

IN THE SUPREME COURT OF BRITISH COLUMBIA

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., AS
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: The Bowra Group Inc., in its capacity as Receiver of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the "Receiver")

To: the Parties on the Service List Attached as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Wilson at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on August 19, 2022, at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "B"** that, *inter alia*:
 - (a) Establishes a Sales Procedure for the real estate assets of the Companies;
 - (b) Approves the Stalking Horse Agreement;
 - (c) Grants a conditional vesting order in favour of the Stalking Horse Bidder in the event that the Receiver does not receive any Qualified Bids prior to the Bid Deadline;

- (d) Authorizes the Receiver to disclaim the pre-sale contracts and leases for the Development entered into by the Companies prior to the date of the Receivership; and
 - (e) Approves the Receiver's Activities as set out in the Second Report.
2. Any such further or other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Background

1. 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the "**Companies**") own a mixed use commercial and industrial strata development (the "**Development Property**") located at 3333 Bridgeway Street, Vancouver, British Columbia .
2. In February 2018, the secured creditor, Institutional Mortgage Capital Canada Inc. ("**IMC**"), provided financing for the Development in the amount of \$26.2 million, secured by a first and second mortgage on the Property.
3. The Development was scheduled to complete in Spring 2020, but completion was delayed for over two years due to cost overruns, construction delays, and disputes between the Companies and the general contractor on the Development, Prism Construction Ltd. ("**Prism**").
4. IMC lost confidence in the Companies' ability to complete the Development due to the construction delays and disputes with Prism, and on March 3, 2022 IMC issued demands and a Notice of Intention to Enforce Security.
5. As at the filing of this within application, IMC is owed approximately \$36 million on their first and second mortgage and an additional \$1.2 million in Receiver's borrowings.
6. On application by IMC, The Bowra Group Inc. was appointed the Receiver and Manager of the assets, undertakings and property of the Companies pursuant to an Order of this court made May 10, 2022 (the "**Receivership Order**").
7. The Receivership Order empowers the Receiver to take all necessary steps to urgently complete the Development Property. The urgency in completing the Development Property stems primarily from the substantial interest accruing on the debt due by the Companies to IMC and the real risk to the recovery for creditors of the Companies.
8. Pursuant to section 2 (e) the Receivership Order, the Receiver has the authority:
 - (e) to take those steps the Receiver deems necessary for the completion of the construction of the buildings on, or improvements to the

Property including, without limitation, those steps necessary to obtain an occupancy permit and to sub-divide the Property into individual strata lots;

9. Further, the Receivership Order, at section 2 (c) includes the authority to cease to perform any contracts of the Companies.
10. The Receivership Order did not grant the Receiver powers to market or sell the units in the Development Property which were not already subject to sales.
11. Once appointed, the Receiver determined there was significant work and costs required to complete the Development Property. On June 23, 2022, the Receiver requested and obtained an increase to the Court authorized Receiver's borrowings from \$900,000 to \$1.6 million.
12. The Receiver also entered into agreement with Prism to complete the deficiency work. Prism has recently completed the necessary deficiency work to arrange for an occupancy inspection with the City of Vancouver. The occupancy inspection is scheduled for August 16, 2022.

Receiver's Activities

13. The Receiver has performed the following work with respect to the Development Property since its First Report to Court dated June 9, 2022:
 - (a) Managed the completion of the deficiency work required for occupancy;
 - (b) Reviewed pre-sale contracts and requirements to complete work on the Development Property to close on sales;
 - (c) Commenced work required to file a strata plan, including but not limited to negotiations with the City of Vancouver concerning easements and encroachment agreements required in advance of filing the strata plan;
 - (d) Held numerous discussions with:
 - (i) the architect on development and construction matters;
 - (ii) IMC and their legal counsel;
 - (iii) Cushman & Wakefield ("**Cushman**"), the realtor for the Development Property prior to the receivership;
 - (iv) creditors and pre-sale purchasers; and,
 - (v) prospective purchasers.

- (e) Held numerous discussions and negotiated with prospective purchasers regarding a potential stalking horse offer to purchase the Development Property as a whole.

Sale Procedure

- 14. The Receiver is of the view that the sales procedure, in the manner as set out hereto as **Schedule "C"** hereto (the "**Sale Procedure**"), is the desired method of maximizing recovery for the stakeholders in these proceedings. All capitalized terms not herein defined have the definition as set out in the Sale Procedure.

- 15. The Sales Procedure has, *inter alia*, the following elements:
 - (a) The Receiver will gather all the relevant documents relating to the Development Property that are in the possession or control of the Receiver (the "**Due Diligence Materials**");
 - (b) Potential purchasers will execute a confidentiality agreement in order to access the Due Diligence Materials;
 - (c) The Receiver will engage Cushman to conduct marketing of the Development Property;
 - (d) The Receiver will evaluate the potential purchasers to determine if they are Qualified Bidders;
 - (e) Qualified Bidders will be able to submit a bid for the Development Property on or before September 30, 2022, and such offers must remain irrevocable until October 15, 2022;
 - (f) The Receiver shall determine if the bids are Qualified Bids, and if:
 - (i) there are no Qualified Bids, the Receiver will file with this Honourable Court an affidavit stating that no Qualified Bids were received by the Bid Deadline, and will close the transaction with the Stalking Horse Bidder on the terms set out in the Stalking Horse Offer and pursuant to the Conditional Vesting Order; or
 - (ii) if there are other Qualified Bids, the Receiver will open and review the Stalking Horse Addendum and determine whether or not the Stalking Horse Bidder or other of the Qualified Bidders is the Successful Bidder and will notify the Successful Bidder, on or before October 7, 2022, and then will return to this Honourable Court for a vesting order to complete the transaction with the Successful Bidder as soon as is practicable after October 7, 2022, and before October 15, 2022.

Stalking Horse Bid Offer

16. The Receiver held numerous discussions from interested parties that showed interest in purchasing the Development Property as a whole.
17. The Receiver obtained a stalking horse offer for an “as is where is” sale of the Development Property for \$38,250,000 (the “**Stalking Horse Offer**”) from Access Self Storage Inc. (the “**Stalking Horse Bidder**”).
18. The Stalking Horse Agreement has, *inter alia*, the following material terms:
 - (a) The Stalking Horse Bidder submitted an offer to purchase the Development Property for \$38,250,000 plus GST;
 - (b) a deposit of \$1,900,000 is to be paid to Receiver’s legal counsel in trust;
 - (c) An initial conditional period to complete due diligence which expired on August 12, 2022, at which time, all conditions were satisfied or waived and the offer became conditional only on the following being granted or authorized by this Honourable Court:
 - (i) the disclaimer of the existing pre-sale contracts and leases by the Receiver; and
 - (ii) a conditional vesting order in favour of the Stalking Horse Bidder (granted simultaneously with the Sales Procedure Order), whereby the Receiver would, at the close of the Sale Procedure, only if no Qualified Bids were received by the Bid Deadline, file an affidavit in these proceedings stating that no Qualified Bids were received and the Receiver would then close on the terms of the Stalking Horse Offer, thus avoiding the need to return to this Honourable Court for sale approval and vesting on the terms of the Stalking Horse Offer.
 - (d) In the event that the Stalking Horse Bidder is not the Successful Bid, a break fee of \$400,000 will be paid to the Stalking Horse Bidder;
 - (e) In the event there are no other qualified bids other than the Stalking Horse Offer, the sales process will be terminated, and the Receiver will complete the sale to the Stalking Horse Bidder; and,
 - (f) Closing date will be on or around November 1, 2022.
19. To assist to implement the Sale Procedure, the Receiver would engage Cushman to market the Development Property. In preparation of the Sales Procedure, Cushman has prepared a marketing strategy report for the Development Property (the “**Marketing Strategy Report**”)

20. The Receiver is of the view that the Stalking Horse Offer and the proposed Sale Procedure will result in a greater recovery to IMC and other creditors than other methods of sale.

Pre-Sale Contracts

21. There are pre-sale contracts on 16 of the 20 proposed strata lots and a lease for the second floor (the "**Pre-Sale Contracts**") which would need to be terminated to complete on the Stalking Horse Offer.
22. The Receiver reviewed all Pre-Sale Contracts and held numerous discussions with pre-sale purchasers, architect, contractors and its development consultant to assess the costs and timing of completing the Pre-Sale Contracts. The Receiver determined that i) there is significant work required and costs to complete the Pre-Sale Contracts, and ii) several of the Pre-Sale Contracts are no longer at market value and the Receiver would likely obtain a higher sales price if the Development Property was sold as a whole "as is where is".

Vendor Work

23. The Pre-Sale Contracts require additional improvements to be completed by the vendor to close the sale (the "**Vendor Improvements**").
24. The Vendor Improvements include, but are not limited to, the following:
 - (a) Adding freight elevator access to 2nd floor;
 - (b) Adding demising walls with electrical components;
 - (c) Concrete coring for plumbing and gas lines;
 - (d) Additional plumbing and mechanical work including installing bathrooms, hot water tanks, sprinkler heads, exhaust ducts and all related plumbing works; and,
 - (e) Adding washroom fixtures including hot water tanks, sprinkler heads, exhaust ducts and all plumbing works.
25. All of the above Vendor Improvements will require consultant drawings, development permit amendments, and building permits prior to proceeding the work, which may take up to 8 months.
26. Based on discussions with architect and development consultant, the Receiver estimates it would likely take a total of 11 months to complete the Vendor Improvements and in excess of \$610,000 in contractor and consultant costs. This is in addition to the holding costs such as property taxes, utilities and security, and interest on secured debt during this period.

Estimated Sales Price for Pre-Sale Contracts

27. Summarized in the table below is the total sales price for the Pre-Sale Contracts plus an estimate for proceeds from the sale of the unsold strata lots:

	Low	High
	\$000's	
Gross sales price	32,806	32,806
Unsold units ¹	5,680	6,491
Estimated gross sales price	38,486	39,297
Shares to be paid in lieu of cash ²	(1,900)	(1,900)
Estimated gross sales price excluding non-cash consideration	36,586	37,397

Note:

1. Estimated sales prices of between \$700 and \$800 per square foot for the unsold strata lots 17 to 20.
2. The pre-sale purchaser for strata lots 6 to 11, NYX Capital Investments Corp. offered shares of a limited partnership to be formed for the proposed self storage facility located on the Development Property to pay for a portion of the purchase price in lieu of cash consideration of \$1.9 million.

28. The Receiver is not certain if the value of the \$1.9 million in shares will be converted to cash and whether the face value will be achieved.
29. The Receiver estimates there will be a shortfall to IMC whether or not the \$1.9 million is converted to cash.
30. In the Marketing Strategy Report, Cushman advises that:
- (a) terminating the Pre-Sale Contracts and marketing the Development Property as a whole will enhance marketability as it would appeal to institutional investors, owner-users and speculative investors; and,
 - (b) the approximate market value of the Development Property is between \$38 million and \$45 million.
 - (c) Accordingly, the Receiver believes that a higher sales price will be achieved if the Pre-Sale Contracts are terminated, and the Development Property was marketed and sold as a whole "as is where is".

Estimated Recovery

31. Summarized in the table below is the Receiver's estimated recovery if the Pre-Sale Contracts are completed and the unsold units are sold (the "Complete Pre-Sale Scenario"):

	Complete Pre-Sale Contracts and Sell Unsold Units ¹	
	Low	High
	\$000's	
Estimated Proceeds		
Pre-Sale Contracts ²	32,806	32,806
Four Unsold Strata Lots ³	5,680	6,491
Commissions	(748)	(773)
Estimated Proceeds	37,738	38,524
Estimated Secured Debt Including Interests	As at Aug 31, 2023	As at Apr 30, 2023
Receiver's Borrowings ⁴	3,631	2,884
IMC - First Mortgage ⁵	34,148	33,252
IMC - Second Mortgage ⁶	5,583	5,313
Total Estimated Secured Debt	43,362	41,449
Estimated Shortfall	(5,624)	(2,925)
Notes		
1. In the low scenario it is assumed that the Receiver will be able to complete all required Vendor Improvements to close on all sales by August 1, 2023 and distribute proceeds by August 31, 2023. In the high scenario it is assumed that the Receiver will be able to complete all required Vendor Improvements to close on all sales by April 1, 2023 and distribute proceeds by April 30, 2023.		
2. Total of the sales prices for all pre-sale contracts. We have assumed that the \$1.9 million in shares will be converted to cash for the purpose of this analysis.		
3. Estimated sales price of between \$700 and \$800 per square foot for the unsold strata lots 17 to 20.		
4. Estimated total Receiver's borrowings plus estimated interest accruing monthly at a rate of 8% per annum.		
5. Estimated balance of IMC's first mortgage as at the respective dates above with interest accruing monthly at a rate of 8% per annum.		
6. Estimated balance of IMC's second mortgage as at the respective dates above with interest accruing monthly at a rate of 15% per annum.		

32. The Receiver estimates a shortfall of between \$2.9 and \$5.6 million to IMC in the Complete Pre-Sale Scenario.
33. Summarized in the table below is the Receiver's estimated recovery if all Pre-Sale Contracts are terminated and the Receiver conducts a stalking horse sales process (the "Stalking Horse Process Scenario"):

	Terminate All Pre-Sale Contracts and Conduct Stalking Horse Sales Process ¹	
	Low	High
	\$000's	
Estimated Proceeds ²		
"As is Where is" Sale	38,250	43,000
Commissions	(150)	(753)
Break Fee	-	(400)
Estimated Proceeds	38,100	41,848
Estimated Secured Debt Including Interests as at Nov 30, 2022		
Receiver's Borrowings ³	1,513	1,513
IMC - First Mortgage ⁴	32,165	32,165
IMC - Second Mortgage ⁵	4,993	4,993
Total Estimated Secured Debt	38,671	38,671
Estimated Surplus / (Shortfall)	(571)	3,177
Notes		
1. We have assumed that the Receiver will obtain an order disclaiming all pre-sale contracts and approving a stalking horse sales process on August 19, 2022 with a bid deadline of September 30, 2022. It is assumed that a sale will close November 1, 2022 and proceeds will be distributed on November 30, 2022.		
2. In the low scenario, it is assumed that the Receiver accepts and closes on the Stalking Horse Offer with a commission of \$150,000. In the high scenario, it is assumed that the Receiver accepts and closes on a higher offer of \$43 million with a commission of \$753,000 or 1.75% of the sales price and a break fee payable to the Stalking Horse Bidder of \$400,000.		
3. Estimated total Receiver's borrowings plus estimated interest accruing monthly at a rate of 8% per annum.		
4. Estimated balance of IMC's first mortgage as at November 30, 2022 with interest accruing monthly at a rate of 8% per annum.		
5. Estimated balance of IMC's second mortgage as at November 30, 2022 with interest accruing monthly at a rate of 15% per annum.		

34. The Receiver estimates a shortfall of \$571,000 to IMC in the low estimate and a potential surplus of \$3.2 million in the high estimate.
35. The Stalking Horse Process Scenario would result in a greater recovery due to the following:
- (a) Potential for a higher estimated sales prices;
 - (b) No need to re-market the individual units, which could possibly delay the termination of the within proceedings and erode recovery through interest and professional fees;
 - (c) The need to address a number of condition precedents to the Pre-Sale Contracts, including termination of the Second Floor Lease and the Vendor Improvements;
 - (d) Removing the need to complete Vendor Improvements allows for:
 - (i) an earlier estimated closing date of November 30, 2022, in the Stalking Horse Process Scenario, versus August 31, 2023, in the Complete Pre-Sale Scenario. An earlier closing date will result in less holding costs for insurance, property taxes and interest on secured debt and Receiver's

borrowings. The interest on the secured debt and Receiver's borrowings are between \$275,000 to \$300,000 per month; and

- (ii) savings from not having to incur contractor and consultant costs to complete the Vendor Improvements. The additional contractor costs are estimated at \$550,000 and consultant costs are estimated to be \$60,000.

Part 3: LEGAL BASIS

1. The Receiver generally relies on the Receivership Order pronounced in this proceeding, the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, and the inherent jurisdiction of this Court.

Sales Procedure

2. The Receiver is of the view that the Sale Procedure, including the use of a stalking horse bid, is fair and will result in the highest potential recovery for stakeholders.

Stalking Horse Bid

3. The use of stalking horse bids to set a baseline for a bidding process in receivership has been recognized by Canadian courts as a legitimate means of maximising recovery in a bankruptcy or receivership sales process.

Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd., 2014 BCSC 1855

4. It is appropriate to seek Court approval of a stalking horse bid process prior to undertaking such a process.

Farm Credit Canada v. Gidda, 2015 BCSC 2188

5. In deciding to approve a Court bid the factors to be considered are those set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), including:
 - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the efficacy and integrity of the receiver's sale process by which offers were obtained; whether there has been unfairness in the working out of the process; and
 - (c) the interest of all parties.
6. In this proceeding, it is the Receiver's view that the use of a stalking horse bid is appropriate because:

- (a) The bidding process will provide a public and transparent process under which potential purchasers will be identified and the Companies' assets will be marketed;
- (b) The process has been designed to obtain the highest price in the shortest possible time;
- (c) the proposed stalking horse agreement sets a floor price that is at least sufficient to pay the claims of IMC as quickly as possible, and will provide comfort to the market that the Stalking Horse Bidder has conducted its due diligence and has decided to enter into the Stalking Horse Agreement.;
- (d) There is urgency to this process given the interest on the secured debts of the Companies, and there is risk that fewer creditors will be paid in a protracted receivership, should the sales process result in low offers or no qualified bids;
- (e) The process is designed to generate a result efficiently and effectively, all the while ensuring that bids will not be below the floor price as set out in the Stalking Horse Offer;
- (f) The Receiver has been in negotiations with a number of interested parties to put forward a stalking horse offer on the Development Property and the Receiver has put forward the best of those offers to the Court to be the Stalking Horse Offer;
- (g) There is no discernible unfairness or prejudice to any potential participant in the proposed Sale Procedure; and
- (h) The break fee is appropriate in the circumstances because in addition to reimbursing the Stalking Horse Bidder for its costs and expenses incurred in standing as the stalking horse bidder, it sets a solid minimum price and sends a strong message to marketplace on the minimum value of the project.

Disclaimer of Pre-sale Contracts and Leases

- 7. The Stalking Horse Offer requires that the Receiver disclaim the Pre-Sale Contracts as a condition precedent to the Stalking Horse Offer.
- 8. The Receiver has reviewed all Pre-Sale Contracts and the requirements to close on them. There are a number of condition precedents to remove in connection to the Pre-Sale Contracts and the Receiver estimates that closing the Pre-Sale Contracts will require significant work, cost and time.
- 9. The Receiver also believes the Stalking Horse Offer will result in a greater recovery compared to completing the Pre-Sale Contracts, and the Sales Procedure with a stalking horse bidder will produce a higher recovery than any other sales process.

10. The Receiver is of the view, based also on the Marketing Strategy Report, that any potential purchaser of the Development Property as a whole will similarly seek to disclaim the Pre-Sale Contracts. This is informed in part by the fact that 16 of 20 units are currently under contract, and some of those pre-sale contracts and leases are below market value for the Development Property and would require significant investment to perform the Vendor Improvements.
11. As noted above, the Receiver is authorized by the Receivership Order to cease to perform any contracts of the Companies.
12. The relevant principles the Court should consider when deciding whether or not to disclaiming a contract is appropriate are set out fully in *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527 [**"Forjay Management"**], and were succinctly summarized by Justice Fitzpatrick in *Peoples Trust Company v. Censorio Gorup (Hastings and Carleton) Holdings Ltd.*, 2020 BCSC 1013 [**"Peoples Trust"**], as follows:

[24] The relevant law is not in dispute. In fact, that law was reviewed by me in *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2018 BCSC 527, aff'd *Forjay Management Ltd. v. Peeverconn Properties Inc.*, 2018 BCCA 251 in similar circumstances.

[25] At paras. 35-43 of *Forjay Management*, I discussed the relevant principles, including that:

- a) A receiver has a duty to maximize recovery of assets under its administration;
- b) One tool of realization is to affirm or disclaim contracts;
- c) Typically, the court order will empower the receiver to act in respect of contracts and often, a receiver will seek specific directions if circumstances dictate that level of oversight; and
- d) Any disclaimer of contracts must arise from a receiver's proper exercise of discretion, including a consideration of its duties and also, all equitable interests involved.

[26] At para. 44 of *Forjay Management*, I considered whether disclaimer was appropriate within the following framework of issues:

- a) Firstly, what are the respective legal priority positions as between the competing interests?
- b) Secondly, would a disclaimer enhance the value of the assets? If so, would a failure to disclaim the contract amount to a preference in favour of one party? and

c) Thirdly, if a preference would arise, has the party seeking to avoid a disclaimer and complete the contract established that the equities support that result rather than a disclaimer?

Legal Priorities

13. The IMC is a priority secured lender. The interests of pre-sale purchasers under the Pre-Sale Contracts do not stand in priority to the legal interest and priority of secured creditors.

Forjay Management at paras. 67-72

14. IMC supports the disclaimer of the Pre-Sale Contracts in the circumstances.
15. Of the Pre-Sale Contracts, the following contracts are in a standard form:

CONTRACT	COUNTERPARTY
Standard Form Offer to Purchase Strata Lot 1	Blast Media Print Corp.
Standard Form Offer to Purchase Strata Lots 2 and 3	Robert Sauer
Standard Form Offer to Purchase Strata Lot 4 and 5	Jeffery Campbell Bowra, Mark Edward Hillsdon Smith, Jitender Pal Singh Bhandal
Standard Form Offer to Purchase Strata Lot 15	Christopher Doray Studio Inc.
Standard Form Offer to Purchase Strata Lot 16	1256175 B.C. Ltd.

(collectively, the "**Standard Form Contracts**")

16. There are two contracts that are not in the standard form:

CONTRACT	COUNTERPARTY
Purchase Agreement for Strata Lots 6,7,8,9,10, and 11	Nyx Capital Investments Corp.
Purchase Agreement for Strata Lots 12, 13, and 14	Nyx Capital Investments Corp.

(collectively, the "**Nyx Agreements**")

17. In addition to the Standard Form Contracts and the Nyx Agreements, there is a lease for the second floor of the Development Property that was granted to Suna Entertainment Group Inc. (the "**Second Floor Lease**"). It is a condition precedent to the Nyx Agreements that the Second Floor Lease be terminated.

18. The counterparties to the Pre-Sale Contracts are in no position to seek what is essentially an order of specific performance against the Receiver to force completion of the contracts.

Peoples Trust at para. 36

19. The Development Property has not been completed, permitted for occupancy, subdivided, stratified, and the subject matter of the Pre-Sale Contracts therefore does not exist.
20. The counterparties to the Pre-Sale Contracts are only entitled to specific performance if the contracts require no further work or services to be performed by the Receiver.

Forjay Management at para. 74, citing bclMC Construction Fund Corp. v. Chandler Homer Street Ventures Ltd., 2008 BCSC 897, at para. 73.

21. In addition, the Standard Form Contracts, at section 3.2 state that, if the Completion Date has not occurred by the Outside Date then either the Vendor or the Purchaser can terminate the Agreement by notice in writing and upon termination the Deposit and any interest accrued will be returned to the Purchaser. The latest of the outside dates in the Standard Form Contracts is April 28, 2022. Further, section 7.7 of the Standard Form Contracts states that "This Agreement creates contractual rights only and not any interest in land."
22. As such, either the Receiver or the purchasers in the Standard Form Contracts are in a legal position to terminate these contracts without the need for a Court Order disclaiming them.

Value Of The Assets And Preferences

23. In the Receiver's analysis, and as supported by the Marketing Strategy Report, it is clear that the value of the Development Property would be significantly enhanced by the disclaimer of the Pre-Sale Contracts.
24. To require the Receiver to perform the Vendor Improvements in order to complete the Pre-Sale Contracts would come at the expense of IMC. Further, because at least some of the contracts are below market value, the equity upon completion would constitute a windfall for the purchaser, when the costs to complete have been born by IMC. To require the performance of the Pre-Sale Contracts would be a preference in favour of the counterparties to the Pre-Sale Contracts.

The Equities

25. The assessment of competing equities in this case are as between the pre-sale counterparties and the secured creditors.

Forjay Management at para. 117

26. The equities in favour of the counterparties to the Pre-Sale Contracts must be such that they would justify overriding the legal priority of IMC.

Forjay Management at para. 131

27. The Receiver is aware of no equities at issue for the counterparties to the Pre-Sale Contracts that would give rise to such a justification.
28. The Receiver further notes that the counterparties will recover their deposits and any accrued interest on these deposits.

Receiver's Activities Since the First Report

29. The Receiver has acted with good faith throughout these proceedings and has complied with the statutory requirements of Receivers as set out in the *BIA*, and the orders issued by this Court from time to time. The activities as set out in the Second Report were undertaken with the objective of maximizing recovery for stakeholders.

Part 4: MATERIAL TO BE RELIED ON

1. The Receiver's Second Report to Court dated August 12, 2022.

The applicant estimates that the application will take 1 day.

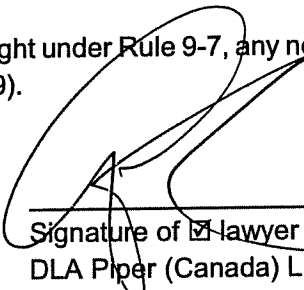
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master. Justice Wilson is seized in this matter

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

August 12, 2022 _____
Dated



Signature of lawyer for filing party
DLA Piper (Canada) LLP (Colin D. Brousson)
Lawyer for the Receiver

CONTACT DETAILS FOR HEARING BY TELEPHONE

Name of Lawyer attending: Colin Brousson
Telephone: 604.643.6400
Email: colin.brousson@dlapiper.com

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
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APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

Service List

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., IN ITS CAPACITY
AS GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENTS

SERVICE LIST

<p>Counsel for the Petitioner: Institutional Mortgage Capital Canada Inc.</p> <p>Bryan C. Gibbons Noor Mann, Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, B.C. V6C 3L2</p> <p>Tel: (604) 631-9152 Fax: (604) 694-2958 Email: bgibbons@lawsonlundell.com nmann@lawsonlundell.com</p>	<p>Counsel for the Respondents: 0876242 B.C. Ltd. and Gateway Development Limited Partnership.</p> <p>Ritchie Clark, Q.C., Bridgehouse Law LLP, 9th Floor – 900 West Hastings St., Vancouver, B.C. V6C 1E5</p> <p>Tel: (604) 684-2550 Fax: (604) 684-0916 Email: rclark@bridgehouselaw.ca</p>
<p>Counsel for the Receiver, The Bowra Group Inc.</p> <p>Colin Brousson Jeffrey Bradshaw DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, B.C. V6C 2Z7</p> <p>Tel: (604) 643-6400 Fax: (604) 605-4875 Email: colin.brousson@dlapiper.com jeffrey.bradshaw@dlapiper.com</p>	<p>The Receiver, The Bowra Group Inc.</p> <p>#430 - 505 Burrard Street Vancouver, B.C. V7X 1M3</p> <p>Attention: <u>Mario Mainella & Kevin Koo</u></p> <p>Tel: (604) 689-8939 Fax: (604) 689-8584 Email: mmainella@bowragroup.com kkoo@bowragroup.com</p>

<p>Counsel for Mark Vanry & Rannoch Capital Ltd.,</p> <p>Doug Eyford, Q.C., Eyford Partners LLP 1744-1055 Dunsmuir Street Vancouver, B.C. V7X 1L2</p> <p>Tel: (604) 899-5226 Fax (604) 899-5216 Email: deyford@eyfordpartners.com</p>	<p>Counsel for Prism Construction Ltd.</p> <p>David Claassen Jenkins Marzban Logan LLP Suite 900 - 808 Nelson Street Vancouver, B.C. V6Z 2H2</p> <p>Tel: (604) 895-3168 Fax: (604) 681-0766 Email: dclaassen@jml.ca</p>
<p>Rannoch Capital Ltd.</p> <p>c/o Registered and Records Office 2080 – 1055 West Georgia Street PO Box 11170 Stn. Royal Centre Vancouver, B.C. V6E 3R5</p> <p>Tel: (604) 992-2651 Email: rannoch29@gmail.com</p>	<p>Seeb Capital Ltd.</p> <p>c/o Registered and Records Office 1020-1166 Alberni Street Vancouver, B.C. V6E 3Z3</p>
<p>Phaser Fire Protection Ltd.</p> <p>2 – 19080 96th Avenue, Surrey, B.C. V4N 3Y3</p> <p>Attention: <u>Eric Kirwan</u></p> <p>Tel: 604-218-4474 Email: eric@phaserfire.ca</p>	

SCHEDULE "B"

Draft Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., AS
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE))	
))	
)	THE HONOURABLE JUSTICE)	August 19, 2022
)	WILSON)	
))	

ON THE APPLICATION of The Bowra Group Inc., in its capacity as Receiver of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the "**Receiver**") coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1, on August 19, 2022 and on hearing Colin D. Brousson and Jeffrey D. Bradshaw, counsel for the Receiver and those other counsel listed on **Schedule "A"** hereto;

THIS COURT ORDERS that:

DEFINITIONS

1. Capitalized terms not defined herein shall have the meanings set out in the Sale Procedure attached hereto as **Schedule "B"**.

SERVICE

2. The time for service of the Notice of Application for this order and the supporting materials therefore, including the Receiver's Second Report to Court dated August 12, 2022, (the "**Second Report**") is hereby abridged and so that this application is properly returnable today and hereby dispenses with further service thereof.

PRE-SALE CONTRACTS DISCLAIMER

3. The Receiver may, on notice to the affected parties (the "**Pre-Sale Contracts Counterparties**"), disclaim any or all of the pre-sale contracts or leases listed on **Schedule "C"** hereto.
4. On the condition that all deposits made by the Pre-Sale Contracts Counterparties together with interest thereon are returned to the Pre-Sale Counterparties in accordance with their respective pre-sale contracts, the Pre-Sale Contracts Counterparties shall be and are hereby permanently enjoined from registering charges on the title to the Property relating to any such disclaimer by the Receiver.

SALE PROCEDURE

5. The Sale Procedure substantially in the form attached as **Schedule "B"** hereto is hereby approved.
6. The Receiver is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.
7. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may 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 a sale of the Property (the "**Sale**"). Each prospective purchaser or bidder to whom each personal information is disclosed shall maintain and protect the privacy of such information and limited 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, and shall return all other personal information.

STALKING HORSE AGREEMENT

8. The execution by the Receiver of the Stalking Horse Agreement attached hereto as **Schedule "D"** is hereby authorized, *nunc pro tunc*, provided (subject to paragraph 10 below) that nothing herein approves the sale of the Property as defined in the Stalking horse Agreement on the terms set out in the Stalking Horse Agreement, and that the approval of any sale of the Property by the Court will be subject to a Vesting Order anticipated to be granted in accordance with the Sale Procedure, with such application to be heard on _____, 2022, subject to further order of the Court.
9. The obligation to pay a break fee on the terms set out in the Stalking Horse Agreement is hereby approved.

STALKING HORSE VESTING ORDER IF NO OTHER BIDS

10. Notwithstanding paragraph 8 above, and in accordance with the Sale Procedure, upon the Receiver filing an affidavit with the Court that no Qualified Bids (other than the Stalking Horse Agreement and Stalking Horse Addendum) were received by the Receiver by the Bid Deadline (the "**Receiver's Affidavit**"), the sale transaction (the "**Stalking Horse Transaction**") contemplated by the Stalking Horse Agreement is hereby approved. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Stalking Horse Transaction and for the conveyance to the Stalking Horse Bidder of the Property.
11. Upon filing of the Receiver's Affidavit, all of the Debtor's right, title and interest in and to the Property described in the Stalking Horse Agreement shall vest absolutely in the Stalking Horse Bidder in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated May 10, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property

registry system; and (iii) those Claims listed on **Schedule "F"** hereto (all of which are collectively referred to as the "**Encumbrances**"), which term shall not include the Permitted Encumbrances, easements and restrictive covenants as set out in the Stalking Horse Agreement, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

12. Following the filing of the Receiver's Affidavit and upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from DLA Piper (Canada) LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Stalking Horse Bidder as the owner of the Property, as identified in **Schedule "D"** hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Stalking Horse Bidder in and to the Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Stalking Horse Bidder as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Property all of the registered Encumbrances except for the Permitted Encumbrances.
13. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and from and after the filing of the Receiver's Affidavit, all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the

possession or control of the person having had possession or control immediately prior to the sale.

