

COURT FILE NUMBER 2003-06728

COURT COURT OF QUEEN'S BENCH OF ALBERTA

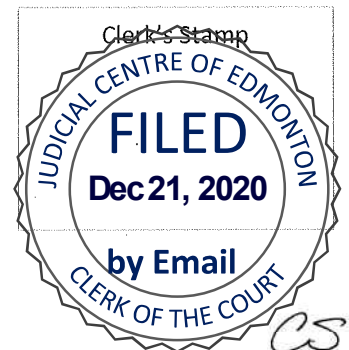
JUDICIAL CENTRE EDMONTON

PLAINTIFFS (DEFENDANTS BY COUNTERCLAIM) **ROMSPEN MORTGAGE LIMITED PARTNERSHIP AND ROMSPEN INVESTMENT CORPORATION**

DEFENDANTS (PLAINTIFFS BY COUNTERCLAIM) **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC. AND DANIEL ALEXANDER WHITE**

PLAINTIFFS BY COUNTERCLAIM **3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD, LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENERGY RESOURCES INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE**

DEFENDANTS BY COUNTERCLAIM **ROMSPEN MORTGAGE LIMITED PARTNERSHIP, ROMSPEN INVESTMENT CORPORATION, RICHARD WELDON and WESLEY ROITMAN**



COURT FILE NUMBER 1903-21473

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS **LOT 11 LIMITED PARTNERSHIP by its general partner LOT 11 GP LTD., ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC. AND DANIEL ALEXANDER WHITE.**

RESPONDENT (S) **ROMSPEN INVESTMENT CORPORATION**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

BORDEN LADNER GERVAIS LLP
1900, 520 Third Avenue S.W.
Calgary, Alberta T2P 0R3

Josef Krüger, QC/Kevin E. Barr
Telephone: 403.232.9563/9786
Facsimile: 403.266.1395
Email: jkruger@blg.com/kbarr@blg.com
File Number: 443063-000012

AFFIDAVIT OF WESLEY ROITMAN
Sworn on December 18, 2020

I, WESLEY ROITMAN, of Toronto, Ontario, SWEAR AND SAY THAT:

A. Introduction

1. I am Managing General Partner of Romspen Investment Corporation, the manager and administrative agent for Romspen Mortgage Limited Partnership. As such, I have personal knowledge of the matters and facts hereinafter sworn to, except where stated to be based on information and belief, and where so stated, I verily believe the same to be true.
2. Capitalized terms not defined herein shall have the same meaning as those terms that have been expressly defined in my Affidavit sworn on March 30, 2020.


B. Supplements

3. In reviewing my Affidavit sworn on March 30, 2020, I note that the signature page to the Loan Agreement (Exhibit "B") for Romspen is missing. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of Romspen's signature page from the Loan Agreement.
4. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of correspondence from the law firm of Hinshaw & Culbertson LLP dated April 19, 2018.
5. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is an email exchange between, among others, Alberta and Texas counsel for each of Romspen, Zen Garden, LP, GP, Absolute

Energy, Absolute Environmental, Eco-Industrial and White at the time that the Loan Agreement was in the process of being executed.

C. Conclusion

- 6. This Affidavit was sworn using video technology due to the Covid-19 pandemic.
- 7. In advance of swearing this Affidavit, I have shown the Notary Public the front and back of my current government-issued photo identification.
- 8. I do verily believe that this Affidavit has been sworn in compliance with Practice Notes issued by the Court of Queen's Bench of Alberta.
- 9. I am authorized to swear this Affidavit on behalf on Romspen.
- 10. I make this Affidavit for no improper purpose.
- 11. I make this Affidavit supplemental to my Affidavit sworn on November 16, 2020.

SWORN BEFORE ME at Toronto, Ontario, this)
 18 day of December, 2020.)
)
)
)
 _____)
 A Notary Public in and for the Province of)
 Alberta)

WESLEY ROITMAN

KEVIN E. BARR
 Barrister & Solicitor

red

This is **Exhibit "A"** referred to
in the Affidavit of Wesley Roitman
Sworn before me this 18 day of December, 2020



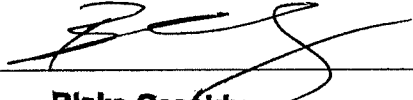
A Notary Public in and for
the Province of Alberta

KEVIN E. BARR
Barrister & Solicitor

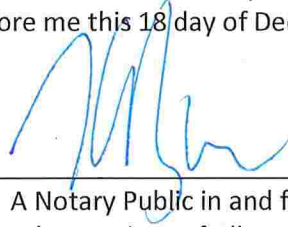
LENDER:

