

NO. H-230801
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TCC MORTGAGE HOLDINGS INC. and TREZ CAPITAL
LIMITED PARTNERSHIP

PETITIONERS

AND:

104 INVESTMENTS LTD.
DENNIS ALLAN DRUMMOND
DAVID WILLIAM BECKINGHAM
CAPITAL PROPERTIES LTD.
SUNBELT RENTALS OF CANADA INC.
JOANNE SUSAN TAYLOR THOMAS
POSNIKOFF MORTGAGE MANAGEMENT LTD.
CORE CONCEPT CONSULTING LTD.
JESSE ROLAND LEGER
CANADA SCAFFOLD SUPPLY CO. LTD.
INTEGRATED FIRE PROTECTION INC.
CADA AND ASSOCIATES CONSULTING LTD.
JOHN DOE
ALL TENANTS AND OCCUPIERS OF THE SUBJECT LANDS
AND PREMISES

RESPONDENTS

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)
JUSTICE B. SMITH)

May 10, 2024

THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver and Manager (the "Receiver") of the assets, undertakings and properties of 104 Investments Ltd. coming on for hearing at Vancouver, British Columbia, on the 10th day of May, 2024; AND ON HEARING Scott R. Andersen, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one appearing the Respondents, although duly served; AND UPON READING the material filed, including the Third Report of the Receiver dated May 6, 2024 (the "**Third Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application dated May 5, 2024 and all materials filed in support thereof (the "**Application**") be and is hereby abridged to the actual date of service upon the Application Respondents such that the Application is properly returnable on today's date.
2. The sale transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale dated May 3, 2024 (the "**Sale Agreement**") between the Receiver and 1479378 BC Ltd. (the "**Purchaser**"), a copy of which is attached as Appendix "B" to the Third Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").
3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "C"** hereto shall vest absolutely in the Purchaser 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 October 3, 2024; (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 "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from the Receiver's counsel, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Lands, as identified in **Schedule "F"** 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 Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "E"**.
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
 6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
 7. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "E"**.
 8. The Receiver, with the consent of the Purchaser, 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 provided that the Closing Date occurs on or before May 17, 2024 or such later date as agreed to by the Receiver and Purchaser in writing.
 9. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor 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 Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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.


10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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:



Scott R. Andersen,
Signature of Lawyer for the Receiver

BY THE COURT 



REGISTRAR



Schedule A – List of Counsel

PARTY	COUNSEL
THE PETITIONERS	Scott Stephens
David Beckingham and Capital Properties Ltd	Brian Markus

Schedule "B" – Receiver's Certificate

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RESPONDENTS

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated October 3, 2023, MNP Ltd. (the "**Receiver**") was appointed as Receiver and Manager of the assets, undertakings and properties of 104 Investments Ltd. (the "**Debtor**").
- B. Pursuant to an Order of the Court (the "**Approval and Vesting Order**") dated May 10, 2024, the Court approved Agreement of Purchase and Sale dated May 3, 2024 (the "**Sale**").

Agreement") between the Receiver and 1479378 BC Ltd. (the "**Purchaser**"), for the Purchase Price (as defined in the Sale Agreement), and provided for the vesting in the Purchaser of all of the right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order or the Sale Agreement, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the consideration and funds constituting the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at Vancouver, B.C. this ____ day of May, 2024.

MNP LTD.,
in its capacity as Receiver and Manager of the assets,
undertakings and properties of 104 Investments Ltd.

Per: _____

Schedule "C" – Purchased Assets

"Purchased Assets" means all of the right, title and interest of the 104 Investments Ltd., in and to the tangible and intangible properties, assets, interests, rights and claims related to land more particular known and described as follows:

PID: 004-063-031

LOT 20 SECTION 2 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 30107

and all assets of the business of 104 Investments Ltd., wherever located, as of the Closing Date, including without limitation the following assets, if any:

- (a) all inventory;
- (b) all chattels, fixtures and equipment;
- (c) all intellectual property;
- (d) all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents or with third parties;
- (e) the Assigned Contracts (as defined in the Sale Agreement), if any, and the Permitted Encumbrances (as defined in the Sale Agreement); and
- (f) all other personal property not contemplated by the foregoing, but excluding the Excluded Assets (as defined in the Sale Agreement).

Schedule "D" – Claims to be deleted/expunged from title to Real Property

1. MORTGAGE CA9148661
2. ASSIGNMENT OF RENTS CA9148662
3. PRIORITY AGREEMENT CA9153694
4. PRIORITY AGREEMENT CA9153695
5. CLAIM OF BUILDERS LIEN CB638388
6. CERTIFICATE OF PENDING LITIGATION CB743537
7. CLAIM OF BUILDERS LIEN, WX2187976
8. CLAIM OF BUILDERS LIEN, HB2535
9. CLAIM OF BUILDERS LIEN, CB1053717
10. CLAIM OF BUILDERS LIEN, CB1195312
11. CLAIM OF BUILDERS LIEN, HB5737

**Schedule "E"– Permitted Encumbrances, Easements and
Restrictive Covenants related to Real Property**

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
2. UNDERSURFACE RIGHTS, 57903E
3. UNDERSURFACE RIGHTS, 96751E
4. STATUTORY RIGHT OF WAY , KF34094
5. STATUTORY RIGHT OF WAY , LB518652
6. STATUTORY RIGHT OF WAY , LB518779
7. STATUTORY RIGHT OF WAY , LB518780
8. MORTGAGE CA9153214 and ASSIGNMENT OF RENTS CA9153215

Schedule "F" – LANDS

Civic Address: 555 Adams Road, Kelowna, British Columbia

Parcel Identifier: 004-063-031

Legal Description: Lot 20 Section 2 Township 23 Osoyoos Division Yale District Plan 30107

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AND:

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RESPONDENTS

**ORDER MADE AFTER APPLICATION
APPROVAL AND VESTING ORDER**



Barristers & Solicitors
Suite 403 - 460 Doyle Avenue
Kelowna, B.C. V1Y 0C2
Phone: (250) 979-8546
Attention: Scott R. Andersen

File No. 26420-173328