

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-060843-220

DATE: March 30, 2022

BY THE HONOURABLE PHILIPPE BÉLANGER, J.S.C.

(JB5492)

IN THE MATTER OF THE RECEIVERSHIP OF:

FLORA I LIMITED PARTNERSHIP

-and-

10542113 CANADA INC.

Debtor

-and-

ROMSPEN INVESTMENT CORPORATION

Petitioner

-and-

MNP LTD.

Receiver

ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

[1] **ON READING** the Petitioner's Motion to Appoint a Receiver (the "**Motion**") pursuant to Article 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the sworn declaration and the exhibits in support thereof;

[2] **SEEING** the service of the Motion;

[3] **SEEING** the submissions of Petitioner's attorneys, the submissions of the attorneys of the Debtor and submissions of other counsel;

[4] **SEEING** that Petitioner sent the Debtor a notice pursuant to the terms of Article 244 of the BIA;

[5] **SEEING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;

WHEREFORE THE COURT:

[6] **GRANTS** the Motion;

SERVICE

[7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

[8] **APPOINTS MNP LTD.**, trustee, via its representative Sheri L. Aberback, CIRP, LIT, CFE, to act as receiver (the "**Receiver**") to the Property of Flora I Limited Partnership and 10542113 Canada Inc. (collectively, the "**Debtor**") until one of the following events comes to pass:

- (a) the sale of all the Property; or
- (b) the issuance of any order by the Court terminating the mandate of the Receiver;

[9] **DECLARES** that the order (the "**Order**") and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies' Creditors Arrangements Act* (the "**CCAA**") or the bankruptcy of the Debtor, unless the Court orders otherwise;

RECEIVER'S POWERS

[10] **AUTHORIZES** the Receiver to exercise the following powers:

10.1 Powers related to the possession of the Property

AUTHORIZES the Receiver to take possession of all the property of the Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in (the "**Property**") including without limitation that certain emplacement located in the City of Montréal, Borough of Lachine known and designated as being lot 5 599 420 of the Cadastre of Québec, Land Registration

Division of Montréal, with the buildings thereon presently under construction and with all that is or will be incorporated into, united with, or attached or otherwise joined to this immovable, by accession or otherwise, and is or will be considered immovable by law (the "**Project**") and to exercise the following powers listed hereinafter in the place and stead of the Debtor in respect of the Property:

10.2 Powers related to the preservation of the Property

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;
- (c) all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and to change the locks granting access to such premises and places of business of the Debtor;
- (d) all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "Records"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Debtor's Records;

10.3 Powers related to the Debtor's operations and claims against the Debtor

- (f) carry on, all or any part of the Debtor's operations;
- (g) all the powers necessary to control the Debtor's receipts and disbursements;
- (h) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same, as well as to sign any document for this purpose;
- (i) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;

(j) all the powers necessary to implement a claims process to resolve any remaining claims of creditors asserting legal hypothecs against the Project that have not otherwise been settled by the Debtor with the Receiver's approval;

(k) all the powers necessary to terminate or otherwise disclaim offers to purchase entered into by the Debtor and to facilitate a mechanism as may be necessary to address claims of persons who have made such offers to purchase and have made deposits in connection therewith, in the event that such offers are disclaimed or terminated; and

10.4 Powers related to the disposition or sale of the Property

(l) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;

[11] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;

[12] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;

[13] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;

[14] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

DEBTOR'S DUTIES

[15] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor, as well as to the Records;

[16] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;

[17] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY AND STAY OF PROCEEDINGS

[18] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process (collectively, "**Proceedings**") shall be commenced or enforced against the Property or against the Debtor, and any and all Proceedings currently underway are hereby stayed and suspended pending further order of this Court, the whole subject to s. 69.42 BIA;

[19] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

[20] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

EMPLOYEES

[21] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

PROTECTION OF PERSONAL INFORMATION

[22] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver;

LIMITATION OF LIABILITY

[23] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 10 of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;

[24] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

[25] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

FUNDING OF THE RECEIVERSHIP

[26] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver and the Receiver's attorneys and other advisors, to the extent of the aggregate amount of **\$100,000** (the "**Administration Charge**");

[27] **AUTHORIZES** the Receiver, *es qualité* and without personal liability, to borrow from Romspen Investment Corporation (the "**Interim Lender**") such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed **\$850,000** (eight hundred and fifty thousand dollars) (or such greater amount as the Interim Lender may approve and this Court may by further order authorize) at any time, at such terms and conditions as are set out in the term sheet filed in support of the Motion as **Exhibit RIC-13** (the "**Term Sheet**"), for the purpose of funding the exercise of the powers and duties conferred upon the Receiver

pursuant to this Order, including interim expenditures (the "**Interim Financing Facility**");

[28] **AUTHORIZES** the Receiver to execute and deliver the Term Sheet and other documents as may be required by the Interim Lender in connection with the Interim Financing Facility;

[29] **ORDERS** that as security for the obligations of the Receiver to the Interim Lender with respect to the payment of the monies borrowed under the Interim Financing Facility, together with interest and charges, a charge and security over the Property is hereby constituted in favour of Romspen Investment Corporation, to the extent of the aggregate amount of **\$1,000,000** (one million dollars) (the "**Receiver's Borrowing Charge**"), subordinate in priority to the Administration Charge, and that the Receiver's Borrowing Charge shall subsist without the necessity of any publication, registration, recording, filing or perfection thereof;

[30] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, trusts, deemed trusts, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;

[31] **DECLARES** that the Receiver's Borrowing Charge shall rank after the Administration Charge and after legal hypothecs of persons having taken part in the construction or renovation of an immovable in respect of the Property (under reserve in each case of their validity and opposability), but in priority to any and all other Encumbrances affecting the Property charged by such Encumbrances;

[32] **DECLARES**, for greater clarity, that the above mentioned charges shall rank, as between themselves, in the following order:

- (a) first, the Administration Charge;
- (b) second, the legal hypothecs of persons having taken part in the construction or renovation of an immovable in respect of the Property (under reserve in each case of their validity and opposability); and
- (c) third, the Receiver's Borrowing Charge.

[33] **DECLARES** that the Administration Charge and the Receiver's Borrowing Charge are effective and shall charge, as of 12:01 a.m. (Montreal time) the day of this Order, all the Debtor's Property present and future;

[34] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of

Property made by the Receiver pursuant to the Order and the granting of the Administration Charge and the Receiver's Borrowing Charge do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any other receiver to the Property of the Debtor, without having to be published or registered;

[35] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

GENERAL

[36] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;

[37] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;

[38] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[39] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;

[40] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the *BIA*, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court;

[41] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[42] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

[43] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

[44] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[45] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.



PHILIPPE BÉLANGER, J.S.C.