14. Following the filing of the Receiver's Affidavit, and subject to the terms of the Stalking Horse Agreement, vacant possession of the Property shall be delivered by the Receiver to the Stalking Horse Bidder at 12:00 noon on the Closing Date (as defined in the Stalking Horse Agreement), subject to the Permitted Encumbrances as set out in the Stalking Horse Agreement.
15. The Receiver, with the consent of the Stalking Horse Bidder, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
16. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of 0876242 B.C. Ltd and Gateway Development Limited Partnership (the "**Debtors**") now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtors,

the vesting of the Property in the Stalking Horse Bidder pursuant to this Order, should it occur, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF RECEIVER'S REPORT

17. The Second Report and the activities of the Receiver described therein are hereby approved.

GENERAL

18. The Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.
19. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Receiver
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

COUNSEL'S NAME	PARTY REPRESENTING
Bryan C. Gibbons	The Petitioner
Ritchie Clark, Q.C.	0876242 B.C. Ltd. and Gateway Development Limited Partnership

SCHEDULE "B"
SALES PROCEDURE

SCHEDULE B

SALE PROCEDURE

Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Honourable Mr. Justice Wilson of the Supreme Court of British Columbia (the "**Court**") dated May 10, 2022 (the "**Date of Receivership**"), The Bowra Group Inc. ("**Bowra**") was appointed as Receiver (in such capacity, the "**Receiver**") without security, over all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "**Debtor**"), acquired for or used in relation to a business carried on by the Debtor in construction of a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, BC and legally described as PID: 011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 (the "**Property**").

On August ____, 2022, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver's entry into a certain offer to purchase and agreement of purchase and sale for the Property between the Receiver and Access Self Storage Inc. (as party to the agreement, the "**Stalking Horse Bidder**") dated August 11, 2022 (the "**Stalking Horse Agreement**") so as to set a minimum price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers for the acquisition of the Property.

Accordingly, the following Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"Acknowledgement of Sale Procedure" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"Acquisition Entity" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"Bid" means an offer or proposals for the acquisition of the Property submitted by a Qualified Bidder. For clarity only a Qualified Bidder may submit a Bid for consideration in this Sale Process;

"Bid Deadline" means 10:00 a.m. Pacific Time on **September 30, 2022**;

"Bidder Qualification Requirements" has the meaning given to it in Section 6;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

"Due Diligence Materials" means some or all of the following information regarding the Property to the extent that it is available to the Receiver:

- a) List of debts and liabilities, secured and unsecured, of Gateway LP
- b) As built drawings for each floor
- c) Floor area measurements for each floor
- d) Copies of all construction warranties received from contractors and suppliers
- e) Copies of any current appraisals,
- f) Copies of any existing environment assessment reports,
- g) Copy of title register,
- h) Copies of architect's completion certificates
- i) Copies of any existing occupancy certificates

all of which will be made available to Participants by way of an electronic data room assembled and administered by the Receiver;

"Good Faith Deposit" means a cash deposit equal to five percent (5%) of the total purchase price contemplated under the applicable Modified APA;

"Modified APA" means an executed mark-up of the Stalking Horse Agreement reflecting the applicable Qualified Bidder's proposed changes to the Stalking Horse Agreement;

"Participant" means any person who has delivered the Participant Requirements and had those Participant Requirements deemed satisfactory by the Receiver in accordance with Section 4;

"Participant Requirements" has the meaning given to it in Section 4;

"Principals" means, collectively, the equity holder(s) of any Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

"Qualified Bidder" means a Participant that, (i) having satisfactorily met the Participant Requirements prior to the Bid Deadline, (ii) meets the Bidder Qualification Requirements prior to the Bid Deadline, and (iii) whom the Receiver, in accordance with Section 5, deems is reasonably likely to submit a binding bona fide offer that would have an aggregate purchase price for the

Property that exceeds the Stalking Horse Purchase Price plus the Break Fee, and would be able to consummate a transaction if selected as the Successful Bidder;

"Qualified Bid" means a Bid submitted by a Qualified Bidder on or prior to the Bid Deadline that satisfies the conditions set out in Section 7 hereof. For clarity the Stalking Horse Agreement is a Qualified Bid.

"Sale Procedure Order" means the Order authorizing this Sale Procedure;

"Sealed Bid Process" has the meaning given to it in Section 10;

"Sealed Bid Participants" has the meaning given to it in Section 10;

"Stalking Horse Addendum" has the meaning given it in Section 8;

"Stalking Horse Purchase Price" means \$38,250,000;

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

"Successful Bidder" means the Qualified Bidder who submitted the Successful Bid;

"Vesting Order" means the order of the Court that approves the sale of the Property to the Successful Bidder and vests title of the Property to the Successful Bidder.

2. **Assets for Sale**

The Receiver is soliciting superior offers for the Property. The sale of the Property pursuant to this Sale Procedure shall be on an **"as is, where is"** basis and without representations or warranties of any kind, nature, or description by the Receiver, or its directors, officers, employees or agents except to the extent set forth in the Successful Bid. Each Bidder shall, and the Stalking Horse Bidder shall, upon waiver of its initial conditions, be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/ or inspection of any documents and/ or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure.

3. **Marketing**

The Receiver or its real estate agent will solicit Bids for the Property and market the Property as they see fit, including but not limited to the following:

- a) preparing a teaser document (the "**Teaser**") that outlines the Property for sale, includes the Stalking Horse Agreement and this Sale Procedure and invites parties to satisfy the Participant Requirements to gain access to the Due Diligence Materials;
- b) sending the Teaser to a list of potential interested parties as soon as the Stalking Horse Agreement and the Sale Procedure is approved by the Court; and
- c) responding as appropriate at any time prior to the Bid Deadline to various questions and queries from interested parties, Participants and Qualified Bidders with the assistance of Debtor's management.

4. Participant Requirements

In order to participate in this Sales Process an interested person must first deliver each of the following to the Receiver:

- a) an executed Confidentiality Agreement;
- b) an executed Acknowledgement of Sale Procedure;
- c) identification of the Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction,

(collectively, the "**Participant Requirements**").

The Receiver shall review all Participant Requirements received as soon as practicable after receipt and if the Participant Requirements are deemed satisfactory by the Receiver at its reasonable discretion then the person shall be deemed a Participant in this Sales Process.

5. Participant's access to Due Diligence Materials

Only those persons deemed to be Participants in this Sales Process will be permitted access to the Due Diligence Materials. Participants will be permitted access to the Due Diligence Materials as soon as practicable after being deemed Participants.

The Receiver may at its discretion furnish but shall not be obligated to furnish any due diligence information other than the Due Diligence Materials. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

6. Bidder Qualification Requirements.

To have a Bid considered by the Receiver a Participant must establish itself as a Qualified Bidder. In order to be considered for qualification as a Qualified Bidder, each Participant must provide the Receiver with following prior to the Bid Deadline:

- a) written evidence of the Participant's chief executive officer or other appropriate senior executive's approval of the Bid; provided, however, that, if the Participant is an Acquisition Entity, then the Participant must furnish written evidence reasonably acceptable to the Receiver of the approval of the Bid by the Acquisition Entity's Principals; and
- b) written evidence upon which the Receiver may reasonably conclude that the Participant has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction.

(collectively, the "**Bidder Qualification Requirements**").

The Receiver shall review all Bidder Qualification Requirements received from a Participant as soon as practicable after receipt and if the Receiver is satisfied at its reasonable discretion with the reputation and creditworthiness of the Participant and that it is reasonably likely that the Participant will submit a binding bona fide offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement and that the Participant will be able to consummate a transaction if selected as a Successful Bidder, then that Participant shall be deemed a Qualified Bidder in this Sales Process. The Receiver shall notify each Participant of its determination as to whether the Participant is a Qualified Bidder as soon as practicable after receipt of that Participant's Bidder Qualification Requirements. A participant may amend or resubmit Bidder Qualification Requirements at any time prior to the Bid Deadline and the Receiver shall review such amended or resubmitted Bidder Qualification Requirements as soon as practicable after receipt of same.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

Each Participant shall comply with all reasonable requests for additional information by the Receiver regarding such Participant and its contemplated transaction. Failure by a Participant to comply with requests for additional information will be a basis for the Receiver to determine that the Participant is not a Qualified Bidder.

7. **Bid Requirements**

Only Qualified Bidders shall have their Bid's considered by the Receiver. In order to be considered a Qualified Bid a Bid must satisfy each of the following conditions:

- a) Written Submission of Modified APA and Commitment to Close. A Qualified Bid must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- b) Irrevocable. A Qualified Bid must be open for acceptance and irrevocable until October 15, 2022;

- c) Contingencies. A Qualified Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Qualified Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- d) Financing Sources. A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- e) No Fees payable to Qualified Bidder. A Qualified Bid, other than the Stalking Horse Agreement, may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- f) Good-Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver by certified cheque or banker's draft, to be held by the Receiver in trust in accordance with this Sale Procedure;
- g) Stalking Horse Purchase Price. The aggregate consideration in a Qualified Bid must have a purchase price that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement; and
- h) Delivery. A Qualified Bid must be delivered to the Receiver in a sealed envelope in accordance with Section 14 at or prior to the Bid Deadline.

The Receiver shall not unseal or read any Bid except in accordance with Section 10 below.

Notwithstanding the above requirements, the Stalking Horse Agreement is deemed to be a Qualified Bid for all purposes of this Sale Procedure.

8. Stalking Horse Bidder may increase its Bid

The Stalking Horse Bidder may at any time prior to the Bid Deadline submit to the Receiver in a sealed envelope an executed addendum to the Stalking Horse Bid amending the Stalking Horse Bid as to Purchase Price only (the "**Stalking Horse Addendum**"). The Stalking Horse Addendum shall not be unsealed or read by the Receiver Manager except in accordance with Section 10 below.

9. If no Qualified Bid other than the Stalking Horse Bid

If no Bid other than the Stalking Horse Agreement (and the sealed Stalking Horse Addendum if any) is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened. The Receiver shall then as soon as reasonably practicable file an affidavit with

the Court that no Qualified Bids (other than the Stalking Horse Agreement and Stalking Horse Addendum) were received by the Receiver by the Bid Deadline (the "**Receiver's Affidavit**") and the Receiver shall consummate, the Stalking Horse Agreement and the transactions provided for therein under the Approval and Conditional Vesting Order as defined the Stalking Horse Agreement. For clarity, no further application to Court will be necessary.

10. If one or more Bids in addition to the Stalking Horse Bid

If one or more Bids other than the Stalking Horse Bid is received by the Bid Deadline, the Receiver Manager shall conduct a sealed bid process (the "**Sealed Bid Process**") among only those Qualified Bidders who submitted Bids (collectively the "**Sealed Bid Participants**") to determine the Successful Bid.

The Sealed Bid Process shall be conducted as follows:

- a) the Receiver shall open and read all Bids submitted by Qualified Bidders other than the Stalking Horse Bidder and determine which, if any, are Qualified Bids pursuant to the requirements set out in Section 7;
- b) if the Receiver determines that none of the Bids is a Qualified Bid then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement, the Stalking Horse Addendum (if any) shall be destroyed without being opened and the Receiver shall proceed under section 9 herein to complete the Stalking Horse Agreement pursuant to the Approval and Conditional Vesting Order (as defined in the Stalking Horse Agreement);
- c) if the Receiver determines that one or more of the Bids is a Qualified Bid then the Receiver shall then unseal and read the Stalking Horse Addendum and shall then determine which among the Qualified Bids and the Stalking Horse Agreement as amended by the Stalking Horse Addendum is the Successful Bid;
- d) the Receiver shall determine the Successful Bidder by no later than 5:00 p.m. Pacific Time on October 7, 2022. After the Receiver determines the Successful Bid the Receiver shall:
 - i. as soon as practicable advise the Sealed Bid Participants of its determination and post notice of the determination on its website established in connection with the Receivership Proceedings; and
 - ii. seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein).

The Receiver shall be entitled to, but is not obligated to, seek additional information and clarifications from any Participant or Qualified Bidder in respect of its Bidder Qualification

Requirements or Bid at any time provided that nothing herein shall entitle a Qualified Bidder to improve its Bid as submitted at the Bid Deadline.

11. Acceptance of Successful Bid and Vesting Order

The Receiver shall complete the sale transaction or transactions with the Successful Bidder following the granting of a Vesting Order with regard to the Successful Bid (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein and will rely upon the Approval and Conditional Vesting Order previously granted). The Receiver shall apply for a Vesting Order as soon as practicable after the determination by the Receiver of the Successful Bidder.

12. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in an account of the Receiver. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder, shall be returned to such Qualified Bidders within three (3) business days of the selection of the Successful Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

13. Delivery of documents to the Receiver Manager

All documents or other materials to be delivered to the Receiver pursuant to this Sales Procedure, including the Participant Requirements and the Bidder Qualification Requirements, but excluding all Bids, must be submitted by email to mmainella@bowragroup.com such that they are actually received by the Receiver no later than the Bid Deadline.

Bids, including the Good Faith Deposit in the form of a certified cheque or bank draft must be delivered to the Receiver at 430 - 505 Burrard Street, One Bentall Centre, Box 72, Vancouver BC V7X 1M3, Attention: Mario Mainella and Kevin Koo by hard copy in a sealed envelope by the Bid Deadline. The envelope containing the Bid shall be marked:

0876242 B.C. LTD. AND GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
IN RECEIVERSHIP CONFIDENTIAL SEALED BID

A Bid that is not received by hard copy prior to the Bid Deadline shall not constitute a Qualified Bid and shall be disqualified.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

The Receiver may reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) contrary to the best interests of the Receivership estate.

ACKNOWLEDGEMENT OF SALE PROCEDURE

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Supreme Court of British Columbia on August __, 2022 in Action No: H220132 and further acknowledges that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Bid to be considered by the Receiver.

This _____ day of _____

[NAME]

By:

[Signing Officer]

SCHEDULE "C"
PRE-SALE CONTRACTS

CONTRACT	COUNTERPARTY
Standard Form Offer to Purchase Strata Lot 1	Blast Media Print Corp.
Standard Form Offer to Purchase Strata Lots 2 and 3	Robert Sauer
Standard Form Offer to Purchase Strata Lot 4 and 5	Jeffery Campbell Bowra, Mark Edward Hillsdon Smith, Jitender Pal Singh Bhandal
Purchase Agreement for Strata Lots 6,7,8,9,10, and 11	Nyx Capital Investments Corp.
Purchase Agreement for Strata Lots 12, 13, and 14	Nyx Capital Investments Corp.
Standard Form Offer to Purchase Strata Lot 15	Christopher Doray Studio Inc.
Standard Form Offer to Purchase Strata Lot 16	1256175 B.C. Ltd.
Lease for Second Floor	Suna Entertainment Group Inc.

SCHEDULE "D"
STALKING HORSE AGREEMENT

OFFER TO PURCHASE AND AGREEMENT OF PURCHASE AND SALE

3333 BRIDGEWAY STREET, VANCOUVER, BC

THIS OFFER is made on the 11th day of August, 2022.

BY:

ACCESS SELF STORAGE INC.

(the "**Purchaser**")

TO:

THE BOWRA GROUP INC. in its capacity as Court appointed Receiver and Manager of 0876242 B.C. Ltd. and Gateway Development Limited Partnership and not in its personal or any other capacity

(the "**Vendor**")

WITNESSES THAT WHEREAS:

- A. Terms utilized in these Recitals and defined in this Agreement will, for all purposes of this Agreement, have the meanings respectively ascribed thereto in Section 3.1 or as otherwise defined herein;
- B. 0876242 B.C. Ltd. (the "**Nominee**") holds registered ownership of the Property in trust as nominee and bare trustee for Gateway Development Limited Partnership (the "**Beneficial Owner**") and together with the Nominee, collectively, the "**Owner**").
- C. Pursuant to an order (the "**Receivership Order**") of the Supreme Court of British Columbia made on May 10, 2022 in the Supreme Court of British Columbia (the "**Court**") Action Number VLC-S-H-220132, Vancouver Registry (the "**Receivership Action**"), the Court made an Order appointing the Vendor as the court-appointed receiver and manager without security, of all of the assets, undertakings and property of the Owner acquired for, or used in relation to a business carried on by the Owner in constructing a mixed commercial and industrial strata development at the Property, with the power and authority to, among other things, sell the Property; and
- D. The Purchaser is prepared to purchase the Purchase Assets, including the Property, from the Vendor, and the Vendor is prepared to sell the Purchase Assets, including the Property, to the Purchaser, upon the terms and conditions set out in this Agreement,

NOW THEREFORE, in consideration of the covenants and agreements herein set forth, the Vendor and the Purchaser hereby covenant, acknowledge and agree as follows:

ARTICLE 1 – SUMMARY OF BASIC TERMS

1.1 Summary of Basic Terms

The basic terms of this Agreement are as follows:

- | | | |
|-----|------------------------------------|---|
| (a) | Address of Purchaser: | 100 Canadian Road,
Toronto, Ontario
M1R 4Z5
Attention: Iqbal Khan |
| (b) | Address of Vendor: | PO Box 72, Bentall One
505 Burrard Street, Suite 430
Vancouver, British Columbia V7X 13M
Attention: Mario Mainella |
| (c) | Municipal Address of the Property: | 3333 Bridgeway Street, Vancouver, BC |
| (d) | Legal Description of the Property: | See Part 1 of Schedule A |
| (e) | Purchase Price: | \$38,250,000.00 |
| (f) | Deposit: | \$1,900,000.00 |

The foregoing basic terms are approved by the parties. Any reference in this Agreement to a basic term will be construed to include the provision set forth above as well as any additional terms and conditions of this Agreement where the basic term is more fully set forth.

