

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.  
JOHN DOE  
ALL TENANTS AND OCCUPIERS OF THE SUBJECT LANDS  
AND PREMISES

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

BEFORE *The Honorable*  
*Justice MacNanigan*

TUESDAY, THE 9<sup>th</sup> DAY  
OF JANUARY, 2024.

ON THE APPLICATION of MNP Ltd., the Receiver and Manager (the "Receiver") without security, of all of the assets, undertakings and property of 104 Investments Ltd., coming on for hearing at <sup>800 Smithe Street</sup> Vancouver, B.C., on the 9<sup>th</sup> day of January, 2024, and on hearing <sup>Joel Schachter</sup> ~~Scott R. Andersen~~, counsel for the Receiver, and those counsel listed on Schedule "A", and nobody else


*MacN*


appearing although duly served; AND ON READING THE MATERIALS FILED;

THIS COURT ORDERS that:

1. The time for service of the Application and supporting materials giving rise to this Order be and is hereby abridged to the time actually given.
2. The Sale and Investment Solicitation Process attached hereto as **Schedule "B"** be and is hereby approved.
3. The Receiver be and is hereby authorized and empowered to implement the SISP and perform all steps and actions required of the Receiver pursuant to the SISP, including engaging the agent and listing the Property for sale as referenced in the Receiver's Second Report filed herein.
4. The Receiver may apply to this Honourable Court for further advice, direction and assistance as may be necessary to give effect to the terms of this Order.
5. This Order may be served by electronic mail, courier, or facsimile on the parties on the Service List maintained by the Receiver in the within proceedings.
6. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver be and 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:

  
 \_\_\_\_\_  
 Scott R. Andersen Joel Schneider  
 COUNSEL FOR MNP LTD.

BY THE COURT  
  
 \_\_\_\_\_  
 REGISTRAR



Schedule "A"

Schedule A – List of Appearing Parties

Counsel for the Receiver, MNP Ltd.	Scott R. Andersen Lawson Lundell LLP Suite 403, 460 Doyle Avenue Kelowna, BC V1Y 0C2 Email: scott.andersen@lawsonlundell.com
Counsel for the Petitioners	Scott Stephens

## SALE AND INVESTMENT SOLICITATION PROCESS

### Introduction

On October 3, 2023, the Supreme Court of British Columbia (the "Court") made an Order in Action No. H137731 (the "Receivership Order") appointing MNP Ltd. as receiver and manager (in such capacity, the "Receiver"), without security, of all the assets, undertakings and property of 104 Investments Ltd. (the "Debtor"), including all proceeds thereof (collectively, the "Property") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. The BC Court action in which the Receivership Order was granted was subsequently transferred to the Vancouver Registry as Action No. H230801 (the "Receivership Proceeding").

Under the Receivership Order, the Receiver was authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any parts or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate (such process being the "Sale Process"). The Receivership Order, any other Orders granted by the Court in regard to the Sale Process and the procedures set forth herein shall exclusively govern the sale and investment solicitation process (the "SISP") for soliciting and selecting bids for the sale of all or substantially all of the Property of the Debtor.

The Receivership Order and this SISP shall exclusively govern the process for soliciting and selecting bids for the restructuring, recapitalization or refinancing of the Debtor or for the sale of all or any part of the Property.

All dollar amounts expressed herein, unless otherwise indicated, are in Canadian currency. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Receivership Order.

### Sale Process

The Sale Process describes, among other things, the Property available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids, and the approval thereof by the Court. At any point in time, with reasonable notice, the Receiver retains the ability to vary or amend the Sale Process as it deems fit, including changing the timeline or terminating the SISP at any point of the Sale Process.

### Opportunity

The Sale Process is intended to solicit interest in, and opportunities for, a sale of all, or substantially all, of the Property, and in particular the land and building located at 555 Adams Road, Kelowna, B.C. (the "Adams Road Property") or, alternatively, an

investment in the Debtor. As discussed further below, a “Qualified Bid” under the SISP may be comprised either of an *en bloc* bid for all or substantially all of the Property.