ROMSPEN MORTGAGE LIMITED PARTNERSHIP,
an Ontario limited partnership

By: Romspen Fund GP Inc.,
an Ontario corporation, its general partner

By: 
Name: **Blake Cassidy**
Title: **Authorized Signing Officer**

This is **Exhibit "B"** referred to
in the Affidavit of Wesley Roitman
Sworn before me this 18 day of December, 2020



A Notary Public in and for
the Province of Alberta

KEVIN E. BARR
Barrister & Solicitor

HINSHAW

& CULBERTSON LLP

Steven Carlyle Cronig
+1.305.428.5122
scc@hinshawlaw.com

ATTORNEYS AT LAW

2525 Ponce de Leon Boulevard
4th Floor
Coral Gables, FL 33134

305-358-7747
305-577-1063 (fax)
www.hinshawlaw.com

April 19, 2018

Clifton M. Dugas, II, Esquire
Polsinelli P.C.
2950 North Harwood Street
Suite 2100
Dallas, Texas 75201

UPS Overnight Courier / Friday Delivery
Tracking Number 1Z202-3AF-01-9240-4298

Re: 3443 Zen Garden Limited Partnership / \$125,000,000 Loan from
Romspen Mortgage Limited Partnership

Dear Mr. Dugas:

This firm represents 3443 Zen Garden Limited Partnership and its affiliated Guarantors. In connection with the Loan to which reference is made above, enclosed are two originals of the following executed Loan Documents:

1. \$125,000,000 Promissory Note executed on behalf of the Borrower. Notwithstanding that two original counterpart notes are delivered, the total obligation shall not exceed the amounts set forth in either counterpart.
2. Loan Agreement executed on behalf of the Borrower and all Guarantors.
3. Guaranty of Adam Zarafshani.
4. Guaranty of Eightfold Development, LLC.

We also this evening have sent the original Deed of Trust executed on behalf of the Borrower to Donna Gulledge at Chicago Title in Dallas and the original Canadian Loan Documents to Travis McKay at Hurstwick Payne. We make reference to your April 18, 2018 letter to Donna Gulledge. You are directed to retain the enclosed documents in escrow until the following conditions precedent have occurred:

1. We have received confirmation of the dispatch of a federal wire transfer in the sum of \$4,902,062.15 to Panache Development & Construction, Inc., including a fedwire confirmation number.

Clifton M. Dugas, II, Esquire
April 19, 2018
Page 2

2. We have received written confirmation from the Lender on its letterhead that they will review and diligently work to approve the declaration of condominium for this project within two weeks of your receipt of this letter and that, until such approval is issued, no Declaration of Default may be issued pursuant to any Loan Document. The expedited approval of the condominium documents is critical to the project and Borrower will not proceed without this assurance.

3. You will provide us with a copy of the Receipt and Acknowledgment attached to your letter to Donna Gulledge, signed on behalf of Chicago Title Insurance Company.

4. You will confirm to us that all Closing Conditions contained in your letter to Donna Gulledge have been fulfilled.

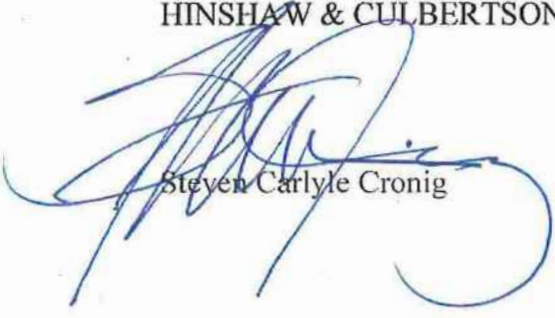
This will confirm that the remaining Loan Documents will be executed and delivered to you no later than April 24, 2018, at which time we anticipate it will be possible to complete the loan closing. If you have not confirmed to us that the foregoing conditions #1, #2, #3 and #4 have been fulfilled by April 22, 2018, you are directed to return the original documents to us immediately.

Please confirm your understanding of and agreement to the terms of this letter by signing below and returning a copy to us.

Thank you for your consideration in this matter.

Sincerely,

HINSHAW & CULBERTSON LLP



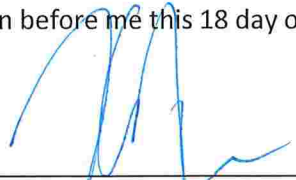
Steven Carlyle Cronig

Acknowledged and agreed this
_____ day of April 2018.

Polsinelli P.C.

