

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE RECEIVERSHIP OF  
THE ASSETS, UNDERTAKINGS AND PROPERTIES OF  
LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP,  
SUNNY BEACH MOTEL INC., PORT CAPITAL FARMS (BEACH) INC.,  
PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC.,  
AND CERTAIN ASSETS OF PORTLIVING PROPERTIES INC. AND  
PORT CAPITAL DEVELOPMENT (FARMS) INC.**

**PURSUANT TO SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED  
AND  
SECTION 39 OF THE *LAW AND EQUITY ACT*, R.S.B.C. 1996 c. 253 AS AMENDED**

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**RECEIVER'S FIRST REPORT TO COURT**

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**September 29, 2023**

**IN THE MATTER OF THE RECEIVERSHIP OF  
LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP,  
SUNNY BEACH MOTEL INC., PORT CAPITAL FARMS (BEACH) INC.,  
PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC., AND  
PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC.**

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- Appendix B A copy of the Purchase and Sale Agreement dated September 1, 2023
- Appendix C Interim Statement of Receipts and Disbursements for the period March 1, 2023 to September 15, 2023

## I. PURPOSE OF REPORT AND BACKGROUND

1. MNP Ltd. (“**MNP**”) was appointed as Receiver and Manager (the “**Receiver**”) of the assets, undertakings and property of Living Beachside Development Limited Partnership (“**Living Beachside LP**”), Sunny Beach Motel Inc. (“**Sunny Beach**”), Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc. (“**3624 Farms**”), PortLiving Farms (3688 Parkview) Investments Inc. (“**3688 Farms**”), PortLiving Farms (3648 Parkview) Investments Inc. (“**3648 Farms**”) (collectively referred to as the “**Companies**”), and certain assets of PortLiving Properties Inc. and Port Capital Development (Farms) Inc. pursuant to an Order granted by the Supreme Court of British Columbia (the “**Receivership Order**”).

### Purpose of the Report

2. The purpose of this report is to provide a:
  - summary of the Receiver’s activities to date;
  - summary of the Receiver’s receipts and disbursements from March 1, 2023 to September 15, 2023
  - summary of the sales and marketing process; and
  - summary of the offer received from 1351486 B.C. Ltd. (“**486 BC Ltd.**”) for an estimated purchase price of \$12.9 million (the “**Offer**”);

and to seek Orders from this Court:

- approving the Offer, including the use of the reverse vesting order structure;
- increasing the Receiver’s borrowing charge limit from \$500,000 to \$780,000;
- authorizing the Receiver to assign Sunny Beach and Living Beachside LP into bankruptcy; and
- approving of the Receiver’s activities to date.

## Background

3. The Companies own and operate the following three motels located in Penticton, BC:
  - i. Beachside Motel – 26-room motel located at 3624 Parkview Street
  - ii. Sunny Beach Motel – 22-room motel located at 3648 Parkview Street
  - iii. Waterfront Inn – 20-room motel located at 3688 Parkview Street

(Collectively referred to as the “**Properties**”)

4. Living Beachside LP is the beneficial owner of Beachside Motel. 3624 Farms is the registered owner of Beachside Motel.
5. Sunny Beach is the beneficial owner of Sunny Beach Motel. 3648 Farms is the registered owner of Sunny Beach Motel.
6. Living Beachside LP is the beneficial owner of Waterfront Inn. 3688 Farms is the registered owner of Waterfront Inn.
7. The Companies’ secured debts are:
  - i. Synvest Investment Management Inc. (“**Synvest**”) approximately \$7.1 million by way of a first mortgage against the Properties.
  - ii. 1351486 B.C. Ltd. (“**486 BC Ltd.**”) approximately \$4.9 million by way of a second mortgage against the Properties.
8. In March 2023, Synvest took an assignment of the first mortgage held by 1341550 B.C. Ltd. (“**550 BC Ltd.**”).
9. The second mortgagee, 486 BC Ltd. issued Notices of Intention to Enforce Security dated June 3, 2022, to the Companies.
10. On October 25, 2022, 486 BC Ltd., and the Companies entered into a forbearance agreement under which 486 BC Ltd. would forbear from further action until after November 16, 2022.

11. The Companies failed to satisfy the terms of the forbearance agreement with 486 BC Ltd.
12. On November 30, 2022, 486 BC Ltd. filed a petition to the Court to obtain an order appointing a receiver over the Companies.
13. The application by 486 BC Ltd. was heard on January 30, 2023, which appointed MNP as Receiver. However, the Receivership Order was stayed until March 1, 2023, to allow the Companies additional time to redeem the mortgages.
14. The Receivership Order became effective March 1, 2023, and MNP took possession of the assets.
15. The Receiver did not immediately list the Properties for sale, because the Companies and 486 BC Ltd. asked the Receiver to delay the sales process pending the outcome of a series of refinancing discussions.
16. The refinancing or redemption of the mortgages did not occur and the Receiver commenced the sales process on May 4, 2023.