ARTICLE 2 – OFFER AND ACCEPTANCE

2.1 Offer

The Purchaser hereby offers to purchase (the “Offer”) from the Vendor the Purchase Assets, including the Property, free and clear of all liens, charges, encumbrances and title notations, save and except only the Permitted Encumbrances, and free and clear of any debts and obligations of the Owner, upon the terms and conditions contained herein.

2.2 Acceptance

The acceptance of this Offer by the Vendor will convert this Offer into a binding agreement (the “Agreement”) for the purchase and sale of the Property on the terms and conditions contained herein.

ARTICLE 3 – INTERPRETATION

3.1 Definitions

In this Agreement, each following term will have the meaning respectively set out below unless the context or subject matter is inconsistent with that meaning:

- (a) **"Agreement"** means this Offer to Purchase and Agreement of Purchase and Sale, and all schedules attached hereto, as may be amended in writing from time to time with the agreement of both parties;
- (b) **"Approval and Conditional Vesting Order"** means an Order or Orders of the Court in the Receivership Action in form and content satisfactory to the Purchaser and the Vendor, each acting reasonably, approving the entry into this Agreement by the Vendor, including the disclaimer of all pre-sale agreements for the Property, the Break Fee, and the consummation of the transactions contemplated herein, and vesting in the Purchaser or its nominee(s) all right, title and interest of the Owner in and to the Property free and clear of all legal notations, charges, liens and interests, save and except the Permitted Encumbrances, and free and clear of any debts and obligations of the Owner;
- (c) **"Break Fee"** has the meaning given in Section 7.3;
- (d) **"Building"** means the 6 storey building constructed on the Property and comprising approximately 110,000 square feet of building area and all other structures, improvements and facilities situated in or on the Lands;
- (e) **"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;
- (f) **"City"** means the City of Vancouver;
- (g) **"Closing"** means the closing of the purchase and sale of the Property in accordance with the provisions of this Agreement;
- (h) **"Closing Date"** means the later of (i) November 1, 2022 and (ii) the tenth Business Day following the date on which the Receiver's Affidavit (as defined in the Sale Procedure) is filed with the Court if Section 9 of the Sale Procedure is applicable or the tenth Business Day following the date on which the Vesting Order is granted by the Court if the Purchaser is determined to have the Successful Bid (as defined in the Sale Procedure) in accordance with Section 10(d) of the Sale Procedure; or such other date as agreed upon in writing by the Vendor and the Purchaser;
- (i) **"Deposit"** means the sum set forth in Subsection 1.1(f) to be paid by the Purchaser to the Vendor pursuant to Subsection 4.2(a);
- (j) **"Environmental Laws"** means any law, bylaw, order, ordinance, ruling, regulation or directive of any applicable federal, provincial or municipal government or governmental department, agency or regulatory authority or any court of competent jurisdiction relating to environmental matters and/or regulating the import, manufacture, storage, distribution, labelling, sale, use, handling, transport or disposal of Hazardous Materials, as are in force as of the Closing Date;

- (k) **“Environmental Condition”** means:
- (i) the presence of any Hazardous Materials in, on, at or under the Property or any building, improvement or structure on the Property;
 - (ii) the release of any Hazardous Materials to, at or from the Property or any building, improvement or structure on the Property;
 - (iii) the presence of any Hazardous Materials in, on, at or under any land, water, groundwater, sediments or building, improvement or structure other than the Property where such Hazardous Materials originated from, or otherwise resulted from any operation or activity on, the Property; and
 - (iv) any damage, contamination, pollution, impairment, alteration, destruction of or injury to, human health or safety or to the environment resulting from any activity, operation, act or omission of any kind whatsoever on, at or relating to the Property, including damage, contamination, pollution, impairment, alteration or destruction of or injury to fish, fish habitat, wildlife, biota, crops, livestock, lands, soil, air (including indoor air), water, sediments, groundwater and drinking water supplies at, on or of the environment;
- (l) **“Execution Date”** means the date upon which the Vendor accepts the Purchaser’s offer herein contained by delivering a fully executed copy of this Agreement to the Purchaser;
- (m) **“ETA”** means the *Excise Tax Act* (Canada);
- (n) **“Hazardous Materials”** means any underground storage tanks, any explosive or radioactive materials, pollutants, contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind, including, without limitation, compounds known as chlorobiphenyls, petroleum and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws;
- (o) **“Lands”** means the lands described in Schedule “A” hereto;
- (p) **“Land Title Office”** means the Vancouver Land Title Office;
- (q) **“Leases”** means all letters of understanding, offers to lease (unless a lease with respect thereto has been entered into), agreements to lease (unless a lease with respect thereto has been entered into), leases, renewals and extensions of leases, and other rights or licenses granted to possess or occupy space within the Property;

- (r) **“Owner”** has the meaning given in Recital B;
- (s) **“Permits”** means all permits, licenses, certificates, approvals, consents, authorizations, registrations or any item with similar effect issued or granted to the Owner (or the Owner’s predecessors in title) by any governmental authority relating to the construction, development and occupancy of the Property;
- (t) **“Permitted Encumbrances”** means:
 - (i) subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original or any other Crown grant or disposition or implied by statute in respect of or affecting the Property;
 - (ii) the legal notations, rights of way, covenants and agreements listed and described in Part 3 of Schedule “A”; and
 - (iii) an encroachment agreement substantially in the form attached as Schedule C registered or to be registered against the Property as an easement and indemnity agreement and statutory right of way;
- (u) **“Plans”** means all plans, drawings, specifications and other documentation relating to the construction and development of the Property including, without limitation, working drawings, detail drawings, shop drawings, “as built” drawings, CAD files, other documentation prepared to illustrate or define a particular aspect of the Building, and any information relating to the Building’s status and specifications;
- (v) **“Property”** means Building and Lands;
- (w) **“Purchase Assets”** means:
 - (i) the Lands;
 - (ii) the Building; and
 - (iii) all of the right, title and interest of the Owner in and to the Plans, Reports, Permits, Rights and Warranties, if and to the extent assignable, it being understood that the Vendor has provided the Purchaser with copies of everything it has in its possession and control in respect of any Plans, Reports, Permits, Rights and Warranties as part of the Due Diligence Materials (as defined in the Sale Procedure) and the Vendor shall not be required to deliver anything further in respect of Plans, Reports, Permits, Rights and Warranties prior to the Closing Date unless the Vendor obtains possession of any other Plans, Reports, Permits, Rights and Warranties prior to the Closing Date;
- (x) **“Purchase Price”** means the sum set forth in Subsection 1.1(e) to be paid by the Purchaser to the Vendor in consideration of the purchase and sale of the Property in accordance with this Agreement;

- (y) **"Purchaser's Conditional Period"** means the period commencing on the Execution Date and expiring at 1:00 p.m. EST on August 12, 2022;
- (z) **"Purchaser's Initial Conditions"** means the conditions for the benefit of the Purchaser set out in Section 7.1 hereof;
- (aa) **"Purchaser's Solicitors"** means Marrelli & Co., Barristers & Solicitors;
- (bb) **"Receiver"** means The Bowra Group Inc., as court appointed receiver of the Owner and not in its personal or any other capacity;
- (cc) **"Receivership Action"** has the meaning given to it in Recital C;
- (dd) **"Receiver's Court Filing"** has the meaning given to it in subsection 7.2 ;
- (ee) **"Reports"** means all reports obtained by the Owner or the Vendor with respect to the physical condition of or construction of the Property (including, without limitation, planning matters, environmental reports, architectural and engineering reports, building condition and structural reports; area certificates and governmental reports, including, without limitation, investigations, inspections and soil and/or ground water tests);
- (ff) **"Rights"** means all rights and benefits pertaining to the Property;
- (gg) **"Sale Procedure"** means the procedure for marketing and selling the Property as materially set out in Schedule B;
- (hh) **"Sale Procedure Order"** means the Order of the Court approving the Sale Procedure in all material respects;
- (ii) **"Vendor's Solicitors"** means DLA Piper (Canada) LLP;
- (jj) **"Vesting Order"** means the order of the Court, as defined in the Sale Procedure, that approves the sale of the Property to the Successful Bidder and vests title of the Property to the Successful Bidder; and
- (kk) **"Warranties"** means all warranties and guarantees obtained by the Owner or benefitting the Property in respect of the construction and development of the Property.

3.2 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and *vice versa* and words importing the neutral gender include the masculine and feminine genders;

- (b) the division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for convenience only and will not affect the construction or interpretation of this Agreement;
- (c) references to any Article, Section, Subsection or Schedule will, unless the context otherwise requires, mean that Article, Section, Subsection or Schedule of this Agreement;
- (d) the captions contained in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement; and
- (e) all payments to be made will be deemed to be payments in lawful currency of Canada.

ARTICLE 4 – PURCHASE PRICE

4.1 Agreement of Purchase and Sale

Subject to the terms and conditions of this Agreement:

- (a) the Vendor agrees to sell the Purchase Assets, including the Property, to the Purchaser in consideration of payment of the Purchase Price by the Purchaser to the Vendor on the dates stipulated herein; and
- (b) the Purchaser agrees to purchase the Purchase Assets, including the Property, from the Vendor, subject only to the Permitted Encumbrances, and to pay the Purchase Price to the Vendor on the dates stipulated herein.

4.2 Payment of Purchase Price

The Purchaser will pay the Purchase Price as follows:

- (a) the Deposit will be paid by the Purchaser to the Vendor by way of certified cheque or bank draft, payable to the Vendor's Solicitors, in trust, within three Business Days of the delivery of this Offer to the Vendor; and
- (b) the balance of the Purchase Price, subject to the adjustments provided for in this Agreement, will be paid by the Purchaser on the Closing Date as provided in this Agreement.

4.3 Deposit

The Deposit will be held by the Vendor's Solicitors. The Deposit will be dealt with as follows:

- (a) on the Closing Date, the Deposit will be credited on account of the Purchase Price;
or

- (b) if, after the Mutual Conditions in section 7.2 herein are waived, removed or met, the Purchaser fails to complete the purchase of the Property in accordance with this Agreement or if the Purchaser repudiates this Agreement, then the Deposit will be forfeited to the Vendor as liquidated damages, without prejudice to any other rights or remedies of the Vendor whether at law or in equity; or
- (c) if the Mutual Conditions in Section 7.2 herein are not waived, removed or met, the Deposit will be returned to the Purchaser forthwith without any deduction
- (d) subject to the Vendor's rights to sell the Property to a party other than the Purchaser under the Sale Procedure Order, if the Purchaser is not in default of any of its obligations under this Agreement and the Vendor fails to complete the sale of the Property in accordance with this Agreement or if the Vendor repudiates this Agreement, then the Deposit will be returned to the Purchaser upon demand by the Purchaser on or after the Closing Date, without prejudice to any other rights or remedies of the Purchaser whether at law or in equity; or
- (e) in the event the Vendor's sells the Property to a party other than the Purchaser under the Sales Procedure Order, then the Deposit will be forthwith returned to the Purchaser and the transactions contemplated hereby will be abandoned, without further action by any of the parties; provided, however, Section 5.1 will remain in full force and effect and survive any termination of this Agreement.

ARTICLE 5 – “AS IS, WHERE IS”, INSPECTION AND INQUIRY

5.1 Acknowledgements by Purchaser

The Purchaser acknowledges and agrees that:

- (a) subject to waiver of Purchaser's Initial Conditions as herein provided, the Purchaser expressly acknowledges and agrees that it is acquiring the Property on an "as is and where is" basis, without any representation or warranty by the Vendor with respect to the Property, except as otherwise set forth in this Agreement and in this regard, the Purchaser is relying solely on its own due diligence investigations in entering into this Agreement; and
- (b) this Agreement will serve as a "Stalking Horse Agreement" under the Sale Procedure Order and Sale Procedure; and
- (c) under the Sale Procedure Order and Sale Procedure, the Vendor is entitled to, and may wish to advocate for another offer to be accepted and approved by the Court if another offer for the Property is deemed, in the Receiver's sole discretion, as being superior to the Purchaser's offer.

5.2 Physical Inspections by the Purchaser

The Purchaser will, until the expiry of the Purchaser's Conditional Period, have the right, from time to time, and upon prior notice to the Vendor of at least one (1) Business Day, to enter the

Property on any Business Day, at the Purchaser's sole risk and expense, for the purpose of conducting inspections, tests and audits (including environmental inspections) relating to the Property, including, without limitation, soil tests, chemical analysis tests, inspections and tests of the roof and structural soundness of the Building situated on the Property and the operating capability of all building systems serving the Property. The Purchaser hereby agrees to pay all costs of any repairs required to be made to the Property as a result of the aforesaid inspections, tests and audits so that the Property is restored to the condition it was in immediately prior to the inspection, test or audit. If any such repairs are not completed by the Purchaser within 30 days following termination of this Agreement, the Vendor shall have the right to perform such repairs and, in that event, shall be entitled to be reimbursed for all reasonable costs and expenses which it incurs in respect thereof. Furthermore, the Purchaser agrees to indemnify and save harmless the Vendor from and against any claims, losses, damages, liability and costs the Owner may suffer or incur by reason of personal injury or death to any person or loss of or damage to property that occurs during the course of or as a result of the Purchaser's inspections.

ARTICLE 6 – REPRESENTATIONS AND WARRANTIES

6.1 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to the Purchaser as representations and warranties made as of the date hereof and as of the Closing Date, unless otherwise specified, with the intent that the Purchaser will rely on such representations and warranties in entering into this Agreement, that:

- (a) subject to the Approval and Conditional Vesting Order being granted, the Vendor has the power, authority and capacity to enter into this Agreement, subject to its terms; and
- (b) the Vendor is a resident of Canada within the meaning of the *Income Tax Act* (Canada).

6.2 Purchaser's Representation and Warranty

The Purchaser hereby represents and warrants to the Vendor as a representation and warranty made as of the date hereof and as of the Closing Date, with the intent that the Vendor will rely on such representation and warranty in entering into this Agreement, that:

- (a) the Purchaser has the financial ability to complete the purchase of the Purchase Assets, including the Property;
- (b) the Purchaser is a corporation duly incorporated, validly existing and in good standing under the jurisdiction of its incorporation and in accordance with applicable legislation governing corporations in the jurisdiction of its incorporation, and has the power and capacity to enter into this Agreement and carry out its terms;
- (c) the execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement have been duly and validly authorized by all

necessary corporate action on the part of the Purchaser, and this Agreement constitutes a legal, valid and binding obligation of the Purchaser;

- (d) except for the Approval and Conditional Vesting Order, no authorization or approval or any other action by, and no notice to or filing with, any governmental entity or regulatory body exercising jurisdiction over the Property is required for the due execution, delivery and performance by the Purchaser of this Agreement;
- (e) the Purchaser is registered for GST under Part IX of the ETA and the Purchaser will provide the registration number to the Vendor prior to the Closing Date; and
- (f) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) and is not a non-Canadian person for the purposes of the *Investment Canada Act* (Canada).

6.3 Vendor's Covenants

The Vendor hereby covenants and agrees with the Purchaser as follows:

- (a) to continue to manage and maintain the Property until the Closing Date as it is currently being managed and maintained, subject to the other provisions of this Agreement and provided however, and notwithstanding the foregoing or any other provision of this Agreement, the Vendor will have no obligation to make any capital repairs or replacements to the Property whatsoever, except where such capital repairs or replacements are necessary to preserve the integrity of the Property; and
- (b) to maintain the existing insurance coverage in respect of the Property in full force and effect up to and including the Closing Date.

