

**IN THE MATTER OF THE PROPOSAL OF  
NEWGEN HARRISON DEVELOPMENT INC.  
TRUSTEE'S REPORT TO CREDITORS**

**January 27, 2015**

**1. BACKGROUND**

Newgen Harrison Development Inc. ("Newgen" or the "Company") developed a 90 acre mixed use residential property in the District of Kent, 17km west of Harrison Hot Springs. The development site is known as Harrison Highlands (the "Development").

The Development consists of 8 parcels of land and was planned to include the following:

- 3 acre Commercial lot;
- 4 acre parcel donated to the District of Kent as a future fire hall site;
- 13 acre parcel zoned for an RV park and 48 cottages;
- 9 acre parcel zoned for 20 single family homes and 49 town homes;
- 9 acre parcel zoned for 28 single family homes, 14 rancher homes and 1 duplex;
- 6 acre parcel zoned for 23 rancher homes and 4 duplexes;
- 7 acre parcel zoned for 254 unit condo units ("Multifamily Parcel"); and,
- 39 acre parcel zoned for 75 single family lots, including 18 strata lots.

The Multifamily Parcel was sold in 2009 to fund the site servicing costs and obtain subdivision approvals for the 39 acre parcel, which was zoned for 75 single family lots, including 18 strata lots. The remaining parcels of land were serviced to the property line and were to be developed in 5 subsequent phases.

Of the 75 single family lots, 26 were sold prior to Receivership. An additional 5 lots were sold in 2014 by the Receiver for gross sales proceeds of \$370,000.

The Company granted a first mortgage over the property to HSBC Bank Canada (“HSBC”). The Company defaulted on the terms of the mortgage and as a result, The Bowra Group Inc. was appointed Receiver-Manager (the “Receiver”) of the assets, undertakings and properties of Newgen pursuant to an order of the Supreme Court of British Columbia dated November 16, 2011.

The Receiver marketed the property for sale. A restructuring offer (the “Restructuring Agreement”) was accepted by the Receiver from 1021051 B.C. Ltd. (the “Purchaser”). The Restructuring Agreement received Court approval on January 19, 2015.

The Restructuring Agreement contemplates the following events:

- Shares of the Company are sold to the Purchaser after the Proposal is approved by Court;
- The Receiver files a Proposal under the Bankruptcy and Insolvency Act (the “BIA”) which provides for a distribution to the Affected Creditors (defined in the Proposal as all creditors with proven claims, except for those of the first mortgagee, crown claims, claims against directors and officers of the debtor and employee claims);
- Dividend to be funded to the Trustee in the Proposal by the Purchaser;
- Assignment of HSBC’s secured claim to the Purchaser for \$5.08 million following a successful Proposal;
- In the event that the Proposal is not successful, an alternative transaction (“AT”) will occur whereby the development property will be purchased for \$5.08 million and there will be no recovery to the Affected Creditors.

The Receiver has marketed the property since November 2011 and believes that the Proposal contained within the Restructuring Agreement represents the best offer to the Affected Creditors.

The Company was assigned into bankruptcy on June 9, 2014, and the First Meeting of Creditors in the bankruptcy was held on June 24, 2014.

## 2. SUMMARY OF PROPOSAL

Affected Creditors having Proven Claims will receive the amount determined as follows:

- (a) All Affected Creditors with Proven Claims in the aggregate amount of which is equal to or less than \$2,000 shall be deemed to have elected to receive a cash distribution equal to 99% of the aggregate of their Proven Claims and to have cast their Voting Claims in favour of approval of the Proposal; or
- (b) each Affected Creditor with Proven Claims the aggregate amount of which is greater than \$2,000:
  - i) may at its option elect to reduce the amount of its Proven Claims to the sum of \$2,000, and in such case such Affected Creditor shall be deemed to have elected to receive a cash distribution equal to \$1,996 (being approximately 99% of \$2,000) and to have cast its Voting Claim in favour of approval of the Proposal; or
  - ii) If such Affected Creditor does not make the election referenced above, then such Affected Creditor shall in respect of its Proven Claims receive a cash distribution in an amount equal to 0.5% of its Proven Claim.