An investment in the Debtor may include a restructuring, recapitalization, or other form of reorganization of the business and affairs of some or all of the Debtor. A sale of the Property may involve a sale of all, substantially all, or one or more of the assets comprising the Property, including to a newly formed acquisition entity.

**“As Is, Where Is”**

Any investment in the Debtor or sale of any of the Property will be on an “as is, where is” basis without surviving representations, warranties, covenants or indemnities of any kind, nature or description by the Receiver or any of its agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant investment or sale agreement as may be entered into by the Receiver.

**Free of Any and All Claims and Interests**

In the event of a sale, all of the rights, titles, and interests of the Debtor in and to all Property sold or transferred will, at the time of such sale or transfer, be sold or transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively the “**Claims and Interests**”) pursuant to one or more approval and vesting orders made by the Court. Contemporaneously with such approval and vesting orders being made, all such Claims and Interests shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder. Alternatively, the Receiver will work with the purchaser to transfer the Debtor's rights, titles and interests in and to the Property to be sold or transferred pursuant to one or more reverse vesting orders made by the Court, in which case, the structure shall be determined by the Receiver in consultation with the purchaser and their respective counsel.

**Sale Process Timeline**

The Receiver currently anticipates that the Sale Process will commence or about January 15, 2024.

<b>Milestone</b>	<b>Time Period</b>	<b>Date</b>
Pre-Marketing Preparation	2 weeks	Ends January 29, 2024
Marketing Campaign	4-6 weeks	January 30, 2024 to March 11, 2024
Due Diligence Period	5 weeks	February 5 to March 11, 2024
Non-Binding Bid Deadline		March 18, 2024
Period of time to perform Bid Assessment, Communication to Qualified Bidders, and perform Final Due Diligence	21 calendar days after the Non-Binding Bid Deadline	March 18, 2024 to April 8, 2024
Binding Bid Deadline	3 calendar days after the Final Due Diligence Period ends	April 11, 2024
Period of time to perform Final Bid Assessment and notification of Selected Bidder(s), if any	1 week	April 12, 2024 to April 19, 2024
Court Approval of Successful Bid (if applicable)	Within 10 calendar days of the selection of a Successful Bid	

The dates set out in the SISP may be amended or extended by the Receiver, in its sole discretion, and may be subject to change by an order of the Court.

### Participation Requirements and Due Diligence

In order to participate in the Sale Process, an interested party (a "Potential Bidder") must deliver to the Receiver at the address specific herein (including by email), and prior to the distribution of any confidential information by the Receiver to such Potential Bidder (including access to the confidential virtual data room (the "VDR")):

1. an executed non-disclosure agreement in form and substance satisfactory to the Receiver (an "NDA"), which shall inure to the benefit of any Successful Bidder (as defined below) that closes a transaction contemplated by a Successful Bid (as defined below); and
2. a letter outlining the Potential Bidder's qualifications (a "Qualification Letter"), as set out in Schedule A.

A Potential Bidder that has executed an NDA, as described above, and who provides the Receiver with a Qualification Letter and who the Receiver, in its sole discretion, determines has a reasonable prospect of completing a Sale contemplated herein, will be deemed a "Qualified Bidder".

Each Qualified Bidder shall have access to the VDR and any such reasonably required due diligence materials and information relating to the Property as the Receiver deems appropriate. The Receiver makes no representation or warranty as to the information to be provided through the due diligence process or otherwise, regardless of whether such information is provided in written, oral or any other form, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder executed and delivered by the Receiver and approved by the Court.

Upon the reasonable request of a Qualified Bidder, on-site inspections of the Property may be arranged by the Receiver in its sole discretion.

Prior to the Non-Binding Bid Deadline, the Receiver may engage in discussions with any or all of the Qualified Bidders to determine and explore their level of interest and may request from any such Qualified Bidder such information as the Receiver may deem appropriate.