6.4 Environmental Condition of Property

The Purchaser hereby acknowledges and agrees that:

- (a) the Vendor has not made any representation or warranty whatsoever as to the suitability of the Property for the Purchaser's intended purposes, or the extent to which the Property complies with applicable zoning, health or safety standards or applicable laws, including, without limitation, Environmental Laws;
- (b) the Purchaser is acquiring the Property on an "as is and where is" basis, without any representation or warranty by the Vendor with respect to the Property's compliance with Environmental Laws or the Environmental Condition of or relating to the Property, and based on the Purchaser's own investigations, and in connection therewith, the Purchaser acknowledges and agrees that the Purchaser is responsible to satisfy itself, and to rely on its own investigations to verify, the existence and extent of any Hazardous Materials in, on or migrating to or from the Property and that the Environmental Condition of or relating to the Property is otherwise satisfactory;

- (c) the Purchaser hereby waives any requirement for the Vendor to provide the Purchaser with a site disclosure statement under the *Environmental Management Act* (British Columbia); and
- (d) the Purchaser will assume, effective on the Closing Date, and at its own cost, full and complete responsibility for the Environmental Condition of or relating to the Property, including, without limitation, remediation work, if any, in respect thereof and releases and will indemnify and save harmless the Vendor and its directors, officers and employees, and will release any previous owners of the Property, from and against any and all liabilities, obligations, duties, losses, damages, costs, expenses (including legal fees and expenses on a solicitor and own client basis), fees and disbursements of experts, consultants and contractors and costs and expenses with respect to or related to or arising out of the Environmental Condition of the Property as of the Closing Date.

The parties acknowledge and agree that the provisions of this Section 6.4 constitute an agreement between them that is a private agreement respecting liability for Hazardous Materials on, in, at or under, or migrating to or from or released from the Property, and any contamination of other properties, water or sediments resulting from such Hazardous Materials, and the remediation thereof, as contemplated in Part 4 of the *Environmental Management Act* (British Columbia) as amended or replaced from time to time.

ARTICLE 7 – PURCHASER’S INITIAL CONDITIONS, MUTUAL CONDITION RE APPROVAL AND SALE PROCEDURE ORDER AND BREAK FEE

7.1 Initial Conditions – Purchaser

The Purchaser’s obligation to complete the purchase of the Purchase Assets provided for in this Agreement shall be conditional until the expiry of the Purchaser’s Conditional Period upon the Purchaser either satisfying or waiving, in its sole and unfettered discretion, the following (the “**Purchaser’s Initial Conditions**”):

- (a) the Purchaser being satisfied as to the existing zoning for the Property;
- (b) the Purchaser being satisfied with the state of repair of the Building and the condition of the Property;
- (c) the Purchaser being satisfied with the Due Diligence Materials described in the Sale Procedure;

and

- (d) the Purchaser being satisfied that the whole of the top floor of the Building may be utilized as General Offices that are not ancillary to any other permitted use.

The Purchaser shall provide written notice to the Vendor or Vendor’s Solicitor prior to the expiry of the Purchaser’s Conditional Period as to whether or not any or all of the Purchaser’s Initial Conditions have been satisfied, fulfilled or waived. In the event that the such written notice does

not confirm that all of the Purchaser's Initial Conditions are satisfied, fulfilled or waived or in the event the Purchaser does not provide any such written notice, then this Agreement shall be terminated and the Deposit shall be returned to the Purchaser without deduction and the Purchaser shall, except with respect to its obligations under Sections 5.2 and 12.12 hereof, be released from all of its obligations hereunder. The Parties agree that the Purchaser's Initial Conditions have been included for the sole and exclusive benefit of the Purchaser and, notwithstanding that any such Purchaser's Initial Condition may be a true condition precedent, the Purchaser may waive any or all of the Purchaser's Initial Conditions in whole or in part at any time prior to the expiry of the Purchaser's Conditional Period without prejudice to any of its rights of termination in the event of non-performance in whole or in part of any other condition for its benefit.

7.2 Mutual Condition Precedent

The obligations of the parties under this Agreement are subject to the following mutual conditions precedent:

- (a) on or before the eighth Business Day following waiver of Purchaser's Initial Conditions, the Vendor filing with the Court the necessary materials to bring the application seeking the Sale Procedure Order and the Approval and Conditional Vesting Order (the "**Receiver's Court Filing**");
- (b) the Approval and Conditional Vesting Order and the Sale Procedure Order having been granted by the Court within twenty one Business Days of the Receiver's Court Filing; and
- (c) there shall be in effect no order, stay, injunction, judgment, decree, ruling, writ, assessment or arbitration award of the Court or other court of competent jurisdiction or of a relevant government entity prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.

The parties may agree to amend or waive any the foregoing conditions. Any amendment or waiver by the parties must be in writing and delivered to one another's solicitors.

7.3 Break Fee

Subject to this Section 7.3 and the Court granting the Approval and Conditional Vesting Order and the Sale Procedure Order, the Purchaser shall be entitled, in consideration for the loss of its rights under this Agreement, to payment of a break fee (the "**Break Fee**") in cash in the amount of Four Hundred Thousand (\$400,000.00) Dollars.

The Break Fee shall be paid to the Purchaser only if:

- (a) the Purchaser is not in breach or default of any provision of this Agreement, which breach or default has not been waived in writing by the Vendor; and

- (b) the Court approves an offer for the Property other than from the Purchaser, and the closing of a transaction in respect of such other offer has occurred or if this Agreement is terminated as a result of the actions of the Vendor described in Section 4.3(d).

7.4 Efforts to Fulfill Conditions Precedent

Each party shall proceed diligently and in good faith and use commercially reasonable efforts to satisfy and comply with and assist in the satisfaction of and compliance with the conditions precedent contained herein.

ARTICLE 8 – POSSESSION, ADJUSTMENT, RISK AND EXTENSION TO CLOSING DATE

8.1 Possession

The Purchaser will be entitled to have vacant possession of the Property on the Closing Date free and clear of all liens, charges, encumbrances and title notations, subject only to the Permitted Encumbrances, and free and clear of any and all Leases and any debts and obligations of the Owner.

8.2 Adjustments

All adjustments, both incoming and outgoing, normally the subject of adjustments in transactions of this type will be made as of the Closing Date and adjusted on the Vendor's and the Purchaser's statements of adjustment. Such adjustments will include but not be limited to all realty taxes, and other items normally adjusted in similar transactions, provided that any development or local improvement charges relating to the construction and development of the Property, regardless of when payable, shall be the sole responsibility of the Vendor. If the final cost or amount of any item which is to be adjusted cannot be determined as of the Closing Date, then an initial adjustment for such item shall be made at the Closing Date, such amount to be estimated by the parties acting reasonably, on the basis of best evidence available at the Closing Date as to what the final cost or amount of such item will be. In each case when such cost or amount is determined, the Vendor or Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement to the other and within ten (10) days thereafter, the parties shall make a final adjustment for the item in question.

8.3 Risk

The Property will be and remain at the risk of the Vendor until 12:01 a.m. on the Closing Date, and thereafter at the risk of the Purchaser if the sale herein contemplated is duly completed.

ARTICLE 9 – CLOSING PROCEDURES

9.1 Vendor's Documents

On or before the Closing Date, the Vendor will deliver to the Purchaser's Solicitors, properly executed and acknowledged, all documents reasonably required and prepared by the Purchaser's

Solicitors in form and substance reasonably approved by the Vendor's Solicitors, in order to complete this transaction in accordance with its terms, including, without limitation:

- (a) a Court-certified copy of the Approval and Conditional Vesting Order, or the Vesting Order in the event that the Stalking Horse Bidder is the Successful Bidder (as defined in the Sale Procedure);
- (b) the Vendor's statement of adjustments approved by the Vendor;
- (c) a statutory declaration by an authorized officer of the Vendor that the Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
- (d) a certificate of an officer of the Vendor certifying that the representations and warranties of the Vendor set out in this Agreement are true and correct in all material respects as of the Closing Date;
- (e) an agreement to readjust in respect of the adjustments and for any errors, omissions or changes in the statements of adjustments;
- (f) an occupancy permit or certificate for the whole of the Building issued by the City of Vancouver;
- (g) satisfactory evidence from the City of Vancouver that all issued permits for construction of the Building and other improvements to the Property have been completed and that there are no deficiency notices issued by the City of Vancouver in respect thereof; and
- (h) such other transfers, assignments and documents as the Purchaser's Solicitors may reasonably require to complete the transaction herein contemplated.

9.2 Purchaser's Documents

On or before the Closing Date the Purchaser will deliver to the Purchaser's Solicitors the following:

- (a) the Purchaser's statement of adjustments approved by the Purchaser;
- (b) one or more certified cheques or bank drafts payable to the Purchaser's Solicitors in trust (or bank wire to the Purchaser's Solicitors' trust account) for the balance of the adjusted Purchase Price;
- (c) Purchaser GST Certificate (as defined in Section 10.2);
- (d) a certificate of an officer of the Purchaser certifying that the representations and warranties of the Purchaser set out in this Agreement are true and correct in all material respects as of the Closing Date;
- (e) an agreement to readjust in respect of the adjustments and for any errors, omissions or changes in the statements of adjustments; and

- (f) such other transfers, assignments and documents as the Vendor's Solicitors may reasonably require to complete the transaction herein contemplated.

9.3 Terms of Tender

On the Closing Date, if all documents and funds have been delivered as herein provided, all documents will be held in trust by the Purchaser's Solicitors with the exception of the Court-certified Approval and Conditional Vesting Order (or the Vesting Order, if applicable), which document will be tendered for registration in the Land Title Office by the Purchaser's Solicitors. Upon submission for registration of the Court-certified Approval and Conditional Vesting Order (or Vesting Order, if applicable) and any other documents required to be submitted for registration and receipt by the Purchaser's Solicitors of a satisfactory post-index search confirming that title to the Property will be issued in the name of the Purchaser free and clear of all liens, charges, encumbrances and title notations (including the liens, charges and encumbrances set out in Part 2 of Schedule "A") except only Permitted Encumbrances and those encumbrances being discharged by way of the Court-certified Approval and Conditional Vesting Order (or Vesting Order, if applicable) and free and clear of any debts or obligations of the Owner, the Purchaser's Solicitors will forthwith pay to the Vendor the Purchase Price, as adjusted herein, and the parties will exchange all closing documents referred to in Sections 9.1 and 9.2.

9.4 Concurrent Requirements

All of the matters of payment and delivery of documents by each party to the other will be deemed to be concurrent requirements so that nothing is complete until everything has been paid, delivered and registered.

ARTICLE 10 – COSTS AND TAXES

10.1 Responsibility for Transaction Costs

The Purchaser will be responsible for the cost of registering the Court-certified Approval and Conditional Vesting Order (or Vesting Order, if applicable), including all relevant property transfer taxes and Land Title Office fees, necessary to convey the Property to the Purchaser. Each party will pay its own legal fees with respect to the transactions contemplated in this Agreement.

10.2 Goods and Services Tax

The Purchaser is responsible for any goods and services tax in respect of this purchase and sale transaction and will be responsible to account for goods and services tax in respect of this purchase and sale transaction in accordance with the ETA. The Purchaser confirms that it will account directly to Canada Revenue Agency with respect to any goods and services tax payable by the Purchaser in connection with the purchase of the Property and will confirm its goods and services tax registration number to the Vendor on the Closing Date by providing a signed certificate in the customary form which certificate shall include an indemnity in favour of the Vendor (the "**Purchaser GST Certificate**"), failing which the Purchaser will pay to the Vendor the goods and services tax applicable to the purchase of the Property on the Closing Date. The Purchaser will indemnify and hold harmless the Vendor from any liability under the ETA arising

as a result of any breach of this Section 10.2, such indemnity to survive the completion of the transactions contemplated in this Agreement.

ARTICLE 11 – NOTICES AND TENDER

11.1 Delivery of Notices

Any demand, notice, approval, consent or other communication to be given under the provisions of this Agreement by any party will be validly given if delivered personally or sent electronically addressed to the respective parties as follows:

- (a) to the Purchaser at the address set forth in Subsection 1.1(a), with a copy to the Purchaser's Solicitors at:

Marrelli & Co.
100 Canadian Road
Toronto, Ontario
M1R 4Z5

Tel: 416-971-7457
Fax: 416-971-7458
Email: james@marrelli.on.ca

Attention: James Marrelli

- (b) to the Vendor at the address set forth in Subsection 1.1(b), with a copy to the Vendor's Solicitors at:

DLA Piper (Canada) LLP
2800 - 666 Burrard Street
Vancouver, BC V6C 2Z7

Tel: 604.643.6467
Fax: 604.605.3761
Email: richard.lord@dlapiper.com

Attention: Richard Lord

11.2 Deemed Date of Receipt

The date of receipt of any such notice or communication will be deemed to be the date of delivery or transmittal by facsimile if delivered by 5:00 p.m. (Vancouver time) on a Business Day, and if otherwise delivered or transmitted by facsimile, on the next Business Day following the date of such delivery or transmittal.

11.3 Change of Address

Either party may at any time give notice in writing to the other of any change of address of the party giving such notice to be given in the manner aforesaid, and from and after giving such notice, the address therein specified will be deemed to be the address of such party for the giving of such notice.

11.4 Tender

Tender of any money to be paid hereunder may be made by certified cheque (including a certified solicitor's trust cheque), bank draft or wire transfer payable to the party to whom tender is made, and drawn on a Canadian chartered bank or trust company, and tender may be made on an officer or director of the party or a solicitor known to the tendering party to be acting for the other in this matter.

ARTICLE 12 – MISCELLANEOUS

12.1 Assignment

The Purchaser may only assign this Agreement with the prior written consent of the Vendor, which consent may not be unreasonably withheld or delayed.

12.2 Agency and Commission

The Purchaser will be responsible for any and all fees, commission or compensation payable to any real estate agent or salesperson engaged by the Purchaser in connection with the purchase of the Purchase Assets. The Vendor agrees that any fees, commissions or compensation payable to any real estate agent or salesperson engaged by the Vendor will be paid from the sales proceeds, provided that the maximum amount thereof in respect of the sale of the Purchase Assets to the Purchaser completed pursuant to Section 9 of the Sale Procedure (no Qualified Bid other than the Stalking Horse Bid) shall not exceed the sum of \$150,000.00, it being understood that there is no cap on the amount of any fees, commissions or compensation payable to any real estate agent or salesperson engaged by the Vendor in respect of the sale of the Purchase Assets to the Purchaser completed in circumstances where the Purchaser has, under the Sale Procedure, submitted a Stalking Horse Addendum and is only determined to be the Successful Bidder pursuant to Section 10(d) of the Sale Procedure as a result of the Stalking Horse Addendum.

12.3 Further Assurances

The Vendor and the Purchaser will each deliver to or cause to be delivered to the other all such further documents and assurances as may be reasonably required to give full effect to the intent and meaning of this Agreement and registration of all the requisite documents in all appropriate offices of public record.

12.4 Survival

The representations, warranties and covenants of the Vendor in this Agreement will survive the closing of the sale and purchase of the Property for a period of one year after the Closing Date and will not merge in the Transfer of the Property or any other document delivered on the Closing Date.

12.5 Entire Agreement

This Agreement contains the whole of the agreement between the parties and there are no agreements, representations or warranties save as herein set out or incorporated by reference.

12.6 Time of the Essence

Time will be of the essence.

12.7 Business Days

If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited will extend to the next following Business Day.

12.8 Counterparts and Electronic Execution

This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by email or any other form of electronic transmission and may be signed electronically.

12.9 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada having application in the Province of British Columbia.

12.10 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12.11 Role of Receiver

The Purchaser acknowledges and agrees that the Receiver is the Court appointed receiver of the Vendor and is executing this Agreement in such capacity, and not in its personal or any other capacity and, accordingly, the Receiver incurs no personal or any other liability in executing this Agreement.

VENDOR'S ACCEPTANCE OF OFFER

For and in consideration of the covenants and agreements of the Purchaser contained in the within Offer, the Vendor hereby irrevocably accepts the Offer and agrees to perform its obligations thereunder this 11th day of August, 2022.