Other terms of the Proposal include:

- The first secured mortgagee, HSBC, shall not be entitled to receive any distributions in this Proposal; and,
- The Proposal Trustee costs, counsel for the Proposal Trustee or counsel to the Company for fees and disbursements will not be deducted from any dividends to the Affected Creditors.

An estimate of the dividend payable of \$58,000 to the Affected Creditors is detailed in **Appendix A**. The estimate is based on the Company's Statement of Affairs and not from Proofs of Claim received by the Trustee.

### **3. FINANCIAL SITUATION**

As noted above, the Company was unable to service its mortgage from HSBC, estimated at \$11 million at the date of Receivership. The inability of the Company to service its debt obligation resulted in HSBC appointing a Receiver.

### **4. IDENTIFICATION AND EVALUATION OF ASSETS**

The Company's only asset is the property identified in the Background.

The Property has been marketed for sale and an offer has been accepted by the Receiver. The Court has approved the offer accepted by the Receiver. The value of the property, based on the marketing efforts of the Receiver and the restructuring agreement approved by the Court, does not satisfy the claim of the first secured mortgagee and as a result there are no assets of the Company available for unsecured creditors.

### **5. CONDUCT OF DEBTOR**

The Trustee in Bankruptcy in its report to creditors dated June 24, 2014 noted the following:

- The Trustee has performed a preliminary review of the Company's books and records that are available;
- The Trustee has not identified any transactions which could be regarded as reviewable transactions or transfers at undervalue, although there may be further investigations conducted that could reveal such items.

Nothing has come to our attention to change our opinion regarding the conduct of the debtor.

## 6. CREDITOR CLAIMS

Proofs of Claims filed in the bankruptcy are as follows:

<b>Creditor Class</b>	<b># of Creditors</b>	<b>(\$000's)</b>
Secured	0	0
Unsecured	2	186
	<u>2</u>	<u>186</u>

There are 25 other creditors that may file proofs of claim totaling \$6,089,000 based on the Statement of Affairs.

Secured creditor claims tabled below:

<b>Creditor</b>	<b>Assets Secured</b>	<b>Claim Amount (\$000's)</b>
HSBC Bank Canada	First mortgage on property	11,500
East Gordon Developments Ltd.	Second mortgage on property	1,500

An independent legal opinion was obtained by the Trustee that confirms the HSBC mortgage is valid and enforceable.

## **7. PREVIOUS BUSINESS DEALINGS WITH THE DEBTOR**

As previously stated, The Bowra Group Inc. was appointed as Receiver of the Company on November 16, 2011 pursuant to an Order of the Supreme Court of British Columbia.

The Bowra Group Inc. was appointed as the Trustee in the bankruptcy of the Company on June 9, 2014, which was affirmed at the First Meeting of Creditors on June 24, 2014.

## **8. TRUSTEE FEES**

The Proposal Trustee fees incurred in the Proposal will be paid by the Purchaser. A retainer of \$50,000 has been paid to the Proposal Trustee by the Purchaser pursuant to a third party retainer agreement.

## **9. REALIZATION AND DISTRIBUTION**

The Funds will be held by the Trustee under the Proposal and paid to the Affected Creditors as a dividend at the later of:

- 2 business days after Court approval of the Proposal; and,
- The date on which all disputed claims are resolved.

## **10. STATEMENT OF ESTIMATED REALIZATION**

The estimated dividends to the Affected Creditors is \$58,000.

If the Proposal is not successful, the AT would complete and will result in no recovery to Affected Creditors.

## 11. RECOMMENDATIONS

The Proposal offers the Affected Creditors a recovery of an estimated \$58,000 that they would not otherwise receive if the assets were sold under the AT. Therefore, the Proposal Trustee recommends acceptance of this Proposal.

**The Bowra Group Inc.**

Trustee under the Proposal of  
Newgen Harrison Development Inc.

**APPENDIX A**

**NEWGEN HARRISON DEVELOPMENT INC.  
DRAFT ESTIMATED PROPOSAL DIVIDEND**