By: _____
Clifton M. Dugas, II, Esquire

This is **Exhibit "C"** referred to
in the Affidavit of Wesley Roitman
Sworn before me this 18 day of December, 2020



A Notary Public in and for
the Province of Alberta

KEVIN E. BARR
Barrister & Solicitor

From: Adam Zarafshani <adam@panachehomes.com>
Sent: April 26, 2018 2:32 PM
To: Joel Mickelson; Cronig, Steven C.; Clifton Dugas
Cc: Richard Weldon; Amanda Woodham; Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com) (cfarnell@wittenlaw.com); Blake Cassidy; Genia Ionova; TravisM@hplegal.ca; Roderick (Rod) C. Payne (rod@hplegal.ca); Vitor Fonseca; Dan White
Subject: Re: Romspen Loan to 3443 Zen Garden Limited Partnership

Good afternoon Joel,

I am aware of it. I spoke with Richard at length about it yesterday. We will take care of paying it after the initial draw has been funded. In US tax dollars, at today's conversion, the taxes are around \$156,000. If you want to escrow whatever amount makes Blake comfortable, we are okay with it. There is no reason to hold back \$400,000 on a \$156,000 bill. Our commitment was, as of yesterday, that the tax on Lot 3 will be paid prior to the hard close. However, we are not required to pay the taxes on Lot 4 which you have a second mortgage on as security. Please let me know if this your understanding as well.

Regards,

Adam Zarafshani
Eightfold Developments, LLC
Panache Development & Construction, Inc.
512 345 7000 Austin
872 222 7031 Chicago
310 929 0094 LA

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From: Joel Mickelson <JoelMickelson@romspen.com>
Sent: Thursday, April 26, 2018 3:26 PM
To: Cronig, Steven C.; Clifton Dugas
Cc: Adam Zarafshani; Richard Weldon; Amanda Woodham; Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com) (cfarnell@wittenlaw.com); Blake Cassidy; Genia Ionova; TravisM@hplegal.ca; Roderick (Rod) C. Payne (rod@hplegal.ca); Vitor Fonseca
Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership


The property taxes on Lot 12 in Alberta remain delinquent (ca. \$200K). Apparently, AB counsel was under the impression that we'd agreed to fund them from the Initial Advance. Per Blake's instructions, it is not our intention to do so. Instructions are to hold back \$400,000 from the Initial Advance, to be released upon confirmation that the taxes have been paid.


I believe once we iron this matter out, and assuming all is in order with the documents, we will be in a position to record/register and advance tomorrow, albeit with some post-closing obligations.

Joel Mickelson

Corporate Counsel
Romspen Investment Corporation
162 Cumberland Street, Suite 300
Toronto, Ontario M5R 3N5

 : 416.928.4870

 : 416.937.1815

 : 416.966.1161

From: Cronig, Steven C. [mailto:scc@hinshawlaw.com]

Sent: Thursday, April 26, 2018 4:08 PM

To: Clifton Dugas; Joel Mickelson

Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon; Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com) (cfarnell@wittenlaw.com)

Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership

Clifton:

In 1934, my grandfather sold 100,000 acres in Massachusetts for \$500,206. He took back a mortgage for \$400,000. That mortgage was one page long and I believe there was a one inch margin left over.

Your mortgage is not one page long.

We received Dan's scanned document yesterday afternoon at 4:00 p.m. (Eastern). We received the remainder of Adam's signed documents at 10:30 this morning. Between the Austin and the Edmonton properties, there are close to 1,000 pages of documents, each of which has to be checked to make sure they are signed, witnessed and notarized, as needed, as well as having all of the pages in the correct order and being your most recent version.

Linda advises that she has to extract Dan's signature pages from each of Dan's documents and interlineate those pages into the original documents that Adam signed. After that, the documents will be scanned. Linda advises everything should be ready this afternoon and we then will distribute them.

In the meantime, I still need an answer to the question posed in my email of yesterday at 6:04 p.m. (Eastern) regarding the closing statement as to whether the lender will increase Draw #1 by \$234,458.71 so the closing statement will balance, fully funding Draw Request #1 as approved by the lender. I have not seen a new draft closing statement since yesterday afternoon at 5:34 p.m.

I hope you enjoyed this charming homily about my grandfather. Expect scans of all of the documents within the hour.