THE BOWRA GROUP INC. in its capacity as Court appointed receiver and manager of 0876242 B.C. Ltd. and Gateway Development Limited Partnership and not in its personal or any other capacity

Per: _____

Name: KEVIN KOO

Title: SENIOR ASSOCIATE

SCHEDULE A

PART 1: LEGAL DESCRIPTION OF PROPERTY

PID: 011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461

PART 2: LEGAL NOTATIONS, CHARGES AND ENCUMBRANCES TO BE DISCHARGED

1. Notice of Interest, *Builders Lien Act* (s.3(2)), See CA3947748, Filed 2014-09-08
2. Mortgage CA6681010 modified by CA8430029
3. Assignment of Rents CA6681011
4. Mortgage CA8430043
5. Claim of Builders Lien CA9867388
6. Certificate of Pending Litigation CB129148
7. All related priority agreements in respect of the above encumbrances

PART 3: PERMITTED ENCUMBRANCES

Nature: STATUTORY RIGHT OF WAY

Registration Number: BB206901

Registration Date and Time: 2008-03-06 11:59

Registered Owner: GREATER VANCOUVER SEWERAGE AND DRAINAGE DISTRICT

Remarks: PART IN PLAN BCP35245

Nature: STATUTORY RIGHT OF WAY

Registration Number: BB814032

Registration Date and Time: 2009-09-28 13:14

Registered Owner: CANADIAN PACIFIC RAILWAY COMPANY

Nature: STATUTORY RIGHT OF WAY

Registration Number: BB814033

Registration Date and Time: 2009-09-28 13:14

Registered Owner: CANADIAN PACIFIC RAILWAY COMPANY

Remarks: PART IN PLAN BCP42338

Nature: RESTRICTIVE COVENANT

Registration Number: BB814034

Registration Date and Time: 2009-09-28 13:14

Remarks: PART IN PLAN BCP42338

APPURTENANT TO LOT L PLAN 16178

Nature: STATUTORY RIGHT OF WAY
Registration Number: CA5047378
Registration Date and Time: 2016-03-16 13:55
Registered Owner: GREATER VANCOUVER SEWERAGE AND DRAINAGE DISTRICT
Remarks: PART IN PLAN EPP59872

Nature: COVENANT
Registration Number: CA5047379
Registration Date and Time: 2016-03-16 13:55
Registered Owner: GREATER VANCOUVER SEWERAGE AND DRAINAGE DISTRICT

Nature: COVENANT
Registration Number: CA5865408
Registration Date and Time: 2017-03-10 15:01
Registered Owner: CITY OF VANCOUVER

Nature: STATUTORY RIGHT OF WAY
Registration Number: CA9134330
Registration Date and Time: 2021-06-25 15:58
Registered Owner: FORTISBC ENERGY INC.

Nature: EASEMENT AND INDEMNITY AGREEMENT
Registration Number: CB102324
Registration Date and Time: 2022-07-22 15:53
Registered Owner: CITY OF VANCOUVER

Nature: STATUTORY RIGHT OF WAY
Registration Number: CB102327
Registration Date and Time: 2022-07-22 15:53
Registered Owner: CITY OF VANCOUVER

SCHEDULE B

SALE PROCEDURE

Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Honourable Mr. Justice Wilson of the Supreme Court of British Columbia (the "**Court**") dated May 10, 2022 (the "**Date of Receivership**"), The Bowra Group Inc. ("**Bowra**") was appointed as Receiver (in such capacity, the "**Receiver**") without security, over all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "**Debtor**"), acquired for or used in relation to a business carried on by the Debtor in construction of a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, BC and legally described as PID: 011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 (the "**Property**").

On August ___, 2022, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver's entry into a certain offer to purchase and agreement of purchase and sale for the Property between the Receiver and Access Self Storage Inc. (as party to the agreement, the "**Stalking Horse Bidder**") dated August ___, 2022 (the "**Stalking Horse Agreement**") so as to set a minimum price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers for the acquisition of the Property.

Accordingly, the following Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"Acknowledgement of Sale Procedure" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"Acquisition Entity" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"Bid" means an offer or proposals for the acquisition of the Property submitted by a Qualified Bidder. For clarity only a Qualified Bidder may submit a Bid for consideration in this Sale Process;

"Bid Deadline" means 10:00 a.m. Pacific Time on **September 30, 2022**;

"Bidder Qualification Requirements" has the meaning given to it in Section 6;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

"Due Diligence Materials" means some or all of the following information regarding the Property to the extent that it is available to the Receiver:

- a) List of debts and liabilities, secured and unsecured, of Gateway LP
- b) As built drawings for each floor
- c) Floor area measurements for each floor
- d) Copies of all construction warranties received from contractors and suppliers
- e) Copies of any current appraisals,
- f) Copies of any existing environment assessment reports,
- g) Copy of title register,
- h) Copies of architect's completion certificates
- i) Copies of any existing occupancy certificates

all of which will be made available to Participants by way of an electronic data room assembled and administered by the Receiver;

"Good Faith Deposit" means a cash deposit equal to five percent (5%) of the total purchase price contemplated under the applicable Modified APA;

"Modified APA" means an executed mark-up of the Stalking Horse Agreement reflecting the applicable Qualified Bidder's proposed changes to the Stalking Horse Agreement;

"Participant" means any person who has delivered the Participant Requirements and had those Participant Requirements deemed satisfactory by the Receiver in accordance with Section 4;

"Participant Requirements" has the meaning given to it in Section 4;

"Principals" means, collectively, the equity holder(s) of any Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

"Qualified Bidder" means a Participant that, (i) having satisfactorily met the Participant Requirements prior to the Bid Deadline, (ii) meets the Bidder Qualification Requirements prior to the Bid Deadline, and (iii) whom the Receiver, in accordance with Section 5, deems is reasonably likely to submit a binding bona fide offer that would have an aggregate purchase price for the

Property that exceeds the Stalking Horse Purchase Price plus the Break Fee, and would be able to consummate a transaction if selected as the Successful Bidder;

"Qualified Bid" means a Bid submitted by a Qualified Bidder on or prior to the Bid Deadline that satisfies the conditions set out in Section 7 hereof. For clarity the Stalking Horse Agreement is a Qualified Bid.

"Sale Procedure Order" means the Order authorizing this Sale Procedure;

"Sealed Bid Process" has the meaning given to it in Section 10;

"Sealed Bid Participants" has the meaning given to it in Section 10;

"Stalking Horse Addendum" has the meaning given it in Section 8;

"Stalking Horse Purchase Price" means \$_____;

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

"Successful Bidder" means the Qualified Bidder who submitted the Successful Bid;

"Vesting Order" means the order of the Court that approves the sale of the Property to the Successful Bidder and vests title of the Property to the Successful Bidder.

2. **Assets for Sale**

The Receiver is soliciting superior offers for the Property. The sale of the Property pursuant to this Sale Procedure shall be on an **"as is, where is"** basis and without representations or warranties of any kind, nature, or description by the Receiver, or its directors, officers, employees or agents except to the extent set forth in the Successful Bid. Each Bidder shall, and the Stalking Horse Bidder shall, upon waiver of its initial conditions, be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/ or inspection of any documents and/ or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure.

3. **Marketing**

The Receiver or its real estate agent will solicit Bids for the Property and market the Property as they see fit, including but not limited to the following:

- a) preparing a teaser document (the "**Teaser**") that outlines the Property for sale, includes the Stalking Horse Agreement and this Sale Procedure and invites parties to satisfy the Participant Requirements to gain access to the Due Diligence Materials;
- b) sending the Teaser to a list of potential interested parties as soon as the Stalking Horse Agreement and the Sale Procedure is approved by the Court; and
- c) responding as appropriate at any time prior to the Bid Deadline to various questions and queries from interested parties, Participants and Qualified Bidders with the assistance of Debtor's management.

4. Participant Requirements

In order to participate in this Sales Process an interested person must first deliver each of the following to the Receiver:

- a) an executed Confidentiality Agreement;
- b) an executed Acknowledgement of Sale Procedure;
- c) identification of the Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction,

(collectively, the "**Participant Requirements**").

The Receiver shall review all Participant Requirements received as soon as practicable after receipt and if the Participant Requirements are deemed satisfactory by the Receiver at its reasonable discretion then the person shall be deemed a Participant in this Sales Process.

5. Participant's access to Due Diligence Materials

Only those persons deemed to be Participants in this Sales Process will be permitted access to the Due Diligence Materials. Participants will be permitted access to the Due Diligence Materials as soon as practicable after being deemed Participants.

The Receiver may at its discretion furnish but shall not be obligated to furnish any due diligence information other than the Due Diligence Materials. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

6. Bidder Qualification Requirements.

To have a Bid considered by the Receiver a Participant must establish itself as a Qualified Bidder. In order to be considered for qualification as a Qualified Bidder, each Participant must provide the Receiver with following prior to the Bid Deadline:

- a) written evidence of the Participant's chief executive officer or other appropriate senior executive's approval of the Bid; provided, however, that, if the Participant is an Acquisition Entity, then the Participant must furnish written evidence reasonably acceptable to the Receiver of the approval of the Bid by the Acquisition Entity's Principals; and
- b) written evidence upon which the Receiver may reasonably conclude that the Participant has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction.

(collectively, the "**Bidder Qualification Requirements**").

The Receiver shall review all Bidder Qualification Requirements received from a Participant as soon as practicable after receipt and if the Receiver is satisfied at its reasonable discretion with the reputation and creditworthiness of the Participant and that it is reasonably likely that the Participant will submit a binding bona fide offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement and that the Participant will be able to consummate a transaction if selected as a Successful Bidder, then that Participant shall be deemed a Qualified Bidder in this Sales Process. The Receiver shall notify each Participant of its determination as to whether the Participant is a Qualified Bidder as soon as practicable after receipt of that Participant's Bidder Qualification Requirements. A participant may amend or resubmit Bidder Qualification Requirements at any time prior to the Bid Deadline and the Receiver shall review such amended or resubmitted Bidder Qualification Requirements as soon as practicable after receipt of same.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

Each Participant shall comply with all reasonable requests for additional information by the Receiver regarding such Participant and its contemplated transaction. Failure by a Participant to comply with requests for additional information will be a basis for the Receiver to determine that the Participant is not a Qualified Bidder.

7. **Bid Requirements**

Only Qualified Bidders shall have their Bid's considered by the Receiver. In order to be considered a Qualified Bid a Bid must satisfy each of the following conditions:

- a) Written Submission of Modified APA and Commitment to Close. A Qualified Bid must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- b) Irrevocable. A Qualified Bid must be open for acceptance and irrevocable until October 15, 2022;

- c) Contingencies. A Qualified Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Qualified Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- d) Financing Sources. A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- e) No Fees payable to Qualified Bidder. A Qualified Bid, other than the Stalking Horse Agreement, may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- f) Good-Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver by certified cheque or banker's draft, to be held by the Receiver in trust in accordance with this Sale Procedure;
- g) Stalking Horse Purchase Price. The aggregate consideration in a Qualified Bid must have a purchase price that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement; and
- h) Delivery. A Qualified Bid must be delivered to the Receiver in a sealed envelope in accordance with Section 14 at or prior to the Bid Deadline.

The Receiver shall not unseal or read any Bid except in accordance with Section 10 below.

Notwithstanding the above requirements, the Stalking Horse Agreement is deemed to be a Qualified Bid for all purposes of this Sale Procedure.

8. Stalking Horse Bidder may increase its Bid

The Stalking Horse Bidder may at any time prior to the Bid Deadline submit to the Receiver in a sealed envelope an executed addendum to the Stalking Horse Bid amending the Stalking Horse Bid as to Purchase Price only (the "**Stalking Horse Addendum**"). The Stalking Horse Addendum shall not be unsealed or read by the Receiver Manager except in accordance with Section 10 below.

9. If no Qualified Bid other than the Stalking Horse Bid

If no Bid other than the Stalking Horse Agreement (and the sealed Stalking Horse Addendum if any) is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened. The Receiver shall then as soon as reasonably practicable file an affidavit with

the Court that no Qualified Bids (other than the Stalking Horse Agreement and Stalking Horse Addendum) were received by the Receiver by the Bid Deadline (the "**Receiver's Affidavit**") and the Receiver shall consummate, the Stalking Horse Agreement and the transactions provided for therein under the Approval and Conditional Vesting Order as defined the Stalking Horse Agreement. For clarity, no further application to Court will be necessary.

10. If one or more Bids in addition to the Stalking Horse Bid

If one or more Bids other than the Stalking Horse Bid is received by the Bid Deadline, the Receiver Manager shall conduct a sealed bid process (the "**Sealed Bid Process**") among only those Qualified Bidders who submitted Bids (collectively the "**Sealed Bid Participants**") to determine the Successful Bid.

The Sealed Bid Process shall be conducted as follows:

- a) the Receiver shall open and read all Bids submitted by Qualified Bidders other than the Stalking Horse Bidder and determine which, if any, are Qualified Bids pursuant to the requirements set out in Section 7;
- b) if the Receiver determines that none of the Bids is a Qualified Bid then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement, the Stalking Horse Addendum (if any) shall be destroyed without being opened and the Receiver shall proceed under section 9 herein to complete the Stalking Horse Agreement pursuant to the Approval and Conditional Vesting Order (as defined in the Stalking Horse Agreement);
- c) if the Receiver determines that one or more of the Bids is a Qualified Bid then the Receiver shall then unseal and read the Stalking Horse Addendum and shall then determine which among the Qualified Bids and the Stalking Horse Agreement as amended by the Stalking Horse Addendum is the Successful Bid;
- d) the Receiver shall determine the Successful Bidder by no later than 5:00 p.m. Pacific Time on October 7, 2022. After the Receiver determines the Successful Bid the Receiver shall:
 - i. as soon as practicable advise the Sealed Bid Participants of its determination and post notice of the determination on its website established in connection with the Receivership Proceedings; and
 - ii. seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein).

The Receiver shall be entitled to, but is not obligated to, seek additional information and clarifications from any Participant or Qualified Bidder in respect of its Bidder Qualification

Requirements or Bid at any time provided that nothing herein shall entitle a Qualified Bidder to improve its Bid as submitted at the Bid Deadline.

11. Acceptance of Successful Bid and Vesting Order

The Receiver shall complete the sale transaction or transactions with the Successful Bidder following the granting of a Vesting Order with regard to the Successful Bid (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein and will rely upon the Approval and Conditional Vesting Order previously granted). The Receiver shall apply for a Vesting Order as soon as practicable after the determination by the Receiver of the Successful Bidder.

12. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in an account of the Receiver. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder, shall be returned to such Qualified Bidders within three (3) business days of the selection of the Successful Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

13. Delivery of documents to the Receiver Manager

All documents or other materials to be delivered to the Receiver pursuant to this Sales Procedure, including the Participant Requirements and the Bidder Qualification Requirements, but excluding all Bids, must be submitted by email to mmainella@bowragroup.com such that they are actually received by the Receiver no later than the Bid Deadline.

Bids, including the Good Faith Deposit in the form of a certified cheque or bank draft must be delivered to the Receiver at 430 - 505 Burrard Street, One Bentall Centre, Box 72, Vancouver BC V7X 1M3, Attention: Mario Mainella and Kevin Koo by hard copy in a sealed envelope by the Bid Deadline. The envelope containing the Bid shall be marked:

0876242 B.C. LTD. AND GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
IN RECEIVERSHIP CONFIDENTIAL SEALED BID

A Bid that is not received by hard copy prior to the Bid Deadline shall not constitute a Qualified Bid and shall be disqualified.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

The Receiver may reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) contrary to the best interests of the Receivership estate.

ACKNOWLEDGEMENT OF SALE PROCEDURE

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Supreme Court of British Columbia on August __, 2022 in Action No: < > and further acknowledges that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Bid to be considered by the Receiver.

This _____ day of _____

[NAME]

By:

[Signing Officer]

SCHEDULE C
FORM OF ENCROACHMENT AGREEMENT
[SEE ATTACHED]



1. Application

Document Fees: \$457.92

**Richard Lord, DLA Piper (Canada) LLP
 Barristers & Solicitors
 2800 - 666 Burrard Street
 Vancouver BC V6C 2Z7
 604.687.9444**

File number: 063227-00023 (cgs)

2. Description of Land

PID/Plan Number Legal Description

011-154-551 BLOCK K, EXCEPT PART ON REFERENCE PLAN 8675, NOW LANE TOWN OF HASTINGS PLAN 5461

3. Nature of Interest

Type	Number	Additional Information
EASEMENT AND INDEMNITY AGREEMENT		The entire document.
PRIORITY AGREEMENT		Priority Agreement granting above Easement and Indemnity Agreement priority over Mortgage CA6681010, as modified by CA8430029 and CA8430043 and the Assignment of Rents registered under number CA6681011.
PRIORITY AGREEMENT		Priority Agreement granting above Easement and Indemnity priority over Claim of Builders Lien registered under number CA9867388.
STATUTORY RIGHT OF WAY		Paragraph 11 pages 8 and 9.
PRIORITY AGREEMENT		Priority Agreement granting above Statutory Right of Way priority over Mortgage CA6681010, as modified by CA8430029 and CA8430043 and the Assignment of Rents registered under number CA6681011.
PRIORITY AGREEMENT		Priority Agreement granting above Statutory Right of Way priority over Claim of Builders Lien registered under number CA9867388.