### Submission of Binding Offers

The Receiver shall provide Qualified Bidders, for all or part of the Property, or for an investment in the Debtor, with a draft purchase and sale agreement (a "Purchase Agreement") at such time as the Receiver may, in its discretion, deem appropriate. If the Qualified Bidder's proposal is in the form of an investment, the Receiver shall not provide a draft form of agreement.

A Qualified Bidder that desires to make a bid for some or all of the Property must deliver a non-binding bid to the Receiver so as to be received by no later than the Non-

**Binding Bid Deadline** and a binding offer (the "**Binding Bid**") to the Receiver so as to be received by no later than the **Binding Bid Deadline**.

A Binding Bid will only be considered a Qualified Bid if it is submitted by a Qualified Bidder and complies with the following conditions (each, a "**Qualified Bid**"):

- (a) it contains a binding offer to:
  - a. acquire all, or any part of the Property, pursuant to a vesting or a reverse vesting order; or
  - b. make an investment in the Debtor, including the aggregate amount of proposed equity and debt investment and details regarding the proposed equity and debt structure of the Debtor following completion of the proposed transaction.
- (b) it contains a duly authorized and executed Purchase Agreement or an agreement for investment in the Debtor, specifying the purchase price (the "**Purchase Price**") or investment terms, and providing for a closing of the purchase or investment transaction as soon as practicable after the Binding Bid Deadline, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), and, in the case of a bid for a purchase and sale transaction, copies of such materials marked to show the amendments and modifications to the Purchase Agreement provided by the Receiver;
- (c) it includes a letter stating that the Binding Bid is irrevocable until 8 days following the Binding Bid Deadline unless it is chosen as the successful bid, in which case it is irrevocable until closing of the transactions contemplated by the Binding Bid as soon as practicable following the Binding Bid Deadline;
- (d) it provides written evidence, satisfactory to the Receiver, of (i) a firm, irrevocable financial commitment for all required funding or financing or (ii) evidence of the Qualified Bidder's financial wherewithal to close the bid using unencumbered funds on hand;
- (e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder; and/or (ii) obtaining any financing or financial capital and includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Binding Bid;
- (f) it fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the sale or investment proposal, including



the identification of the bidder's direct and indirect owners and their principals, and the complete terms of any such participation;

- (g) it is accompanied by a refundable deposit in the form of a wire transfer (to a trust account specified by the Receiver) or such other form acceptable to the Receiver, payable to the order MNP Ltd., Receiver, in trust, in an amount equal to ten percent (10%) of the Purchase Price;
- (h) it contains any other information reasonably requested by the Receiver.

### Assessment of Qualified Bids

Qualified Bids will be evaluated upon several factors, including, without limitation and to the degree determined to be applicable by the Receiver in each case:

- (a) Purchase Price;
- (b) Any non-cash consideration, such as liabilities to be assumed by the Qualified Bidder;
- (c) Structural complexity of the proposed transaction;
- (d) Nature and sufficiency of funding for the proposed transaction;
- (e) Probability of closing the proposed transaction and any relevant risks thereto, including nature of any remaining conditions and due diligence requirements;
- (f) Qualified Bidder's financial strength.

If the Receiver receives one or more Qualified Bids, the Receiver may select one or more of the Qualified Bids as the successful bid (the "**Successful Bid**", with such bidder being the "**Successful Bidder**"), or alternatively if no Successful Bidder is determined, terminate the SISP.

### Approval of Successful Bid

The Receiver shall apply to the Court (the "**Approval Application**") for an order approving the Successful Bid and vesting title to any purchased Property in the name of the Successful Bidder, or in the case of an investment, approving the investment structure and any ancillary relief required by the Successful Bidder (the "**Approval Order**"). The Approval Application will be held on a date to be scheduled by the Receiver and confirmed by the Court. The Receiver shall use best efforts to schedule the Approval Application as soon as practical and subject to Court availability. The Approval Application may be adjourned or rescheduled by the Receiver on notice to the Service List prior to the Approval Application. The Receiver shall consult with the Successful Bidder regarding the application material to be filed by the Receiver for the

Approval Application, which material shall be acceptable to the Successful Bidder, acting reasonably.

