signed back Mr. Punjani's offer with the following amendments:
- Mr. Punjani would be required to replace a \$500,000 letter of credit held by Town of Midland in connection with the condominium project; and
  - The completion of Mr. Punjani's offer would be conditional upon the Court approving and Mr. Cocov completing the purchase of Midland Land for a purchase price of \$4,750,000.
29. After further discussions with Mr. Punjani, his counsel and with Mr. Cocov, both offers were withdrawn on February 6, 2015.
30. On January 16, 2015, the Receiver received a separate offer to purchase the Marine Condo Land, the Midland Land and another property owned by Hugel Lofts Ltd., municipally known as 520 Hugel Avenue in Midland, Ontario from Lightray Corporation ("Lightray") for an aggregate purchase price of \$7,500,000. The Lightray offer contained a six (6) week conditional period, as well as a condition requiring the Receiver to execute a commission agreement. There was no deposit accompanying the Lightray offer. The Receiver had numerous communications with representatives of Lightray to request a deposit and canvass an allocation of the purchase price among the properties. No deposit was submitted, no allocation was proposed and the discussions ended.
31. Although other offers for the Marine Condo Land or the Midland Land were received, they were for significantly less money and, as such, were not acceptable to the Receiver.

#### **Ramara Lands**



32. The Receiver received several offers to purchase certain Ramara parcels, but no *en bloc* offers to purchase all of them. Mr. Cocov submitted an offer to purchase four (4) the Ramara parcels, which he subsequently withdrew.
33. Although other offers for certain Ramara parcels were received, they were for significantly less money and, as such, were not acceptable to the Receiver.

#### **Cambridge Lands**

34. The Receiver accepted an offer from Cora Developments to purchase the Cambridge Lands. The agreement of purchase and sale was conditional for fifteen (15) business days. Cora ultimately did not waive conditions.
35. The sale of the Cambridge Lands is complicated because of significant property tax arrears which have accrued. The Receiver is currently in discussions with a potential purchaser, who is reportedly communicating with the City of Cambridge to obtain a reduction of the taxes, as part of a comprehensive development plan. Should these discussions fail, the Receiver will consider listing the Cambridge Lands for sale.

#### **Negotiations between the Individual Debtors, Romspen and the Receiver**

36. The results of the Sales Process prompted some soul searching on the part of both the Individual Debtors and Romspen. The Individual Debtors were reportedly encountering problems in relation to their other real estate interests, associated with being in receivership personally, and were anxious to obtain the Receiver's discharge, as bankruptcy searches reveal the existence of the Appointment Order. On the other hand, absent a coordinated workout plan involving the Individual Debtors and the Receiver, the alternatives facing Romspen would be a potentially significant erosion in recovery, or considerable time and effort in taking over and developing the properties subject to its security.



37. As of February 27, 2015, the amount owing by the Debtors to Romspen under the loan in respect of which the above-noted mortgage and personal property security was granted, was approximately \$13,756,000 and the *per diem* interest accruing thereon (which is compounding monthly) was approximately \$4,300 (the “Romspen Indebtedness”). A copy of a statement from Romspen, dated February 27, 2015 is attached as Appendix “E”.
38. Negotiations began in earnest between the Individual Debtors and Romspen in February 2015. With the Receiver’s involvement, the negotiations culminated in an overall set of proposed transactions, subject to Court approval, as hereinafter described.

## VI TRANSACTIONS IN RESPECT OF WHICH COURT APPROVAL IS SOUGHT

39. Summarized briefly, the proposed transactions contemplate:
- a paydown of the Romspen Indebtedness by the Individual Debtors of \$4,299,500 (the “Paydown”), which the Receiver is presently holding in trust;
  - a \$4,000,000 credit bid on the part of Romspen for the Marine Condo Land, allocated on the basis of \$3,500,000 for the land and \$500,000 for the letter of credit held by the Town of Midland;
  - a \$2,00,000 credit bid on the part of Romspen for the Midland Land;
  - a company owned and controlled by the Individual Debtors purchasing the Ramara Lands from the Receiver, for a purchase price equivalent to the cost of: (a) assuming all prior ranking claims, including the TD mortgage in the face amount of \$568,750 over



one of the Ramara parcels; and (b) assuming the Romspen Indebtedness following the release of the Paydown to Romspen;

- the Paydown being immediately released by the Receiver to Romspen upon an approval and vesting order being granted in respect of the Ramara Lands;
- the Receiver being discharged as receiver over the Individual Debtors contemporaneously with the closing of the purchase of the Ramara Lands;
- the Cambridge Lands remaining under the administration of the Receiver until it is sold or further directions are sought.