Steve

Steven Carlyle Cronig

Capital Partner

Hinshaw & Culbertson LLP

2525 Ponce de Leon Boulevard, Fourth Floor, Coral Gables, Florida, 33134

Direct Telephone: +1.305.428.5122

Main Telephone +1.305.358.7747 | Telefacsimile: +1.305.577.1063

SCC@hinshawlaw.com | hinshawlaw.com

From: Clifton Dugas [<mailto:CDugas@Polsinelli.com>]

Sent: Thursday, April 26, 2018 3:35 PM

To: Cronig, Steven C.; Joel Mickelson (JoelMickelson@romspen.com)

Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)

Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership

***** External email: use caution *****

Do you have the docs scanned yet?

From: Cronig, Steven C. [<mailto:scc@hinshawlaw.com>]

Sent: Thursday, April 26, 2018 8:59 AM

To: Clifton Dugas; Joel Mickelson (JoelMickelson@romspen.com)

Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)

Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership

It's being done now.

Steven Carlyle Cronig

Capital Partner

Hinshaw & Culbertson LLP

2525 Ponce de Leon Boulevard, Fourth Floor, Coral Gables, Florida, 33134

Direct Telephone: +1.305.428.5122

Main Telephone +1.305.358.7747 | Telefacsimile: +1.305.577.1063

SCC@hinshawlaw.com | hinshawlaw.com

From: Clifton Dugas [<mailto:CDugas@Polsinelli.com>]

Sent: Thursday, April 26, 2018 9:58 AM

To: Cronig, Steven C.; Joel Mickelson (JoelMickelson@romspen.com)

Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)

Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership

***** External email: use caution *****

Can you please have someone scan all the documents you received this morning, so we can continue to check them off our list?

From: Cronig, Steven C. [<mailto:scc@hinshawlaw.com>]

Sent: Thursday, April 26, 2018 8:54 AM

To: Clifton Dugas; Joel Mickelson (JoelMickelson@romspen.com)

Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)

Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership

Good morning.

I am catching up on emails, as I was at a court hearing yesterday. We received a package of signed documents from Adam this morning and am expecting the last of Dan's documents by email today, plus the originals shortly after that (I understand the lender will accept the scans from Dan as the original executed mortgages already have been received for recording).

Steve

Steven Carlyle Cronig

Capital Partner

Hinshaw & Culbertson LLP
2525 Ponce de Leon Boulevard, Fourth Floor, Coral Gables, Florida, 33134
Direct Telephone: +1.305.428.5122
Main Telephone +1.305.358.7747 | Telefacsimile: +1.305.577.1063
SCC@hinshawlaw.com | hinshawlaw.com

From: Clifton Dugas [<mailto:CDugas@Polsinelli.com>]
Sent: Wednesday, April 25, 2018 4:02 PM
To: Cronig, Steven C.; Joel Mickelson (JoelMickelson@romspen.com)
Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)
(cfarnell@wittenlaw.com)
Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership
*** External email: use caution ***

Any update on receipt of documents?

From: Clifton Dugas
Sent: Wednesday, April 25, 2018 10:50 AM
To: Cronig, Steven C.; Joel Mickelson (JoelMickelson@romspen.com)
Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.; Cathy Farnell (cfarnell@wittenlaw.com)
(cfarnell@wittenlaw.com)
Subject: RE: Romspen Loan to 3443 Zen Garden Limited Partnership
Please keep Cathy Farnell copied on the emails.
Steve – do you have a list of what is being sent in Dan’s package, or better yet, scanned copies? We need to better understand what is coming our way before we can update our list of outstanding items.

From: Cronig, Steven C. [<mailto:scc@hinshawlaw.com>]
Sent: Wednesday, April 25, 2018 7:28 AM
To: Clifton Dugas; Joel Mickelson (JoelMickelson@romspen.com)
Cc: Adam Zarafshani (adam@panachehomes.com); Richard Weldon (RichardWeldon@romspen.com); Amanda Woodham (amanda@panachehomes.com); Goodwyn, Ofonedu-Ime; Zagray Linda P.
Subject: Romspen Loan to 3443 Zen Garden Limited Partnership

Good morning Clifton.

I am expecting a DHL package from Dan White this morning and have received the documents to be signed by Adam Zarafshani. Would you please send an updated documents checklist, current as of today, listing what the lender has received and what documents, including support documents, remain to be delivered.

It is our intention to deliver all of the executed loan documents to you by overnight courier tonight (assuming the DHL package comes in). It is my understanding there are some issues about the closing statement which Adam and Richard need to work out, but that we are close to finishing this up. Thanks.

Steve Cronig

Steven C. Cronig

Hinshaw & Culbertson LLP
2525 Ponce de Leon Blvd, 4th Floor, Coral Gables, FL, 33134
Tel: 305-428-5122 | Fax: 305-577-1063
SCC@hinshawlaw.com | hinshawlaw.com

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