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

THE BOWRA GROUP INC., NO.A0063271, AS RECEIVER, WITHOUT SECURITY, ALL OF THE ASSETS, UNDERTAKINGS AND PROPERTY OF 0876242 B.C. LTD. (INC. NO. BC0876242)

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC. , AS TO PRIORITY AGREEMENTS

PRISM CONSTRUCTION LTD. , NO.BC0572766, AS TO PRIORITY AGREEMENTS



6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms

8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

TAYLOR LINGL
Barrister & Solicitor
DLA Piper (Canada) LLP
666 Burrard Street, Suite 2800
Vancouver BC V6C 2Z7

YYYY-MM-DD

2022-07-15

The Bowra Group Inc.
As Receiver, without security, all of the
assets, undertakings and property of
0876242 B.C. Ltd. (Inc. No. BC0876242)
By their Authorized Signatory

Print Name: MARIO MAINELLA

604.643.2983

"as to all signatures"

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

DAMIAN KOO
Barrister & Solicitor
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

YYYY-MM-DD
2022-07-20

City of Vancouver
Transferee
By their Authorized Signatory

TEL: 604-873-7540

"as to all signatures"

Print Name: IAIN DIXON

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

RONALD B. MELVIN
Barrister & Solicitor
Rose, Persiko, Rakowsky, Melvin LLP
Suite 600, 390 Bay Street
Toronto ON M5H 2Y2

YYYY-MM-DD
2022-07-18

**Institutional Mortgage Capital
Canada Inc.**
As to Priority Agreements
By their Authorized Signatory

Telephone: 416-868-1908

"as to all signatures"

Print Name: Jean Monerdo

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD
2022-07-15

Prism Construction Ltd.
As to Priority Agreements
By their Authorized Signatory

VANESSA S. WERDEN
Barrister & Solicitor
Suite 900 - 808 Nelson Street
Vancouver BC V6Z 2H2

604-681-6564

"as to all signatures"

Print Name: Reza Norozy

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

David Arun Gore
NAC82M

Digitally signed by
David Arun Gore NAC82M
Date: 2022-07-22
15:37:39 -07:00

TERMS OF INSTRUMENT - PART 2

ENCROACHMENT AGREEMENT
3333 BRIDGEWAY STREET

WHEREAS:

- A. The Transferor, 0876242 B.C. LTD., is hereinafter called the "Owner";
- B. The Transferee, CITY OF VANCOUVER, is hereinafter called the "City" when referring to corporate entity and the "City of Vancouver" when referring to geographical location;
- C. The Owner is the registered owner in fee simple of the Lands;
- D. The Owner has applied to the City for permission to maintain the Encroachments (hereinafter defined) appurtenant to the Lands, on City street; and
- E. The City has agreed to permit the Encroachments, subject to the provisions of the Encroachment By-law (hereinafter defined) and the provisions of this Agreement.

THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agreed to and accepted, the parties agree as follows:

Definitions and Interpretation

1. In this Agreement the following terms have the definitions now assigned unless otherwise specifically provided or the context otherwise requires:
 - (a) "Agreement" means this Terms of Instrument - Part 2 Encroachment Agreement, including the Recitals set forth above, the *Land Title Act* forms attached and the Plan;
 - (b) "Building" means the building situated on the Lands as of the date this Agreement is executed by the Owner;
 - (c) "City" and "City of Vancouver" each have the meaning set out in Recital B;
 - (d) "City Engineer" means the chief administrator from time to time of the Engineering Department of the City and his or her delegates and successors in function and their respective nominees;
 - (e) "City Personnel" means any and all of the elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors and subcontractors of the City;

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CAN: 40890988.3

Encroachment Agreement
3333 Bridgeway Street

- (f) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and his or her successors in function and their respective nominees;
- (g) "Encroachment Area" means that portion or portions of City street or lane as shown on the Plan in which the Encroachments are or will be located;
- (h) "Encroachment By-law" means the City's Encroachment By-law (4243) and all amendments thereto and re-enactments thereof;
- (i) "Encroachments" mean a decorative aluminium siding situated on the side of the Building from the 2nd floor to the 6th floor thereof, as shown on the Plan;
- (j) "*Land Title Act*", means R.S.B.C. 1996, c. 250, and amendments thereto and re-enactments thereof and all regulations thereto;
- (k) "Lands" mean the lands and premises located in the City of Vancouver, British Columbia and legally described in item 2 of the Form C - General Instrument and includes any parcel of land within such lands created on the deposit of a subdivision plan at the Land Title Office, including by the deposit of a strata plan under the *Strata Property Act* of British Columbia, but excluding any area dedicated for road;
- (l) "Losses" mean all damages, losses, costs, actions, causes of action, suits, claims, demands, orders, judgments, builders' liens, liabilities, obligations, expenses (including legal expenses), indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (m) "Owner" means the Transferor and any beneficial owner and their respective successors and assigns and, without limitation, if the Lands are subdivided by way of a strata plan under the *Strata Property Act* of British Columbia, then "Owner" includes the strata corporation thereby created;
- (n) "Plan" means the plan and/or drawing attached as Schedule "A" numbered H-3387A, which shows the Encroachments and their location in/on City street or lane;
- (o) "Prime Rate" means the floating annual percentage rate of interest as established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia, as the base rate that will be used to determine the rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate; provided that if a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be eighteen percent (18%) per annum calculated monthly not in advance, from the date due until paid; and
- (p) "*Vancouver Charter*" means S.B.C. 1953, Ch. 55, and amendments thereto and re-enactments thereof.

Encroachment

2. The Owner, at its expense, is hereby permitted to maintain the Encroachments in the Encroachment Area.
3. The Owner will pay fees to the City in respect of the Encroachments as follows:
 - (a) upon the execution of this Agreement, a fee of \$1,114.90, plus applicable taxes; and
 - (b) on June 30th of each and every year during the continuance of this Agreement, an annual charge in an amount set out either in the Encroachment By-law from time to time or by resolution of the City's Council from time to time. As of the date this Agreement was executed by the Owner, the Building was exempt from the payment of an annual fee pursuant to the Encroachment By-law.
4. The Owner will at all times, after installation and/or construction of the Encroachments, at its own expense, keep and maintain the Encroachments in good and sufficient repair to the satisfaction of the City Engineer, provided that the Owner will not excavate on or under City street or in any way change the Encroachments or enlarge or alter the Encroachment Area without the prior written consent of the City Engineer. If the Encroachments are negatively affected by any utilities-related construction, the Owner will promptly repair the Encroachments to the satisfaction of the City Engineer. The Owner will maintain and repair the Encroachments on a schedule acceptable to the City Engineer and in the case of maintenance requests from the City to address sightline or safety issues, the Owner will complete the required maintenance within five (5) Business Days of the date of request by the City, or such longer period of time as may be reasonably required in the circumstances provided that the Owner is promptly and diligently carrying out the required maintenance.
5. Within six (6) months of any termination of this Agreement or by such other time as the City may require upon any termination of this Agreement, the Owner, at its expense, will remove the Encroachments from the Encroachment Area and repair any related damage to any City property and any other property for which the City is responsible and restore the Encroachment Area to the satisfaction of the City Engineer.
6. If at any time after this Agreement is registered in the New Westminster Land Title Office, and following installation of the Encroachments, there is any construction on the Lands affecting the Encroachments, the Owner, at its expense, once such construction is substantially complete, will immediately arrange for a British Columbia Land Surveyor to carry out a survey regarding such construction and prepare and deliver to the City, to the satisfaction of the City Engineer, a survey plan showing the location of the Encroachments. If such survey plan shows the Encroachments or any part thereof to be located outside the Encroachment Area, the Owner will forthwith at the direction of the City Engineer:

- (a) remove the Encroachments to the extent they are located outside of the Encroachment Area and immediately cause a further survey plan in respect thereof to be prepared in accordance with this paragraph; or
 - (b) execute a modification or replacement of this Agreement, drawn to the satisfaction of the Director of Legal Services which references the change to the Encroachment Area.
7. Before commencing the construction or installation of or any modifications or repairs to the Encroachments and before removing all or any part of the Encroachments after installation or construction thereof, the Owner will obtain any permits and licenses required in respect thereto pursuant to the Encroachment By-law, any other City by-laws and any other applicable laws and will pay any inspection, license and permit fees required therefor.
8. If at any time hereafter the Encroachments, or any of them, are in any way removed from the Encroachment Area, and not replaced, then within six (6) months after such removal, or by such other time as the City may require, the Owner, at its expense, will repair and restore the Encroachment Area, to the extent affected by the presence of the Encroachments, to the satisfaction of the City Engineer.
9. In the event that the construction, maintenance, use and/or removal of the Encroachments makes necessary any change or alteration to any meter, water-service, sewer or other public works or utilities in the vicinity of the Lands, the Owner will reimburse the City the full amount of any expenses the City may incur in making such alterations or changes as may be deemed necessary by the City Engineer.
10. Before commencing the construction or installation of any of the Encroachments and at all times during the placement and maintenance of the Encroachments in the Encroachment Area, the Owner will take out and maintain liability insurance with a limit of not less than Two Million (\$2,000,000) per occurrence and naming the City as additional insured. The Owner will provide the City with a copy of such insurance prior to the issuance of any building permit for the Encroachments and from time to time thereafter at the written request of the City.

Statutory Right of Way

11. The Owner hereby grants to the City pursuant to Section 218 of the *Land Title Act*, the full, free and uninterrupted right, liberty, easement and statutory right of way, charging the Lands, to enter upon those portions of the Lands as the City Engineer considers necessary, with or without men, tools and equipment and supplies in order to:
- (a) inspect the Encroachments or to carry out any obligations of the Owner in this Agreement that the Owner fails to fulfill, observe or perform to the satisfaction of the City Engineer; and
 - (b) construct, inspect, maintain or remove any public works or utilities that have been or may in the future be installed in the street in proximity to the Encroachments.

This statutory right of way is necessary for the operation and maintenance of the City's undertaking.

Amounts Owing to City

12. If the Owner fails to carry out its obligations under the terms of this Agreement, or any of them, the City may, but will not be obligated to, remedy the default, and the Owner will pay to the City the amount of any costs the City thereby incurs plus a reasonable sum (not greater than twenty percent (20%) of such costs) as a surcharge for the City's overhead, forthwith after the City delivers to the Owner a written request for payment thereof.
13. If the Owner fails to pay to the City any amounts it is required to pay to it pursuant to this Agreement within thirty (30) days after the City delivers to the Owner a written request for payment thereof, such amounts will be considered to be in arrears and thereafter will bear interest at the rate of three percent (3%) per annum above the Prime Rate, calculated monthly not in advance, from the date due until paid.

Indemnity and Release

14. The Owner hereby releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and City Personnel from and against all Losses which the City or any City Personnel may pay, incur, sustain or be put to by reason of this Agreement or the subject matter of this Agreement including, without limiting the generality of the foregoing, Losses paid, incurred or sustained:
 - (a) as a result of or in any way connected to the City or City Personnel exercising any rights under any statutory right of way granted to the City pursuant to this Agreement; or
 - (b) that arise out of, or would not have been incurred but for this Agreement and the permission granted hereby; or
 - (c) by reason of any negligent act or omission or wilful misconduct of the Owner or any of its contractors, subcontractors, employees, agents, licensees, invitees and permittees in connection with the exercise of the obligations or responsibilities of the Owner under this Agreement; or
 - (d) by reason of any default in the due observance and performance of the obligations or responsibilities of the Owner under this Agreement.

This release and indemnity will survive termination of this Agreement.

Termination by City

15. The City, in its sole discretion, may terminate this Agreement and revoke the permissions granted hereby at any time.

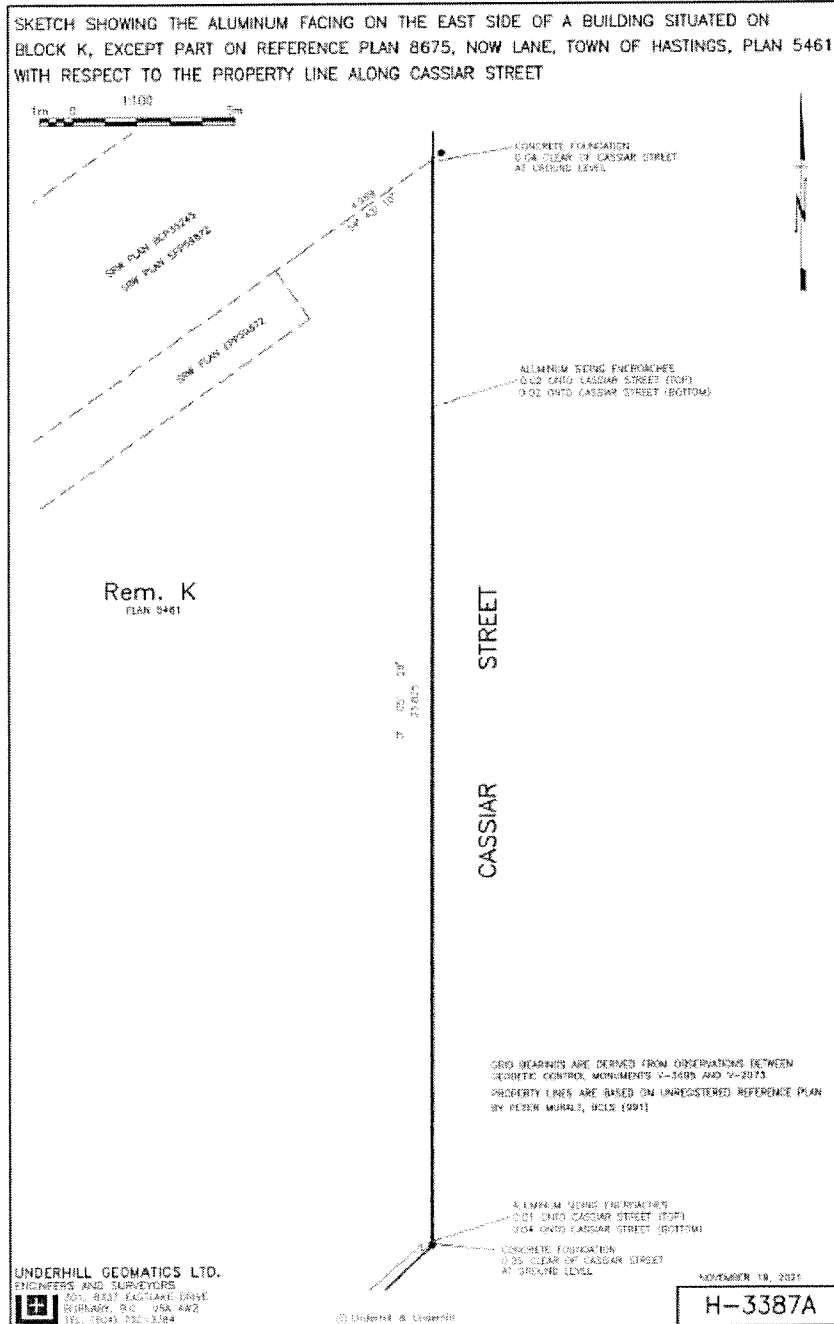
General

16. This Agreement is entered into pursuant and subject to the Encroachment By-law and the Owner will at all times during the existence of this Agreement and the Encroachments comply with the provisions of the Encroachment By-law and all other City by-laws applicable to the Encroachments, and if the Owner fails to comply with the provisions of any such by-laws or this Agreement, all rights of the Owner hereunder will thereupon terminate. Nevertheless, the City will be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any Losses of any kind arising under this Agreement or from the permissions granted hereby.
17. No provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, will operate to relieve, or be deemed to relieve, the Owner in any manner whatsoever from any liability to the City under this Agreement or under the provisions of the *Vancouver Charter*.
18. This Agreement will not in any way operate to restrict the right of the City at any time to alter the street abutting or adjoining the Lands in any manner whatsoever, including without limitation, widening the roadway or boulevard or raising or lowering the elevation of the street (an "Alteration"). Notwithstanding that the effect of such Alteration may be to render the Encroachments useless for the Owner's purposes, the Owner covenants that, in the event the City effects any such Alteration, the Owner will release and forever discharge, and hereby releases and forever discharges, the City and City Personnel from all manner of claims of any nature whatsoever, which may arise by reason of such Alteration or by reason of the discontinuance and removal of the Encroachments as a result of such Alteration.
19. Words used herein in singular or plural form and pronouns used in masculine, feminine or a neutral form will include within their meanings herein any other such forms as the context may require.
20. Any covenant, agreement, condition or proviso made herein by two (2) or more persons will be construed to be made jointly and severally.
21. The Owner will do or cause to be done all acts and things and execute all documents as are necessary to ensure that this Agreement is registered in the New Westminster Land Title Office against title to the Lands, with priority over all other charges and encumbrances registered against title to the Lands as the City might require.
22. This Agreement and the interests granted hereby will run with the Lands.
23. This Agreement will enure to the benefit of and be binding upon the parties hereto and their successors and assigns, provided however, the Owner will not be liable for breaches or non-observance or non-performance of covenants herein occurring after it has ceased to be the registered owner of the Lands.

24. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or limit or otherwise affect the City's rights, powers, duties or obligations under the *Vancouver Charter* or any other legislation.

IN WITNESS WHEREOF the parties have executed this agreement by signing the General Instrument - Part I attached hereto.

SCHEDULE "A"



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CAN: 40890988.3

Encroachment Agreement
3333 Bridgeway Street

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" mean the Mortgages registered under numbers CA6681010, as modified by CA8430029, and CA8430043 and the Assignment of Rents registered under numbers CA6681011;
- (b) "Existing Chargeholder" means INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.;
- (c) "New Charges" mean the Easement and Indemnity Agreement and the Statutory Right of Way contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

{00692700v1}

CAN: 40890988 3

Encroachment Agreement
3333 Bridgeway Street

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charge" means the Claim of Builders Lien registered under number CA9867388;
- (b) "Existing Chargeholder" means PRISM CONSTRUCTION LTD.;
- (c) "New Charges" mean the Easement and Indemnity Agreement and the Statutory Right of Way contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charge in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

{00692700v1}

CAN: 40890988.3

Encroachment Agreement
3333 Bridgeway Street

CAN: 41410933.2

SCHEDULE "E"

LEGAL NOTATIONS, CHARGES AND ENCUMBRANCES TO BE DISCHARGED

1. Notice of Interest, *Builders Lien Act* (s.3(2)), See CA3947748, Filed 2014-09-08
2. Mortgage CA6681010 modified by CA8430029
3. Assignment of Rents CA6681011
4. Mortgage CA8430043
5. Claim of Builders Lien CA9867388
6. Certificate of Pending Litigation CB129148
7. All related priority agreements in respect of the above encumbrances

No. VLC-S-H-220132
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL
MORTGAGE CAPITAL
CANADA INC., AS
GENERAL PARTNER OF
IMC LIMITED
PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT
LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENT

ORDER MADE AFTER APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 063227-00023

CDB/day

SCHEDULE "C"

Sales Procedure

SCHEDULE B

SALE PROCEDURE

Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Honourable Mr. Justice Wilson of the Supreme Court of British Columbia (the "**Court**") dated May 10, 2022 (the "**Date of Receivership**"), The Bowra Group Inc. ("**Bowra**") was appointed as Receiver (in such capacity, the "**Receiver**") without security, over all of the assets, undertakings and property of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (collectively, the "**Debtor**"), acquired for or used in relation to a business carried on by the Debtor in construction of a mixed commercial and industrial strata development located at 3333 Bridgeway Street, Vancouver, BC and legally described as PID: 011-154-551, Block K, Except Part on Reference Plan 8675, Now Lane Town of Hastings Plan 5461 (the "**Property**").

On August __, 2022, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver's entry into a certain offer to purchase and agreement of purchase and sale for the Property between the Receiver and Access Self Storage Inc. (as party to the agreement, the "**Stalking Horse Bidder**") dated August 11, 2022 (the "**Stalking Horse Agreement**") so as to set a minimum price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers for the acquisition of the Property.

Accordingly, the following Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Property that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"Acknowledgement of Sale Procedure" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"Acquisition Entity" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"Bid" means an offer or proposals for the acquisition of the Property submitted by a Qualified Bidder. For clarity only a Qualified Bidder may submit a Bid for consideration in this Sale Process;

"Bid Deadline" means 10:00 a.m. Pacific Time on **September 30, 2022**;

"Bidder Qualification Requirements" has the meaning given to it in Section 6;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel;

"Due Diligence Materials" means some or all of the following information regarding the Property to the extent that it is available to the Receiver:

- a) List of debts and liabilities, secured and unsecured, of Gateway LP
- b) As built drawings for each floor
- c) Floor area measurements for each floor
- d) Copies of all construction warranties received from contractors and suppliers
- e) Copies of any current appraisals,
- f) Copies of any existing environment assessment reports,
- g) Copy of title register,
- h) Copies of architect's completion certificates
- i) Copies of any existing occupancy certificates

all of which will be made available to Participants by way of an electronic data room assembled and administered by the Receiver;

"Good Faith Deposit" means a cash deposit equal to five percent (5%) of the total purchase price contemplated under the applicable Modified APA;

"Modified APA" means an executed mark-up of the Stalking Horse Agreement reflecting the applicable Qualified Bidder's proposed changes to the Stalking Horse Agreement;

"Participant" means any person who has delivered the Participant Requirements and had those Participant Requirements deemed satisfactory by the Receiver in accordance with Section 4;

"Participant Requirements" has the meaning given to it in Section 4;

"Principals" means, collectively, the equity holder(s) of any Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

"Qualified Bidder" means a Participant that, (i) having satisfactorily met the Participant Requirements prior to the Bid Deadline, (ii) meets the Bidder Qualification Requirements prior to the Bid Deadline, and (iii) whom the Receiver, in accordance with Section 5, deems is reasonably likely to submit a binding bona fide offer that would have an aggregate purchase

price for the Property that exceeds the Stalking Horse Purchase Price plus the Break Fee, and would be able to consummate a transaction if selected as the Successful Bidder;

"Qualified Bid" means a Bid submitted by a Qualified Bidder on or prior to the Bid Deadline that satisfies the conditions set out in Section 7 hereof. For clarity the Stalking Horse Agreement is a Qualified Bid.

"Sale Procedure Order" means the Order authorizing this Sale Procedure;

"Sealed Bid Process" has the meaning given to it in Section 10;

"Sealed Bid Participants" has the meaning given to it in Section 10;

"Stalking Horse Addendum" has the meaning given it in Section 8;

"Stalking Horse Purchase Price" means \$38,250,000;

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

"Successful Bidder" means the Qualified Bidder who submitted the Successful Bid;

"Vesting Order" means the order of the Court that approves the sale of the Property to the Successful Bidder and vests title of the Property to the Successful Bidder.

2. **Assets for Sale**

The Receiver is soliciting superior offers for the Property. The sale of the Property pursuant to this Sale Procedure shall be on an **"as is, where is"** basis and without representations or warranties of any kind, nature, or description by the Receiver, or its directors, officers, employees or agents except to the extent set forth in the Successful Bid. Each Bidder shall, and the Stalking Horse Bidder shall, upon waiver of its initial conditions, be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/ or inspection of any documents and/ or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure.

3. **Marketing**

The Receiver or its real estate agent will solicit Bids for the Property and market the Property as they see fit, including but not limited to the following:

- a) preparing a teaser document (the "**Teaser**") that outlines the Property for sale, includes the Stalking Horse Agreement and this Sale Procedure and invites parties to satisfy the Participant Requirements to gain access to the Due Diligence Materials;
- b) sending the Teaser to a list of potential interested parties as soon as the Stalking Horse Agreement and the Sale Procedure is approved by the Court; and
- c) responding as appropriate at any time prior to the Bid Deadline to various questions and queries from interested parties, Participants and Qualified Bidders with the assistance of Debtor's management.

4. **Participant Requirements**

In order to participate in this Sales Process an interested person must first deliver each of the following to the Receiver:

- a) an executed Confidentiality Agreement;
- b) an executed Acknowledgement of Sale Procedure;
- c) identification of the Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction,

(collectively, the "**Participant Requirements**").

The Receiver shall review all Participant Requirements received as soon as practicable after receipt and if the Participant Requirements are deemed satisfactory by the Receiver at its reasonable discretion then the person shall be deemed a Participant in this Sales Process.

5. **Participant's access to Due Diligence Materials**

Only those persons deemed to be Participants in this Sales Process will be permitted access to the Due Diligence Materials. Participants will be permitted access to the Due Diligence Materials as soon as practicable after being deemed Participants.

The Receiver may at its discretion furnish but shall not be obligated to furnish any due diligence information other than the Due Diligence Materials. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

6. **Bidder Qualification Requirements.**

To have a Bid considered by the Receiver a Participant must establish itself as a Qualified Bidder. In order to be considered for qualification as a Qualified Bidder, each Participant must provide the Receiver with following prior to the Bid Deadline:

- a) written evidence of the Participant's chief executive officer or other appropriate senior executive's approval of the Bid; provided, however, that, if the Participant is an Acquisition Entity, then the Participant must furnish written evidence reasonably acceptable to the Receiver of the approval of the Bid by the Acquisition Entity's Principals; and
- b) written evidence upon which the Receiver may reasonably conclude that the Participant has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction.

(collectively, the "**Bidder Qualification Requirements**").

The Receiver shall review all Bidder Qualification Requirements received from a Participant as soon as practicable after receipt and if the Receiver is satisfied at its reasonable discretion with the reputation and creditworthiness of the Participant and that it is reasonably likely that the Participant will submit a binding bona fide offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement and that the Participant will be able to consummate a transaction if selected as a Successful Bidder, then that Participant shall be deemed a Qualified Bidder in this Sales Process. The Receiver shall notify each Participant of its determination as to whether the Participant is a Qualified Bidder as soon as practicable after receipt of that Participant's Bidder Qualification Requirements. A participant may amend or resubmit Bidder Qualification Requirements at any time prior to the Bid Deadline and the Receiver shall review such amended or resubmitted Bidder Qualification Requirements as soon as practicable after receipt of same.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

Each Participant shall comply with all reasonable requests for additional information by the Receiver regarding such Participant and its contemplated transaction. Failure by a Participant to comply with requests for additional information will be a basis for the Receiver to determine that the Participant is not a Qualified Bidder.

7. **Bid Requirements**

Only Qualified Bidders shall have their Bid's considered by the Receiver. In order to be considered a Qualified Bid a Bid must satisfy each of the following conditions:

- a) Written Submission of Modified APA and Commitment to Close. A Qualified Bid must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- b) Irrevocable. A Qualified Bid must be open for acceptance and irrevocable until October 15, 2022;

- c) Contingencies. A Qualified Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Qualified Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- d) Financing Sources. A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- e) No Fees payable to Qualified Bidder. A Qualified Bid, other than the Stalking Horse Agreement, may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- f) Good-Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver by certified cheque or banker's draft, to be held by the Receiver in trust in accordance with this Sale Procedure;
- g) Stalking Horse Purchase Price. The aggregate consideration in a Qualified Bid must have a purchase price that exceeds the Stalking Horse Purchase Price plus the Break Fee as defined in the Stalking Horse Agreement; and
- h) Delivery. A Qualified Bid must be delivered to the Receiver in a sealed envelope in accordance with Section 14 at or prior to the Bid Deadline.

The Receiver shall not unseal or read any Bid except in accordance with Section 10 below.

Notwithstanding the above requirements, the Stalking Horse Agreement is deemed to be a Qualified Bid for all purposes of this Sale Procedure.

8. Stalking Horse Bidder may increase its Bid

The Stalking Horse Bidder may at any time prior to the Bid Deadline submit to the Receiver in a sealed envelope an executed addendum to the Stalking Horse Bid amending the Stalking Horse Bid as to Purchase Price only (the "**Stalking Horse Addendum**"). The Stalking Horse Addendum shall not be unsealed or read by the Receiver Manager except in accordance with Section 10 below.

9. If no Qualified Bid other than the Stalking Horse Bid

If no Bid other than the Stalking Horse Agreement (and the sealed Stalking Horse Addendum if any) is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened. The Receiver shall then as soon as reasonably practicable file an

affidavit with the Court that no Qualified Bids (other than the Stalking Horse Agreement and Stalking Horse Addendum) were received by the Receiver by the Bid Deadline (the "**Receiver's Affidavit**") and the Receiver shall consummate, the Stalking Horse Agreement and the transactions provided for therein under the Approval and Conditional Vesting Order as defined the Stalking Horse Agreement. For clarity, no further application to Court will be necessary.

10. If one or more Bids in addition to the Stalking Horse Bid

If one or more Bids other than the Stalking Horse Bid is received by the Bid Deadline, the Receiver Manager shall conduct a sealed bid process (the "**Sealed Bid Process**") among only those Qualified Bidders who submitted Bids (collectively the "**Sealed Bid Participants**") to determine the Successful Bid.

The Sealed Bid Process shall be conducted as follows:

- a) the Receiver shall open and read all Bids submitted by Qualified Bidders other than the Stalking Horse Bidder and determine which, if any, are Qualified Bids pursuant to the requirements set out in Section 7;
- b) if the Receiver determines that none of the Bids is a Qualified Bid then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement, the Stalking Horse Addendum (if any) shall be destroyed without being opened and the Receiver shall proceed under section 9 herein to complete the Stalking Horse Agreement pursuant to the Approval and Conditional Vesting Order (as defined in the Stalking Horse Agreement);
- c) if the Receiver determines that one or more of the Bids is a Qualified Bid then the Receiver shall then unseal and read the Stalking Horse Addendum and shall then determine which among the Qualified Bids and the Stalking Horse Agreement as amended by the Stalking Horse Addendum is the Successful Bid;
- d) the Receiver shall determine the Successful Bidder by no later than 5:00 p.m. Pacific Time on October 7, 2022. After the Receiver determines the Successful Bid the Receiver shall:
 - i. as soon as practicable advise the Sealed Bid Participants of its determination and post notice of the determination on its website established in connection with the Receivership Proceedings; and
 - ii. seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein).

The Receiver shall be entitled to, but is not obligated to, seek additional information and clarifications from any Participant or Qualified Bidder in respect of its Bidder Qualification Requirements or Bid at any time provided that nothing herein shall entitle a Qualified Bidder to improve its Bid as submitted at the Bid Deadline.

11. Acceptance of Successful Bid and Vesting Order

The Receiver shall complete the sale transaction or transactions with the Successful Bidder following the granting of a Vesting Order with regard to the Successful Bid (except in the case where there are no Qualified Bids other than the Stalking Horse Bid in which case the Receiver shall proceed under section 9 herein and will rely upon the Approval and Conditional Vesting Order previously granted). The Receiver shall apply for a Vesting Order as soon as practicable after the determination by the Receiver of the Successful Bidder.

12. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in an account of the Receiver. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder, shall be returned to such Qualified Bidders within three (3) business days of the selection of the Successful Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

13. Delivery of documents to the Receiver Manager

All documents or other materials to be delivered to the Receiver pursuant to this Sales Procedure, including the Participant Requirements and the Bidder Qualification Requirements, but excluding all Bids, must be submitted by email to mmainella@bowragroup.com such that they are actually received by the Receiver no later than the Bid Deadline.

Bids, including the Good Faith Deposit in the form of a certified cheque or bank draft must be delivered to the Receiver at 430 - 505 Burrard Street, One Bentall Centre, Box 72, Vancouver BC V7X 1M3, Attention: Mario Mainella and Kevin Koo by hard copy in a sealed envelope by the Bid Deadline. The envelope containing the Bid shall be marked:

0876242 B.C. LTD. AND GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
IN RECEIVERSHIP CONFIDENTIAL SEALED BID

A Bid that is not received by hard copy prior to the Bid Deadline shall not constitute a Qualified Bid and shall be disqualified.

14. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

The Receiver may reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) contrary to the best interests of the Receivership estate.

ACKNOWLEDGEMENT OF SALE PROCEDURE

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Supreme Court of British Columbia on August ____, 2022 in Action No: H220132 and further acknowledges that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Bid to be considered by the Receiver.

This _____ day of _____

[NAME]

By:

[Signing Officer]

No. VLC-S-H-220132
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.,
AS GENERAL PARTNER OF IMC LIMITED
PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP
SEEB CAPITAL LTD.
MARK VANRY

RESPONDENTS

NOTICE OF APPLICATION

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File No.: 063227-00023

CDB/day