All Qualified Bids (other than the Successful Bid) shall be deemed rejected on and as of the date of the closing of the Successful Bid.

### Deposits

All deposits shall be retained by the Receiver in a bank account specified by the Receiver. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Application shall be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable.

All Deposits of all Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within five (5) business days of the date upon which the Successful Bid is approved by the Court. If the SISP is terminated in accordance with the provisions hereof, all Deposits shall be returned to the Qualified Bidders within five (5) business days of the date the SISP is terminated, as applicable.

If an entity selected as the Successful Bidder breaches its obligations to close the applicable transaction, it shall forfeit its Deposit to the Receiver; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Receiver has against such breaching entity.

### Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any other statute or are otherwise required at law in order to implement a Successful Bid, as the case may be.

### Notice to the Receiver

The addresses to be used for delivering documents to the Receiver:

**The Receiver:**  
MNP Ltd.  
Suite 1630  
609 Granville Street  
Vancouver, BC V7Y 1G5  
Attention: Doug Chivers - [doug.chivers@mnp.ca](mailto:doug.chivers@mnp.ca)

with a copy to counsel for the Receiver:

Lawson Lundell LLP  
Suite 1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC V6C 3L2  
Attention: Scott R. Andersen – [scott.andersen@lawsonlundell.com](mailto:scott.andersen@lawsonlundell.com)

A bid must be delivered to the Receiver by electronic mail, personal delivery or courier. Interested bidders requesting information about the qualification process, including the form of Purchase Agreement, and information in connection with their due diligence should contact the Receiver.

### **Reservation of Rights**

Notwithstanding any other term of this SISP, the Receiver:

- (a) may reject, at any time any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this SISP or any orders of the Court applicable to the Debtor or the Receiver; or (iii) contrary to the interests of Debtor's estate and stakeholders, as determined by the Receiver;
- (b) in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify this SISP at any time in order to maximize the results obtained;
- (c) in accordance with the terms hereof, may accept bids in conformity with this SISP to the extent that the Receiver determines, in its reasonable business judgment, that doing so will benefit the Debtor's estate and stakeholders; and,
- (d) may shorten or extend the deadlines contained in this SISP or to impose such other terms and conditions as the Receiver determines to be in the best interest of the Debtor's stakeholders, provided that such terms and conditions are not inconsistent with this SISP.

This SISP does not, and shall not be interpreted to create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed by the Receiver.

### **No Amendment**

Except as provided for herein, there shall be no amendments to the SISP without the prior written consent of the Receiver, or further order of the Court obtained on reasonable notice to the Receiver.

**Further Orders**

At any time during the Sale Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

## SCHEDULE "A" QUALIFICATION LETTER OUTLINE

### Qualification Letter Outline

The qualification letter (the "Qualification Letter") should be sent via email, along with an executed copy of the confidentiality agreement in the form provided by the Receiver, to [doug.chivers@mnp.ca](mailto:doug.chivers@mnp.ca)

The Qualification Letter should include the following information:

- 1) The identity and contact information of the prospective purchaser(s) or investor(s), and full disclosure of all direct and indirect principals;
- 2) Any information that you believe would be relevant to explaining the strategic rationale for your participation in the Sale Process;
- 3) A confirmation that a definitive proposal, if submitted, would not be conditioned on obtaining any financing capital. If the prospective purchaser(s) or investor(s) is currently engaged in obtaining funding that would allow for a possible transaction, information regarding the expected sources of funds, the status of any discussions with such sources, and information regarding the further steps necessary to obtain a firm funding commitments, should also be provided;
- 4) The identity of your legal and financial advisors (if any); and
- 5) Any other information that you believe would be important to Receiver in determining your ability to successfully complete the proposed transaction as soon as practicable.

Access to the VDR will not be provided until the above-referenced information is received.

All communications or enquires related to the Qualification Letter should be directed to the Receiver at [doug.chivers@mnp.ca](mailto:doug.chivers@mnp.ca).