#### **Marine Condo Land and Midland Land**

40. On May 12, 2015, the Receiver accepted an offer to purchase the Marine Condo Land from RIC (Marine Condo) Inc., an affiliate of Romspen, for a purchase price of \$4,000,000, allocated on the basis \$3,500,000 for the land and \$500,000, for the letter of credit held by the Town of Midland (the “**Marine Condo APS**”). A copy of the Marine Condo APS is attached as **Appendix “F”**.
41. On May 12, 2015, the Receiver accepted an offer to purchase the Midland Land from RIC (Midland Land) Inc., an affiliate of Romspen, for a purchase price of \$2,000,000 (the “**Midland Land APS**”). A copy of the Midland Land APS is attached as **Appendix “G”**.
42. The Marine Condo APS and the Midland Land APS are in substance credit bids which, upon completion, will serve to partially reduce the Romspen Indebtedness. The purchase price payable under both agreements is payable in part in cash, to satisfy prior ranking claims, including statutory holdbacks under *Construction Lien Act*, and in part by written direction to the Receiver from Romspen, or any assignee(s) of the Romspen Indebtedness, as shall be



required to apply the balance of the purchase price, without physical circulation of funds, in partial reduction of the Romspen Indebtedness. Both agreements are also unconditional.

43. According to O'Keefe and Associates Limited who was the quantity surveyor in respect of the condominium project prior to the standstill arising from the registration of the construction liens, the statutory holdback is \$114,569. A copy of a capital cost summary prepared by O'Keefe and Associates Limited as at October 8, 2013 is attached as **Appendix "H"**.
44. The Receiver intends retain the sum of \$114,569 following closing pending discussions with the lien claimants and directions from this Honourable Court with respect to the distribution thereof.

#### **Ramara Lands**

45. On May 27, 2015, the Receiver accepted an offer from 1932425 Ontario Inc. ("193"), a company controlled by the Individual Debtors, for a purchase price equivalent to the cost of: (a) assuming all prior ranking claims, including the TD mortgage in the face amount of \$568,750 over one of the Ramara parcels; (b) assuming the Romspen Indebtedness following the release of the Paydown to Romspen (the "**Ramara APS**"). A copy of the Ramara APS is attached as **Appendix "I"**.
46. The Ramara APS is unconditional. Under the terms thereof, the Paydown is required to be released upon the Court granting an approval and vesting order. Prior to closing, the purchase price is to be allocated as 193 and the Receiver may agree (acting reasonably), and failing agreement in such manner as the Court shall order. Also, prior to closing, 193 is required to deliver to Romspen security over the Ramara Lands, in a form and substance satisfactory to Romspen, together with such other agreements and instruments as may be required by Romspen to give effect to the assumption of the Romspen Indebtedness and Romspen's security.



### **All Other Romspen Security to Remain in Place**

47. The Receiver notes that following the completion of the above-noted agreements, all other security which Romspen holds for the Romspen Indebtedness, including its security over the Cambridge Lands, will continue to remain in place, until the Romspen Indebtedness is repaid in full.

## **VI SECURITY OPINION**

48. As the Marine Condo APS and the Midland Land APS are credit bids and the lion's share of the consideration payable for the Ramara Lands will be satisfied through 193's assumption of the Romspen Indebtedness, the Receiver obtained an opinion from its counsel, Dickinson Wright LLP, on the validity and priority of Romspen's security. Subject to the customary qualifications, Dickinson Wright LLP has opined, *inter alia*, as follows: (a) Romspen's security is valid and enforceable; (b) Romspen has priority on the Ramara Lands subject only to the TD mortgage on the parcel owned by the Individual Debtors property; (c) Romspen has priority on the Marine Condo Land and Midland Land; and (d) Romspen has priority over the lien holders subject only to the extent of any deficiency of the holdback required to be retained pursuant to the *Construction Lien Act*. A copy of the security opinion is attached as Appendix "J".

## **VII APPRAISALS**

49. As reported in the Receiver's Supplement to its First Report, the Receiver engaged Valco Consultants, an independent real estate appraisal and consulting firm, to provide it with appraisals in respect of the Properties. In paragraph 5 of the Sales Process Order, the appraisals were sealed. Unfortunately, given the results of the Sales Process and the purchase prices payable under the Marine Condo APS, the Midland Land APS and the Ramara APS, the appraised values of those Properties has proven to be overly optimistic.



## VIII RECOMMENDATION

50. In the circumstances, the Receiver respectfully recommends that this Honourable Court approve and authorize the Receiver to proceed with the matters proposed in paragraph 4 above, for the following reasons:

- The Receiver undertook a comprehensive sale process in manner consistent with the Sales Process Order and exposed the Properties to the market for a lengthy period;
- The offers which the Receiver accepted represented the best offers available at the time they were accepted;
- No information has come subsequently come to the Receiver's attention which would indicate that a significantly (or any) better result might have been, or could today, be achieved;
- Romspen, the overwhelmingly largest senior secured creditor of the Debtors, supports the proposed transactions;
- The Individual Debtors, who are guarantors of the Romspen Indebtedness, support the proposed transactions;
- The completion of the proposed transactions will significantly reduce the Romspen Indebtedness, and the interest accruing thereon.

All of which is respectfully submitted,



Dated at Toronto, Ontario, this 2nd day of June, 2015.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER OF  
6711162 CANADA INC., 1794247 ONTARIO INC.,  
1387267 ONTARIO INC., 1564168 ONTARIO INC.,  
2033387 ONTARIO INC., HUGEL LOFTS LTD.,  
ALTAF SOORTY and ZORAN COCOV;  
NOT IN A PERSONAL OR CORPORATE CAPACITY**

Rosen Goldberg Inc.