## **II. RECEIVER'S ACTIVITIES TO DATE**

17. The Receiver has performed the following work with respect to the Properties:
  - i. Took possession of the Properties and continued motel operations;
  - ii. Terminated and subsequently rehired the employees;
  - iii. Liaised with the vendors to ensure continuation of services;
  - iv. Liaised with the general manager of the motels on a weekly basis regarding operations;
  - v. Obtained a new insurance policy to ensure adequate coverage;
  - vi. Implemented and modified existing internal controls and procedures;
  - vii. Reviewed and reconciled motel sales activity;
  - viii. Prepared cash flow forecasts;
  - ix. Administered the payroll function for all employees at the motels including the issuance of T4 slips and Records of Employment as required;
  - x. Administered employee claims under the *Wage Earner Protection Program Act*;

- xii. Administered all WCB, GST, PST, and Municipal and Regional District Tax reporting and remittances as required;
- xiii. Entered into discussions and negotiations with numerous parties concerning various potential redemption or re-financing proposals;
- xiv. Attended to meetings with the first mortgagee, 550 BC Ltd. and facilitated its replacement by Synvest;
- xv. Held discussions with the real estate agent regarding sales and marketing for the Properties;
- xvi. Held discussions with the Province of BC, Interior Health services, and the City of Penticton regarding motel operations;
- xvii. Held various discussions and correspondence with legal counsel; and
- xviii. Prepared statutory documents for the receivership.

### **III. SALES AND MARKETING PROCESS**

18. The Receiver signed a listing agreement with Colliers to market and sell the Properties on May 4, 2023.
19. The Properties were initially marketed without a listing price. After receipt of the initial offers, the listing price was updated to \$10 million on August 8, 2023, as the second mortgagee informed the Receiver that any amount below that figure would be opposed.
20. Below is a summary of Colliers' marketing activities to date:
  - i. Over 200 marketing packages were sent out to prospective purchasers;
  - ii. Over 150 targeted calls were made to prospective purchasers;
  - iii. Over 250 phone calls from interested parties were received by Colliers;
  - iv. The Properties were advertised for sale on Colliers' website and Bill Randall's personal website;
  - v. The Properties have been advertised in the Western Investor on a monthly basis; and
  - vi. 168 interested parties executed confidentiality agreements to receive due diligence materials for the Properties.

Attached as **Appendix A** is a copy of Colliers' marketing activity report. The Receiver has redacted the names of the prospective purchasers that submitted offers.

21. Colliers obtained three offers from interested parties and the Receiver obtained two offers directly from potential purchasers.
22. The five offers received in the sales process were as follows:
  - i. Offer #1 - \$6.75 million.
  - ii. Offer #2 - \$7.5 million.
  - iii. Offer #3 - \$8.0 million.
  - iv. Offer #4 - \$7.5 million.
  - v. Offer #5 - \$12.9 million.
23. The Receiver has accepted the highest offer as submitted by 486 BC Ltd. to purchase the Properties for approximately \$12.9 million.

#### **IV. OFFER TO PURCHASE**

24. The Receiver has entered into a Purchase and Sale Agreement ("**PSA**") with 486 BC Ltd. to purchase the Properties is attached as **Appendix B**.
25. The PSA, subject to Court approval, requires a Reverse Vesting Order ("**RVO**") to be obtained by the Receiver and the purchaser, 486 BC Ltd., will pay all obligations that rank ahead of its second mortgage. The remaining amount is to be credit bid the value of its second mortgage. The purchase price offered by 486 BC Ltd. is estimated at \$12.9 million as follows:

<b><u>Purchase Price (estimate)</u></b>	
First mortgage payable to Synvest	\$ 7,100,000
Second mortgage payable to 486 BC Ltd.	4,900,000
Receiver's borrowings charge	780,000
Real estate agent's commission	75,000
Outstanding property tax	-
Receiver's charge	-
	<u>\$ 12,855,000</u>

26. The Receiver's legal counsel received a deposit of \$500,000 on September 14, 2023, from 486 BC Ltd.
27. The closing date in the PSA is set for 28 days after the date the RVO is pronounced by the Court, or any other date as may be agreed by the Vendor and Purchaser and, in any event, no earlier than November 2, 2023 (the "**Closing Date**").
28. The employee treatment contemplated in the APA is essentially as follows:
  - i. the Receiver shall terminate all of the employees of the Companies and bring all employment obligations up to date on or before the Closing Date;
  - ii. the purchaser will provide a list of non-union Employees that the purchaser wishes to continue to employ at the business after the Closing Date (the "**Retained Employees**");
  - iii. the purchaser shall:
    - i. extend an employment offer to each Retained Employee with effect as of the Closing Date on substantially the same terms and conditions as such Retained Employee had been employed by the applicable Company; and
    - ii. provide the Retained Employees with credit for past years of service with the applicable Company for the purposes of their employment entitlements, including without limitation vacation entitlement and notice entitlement upon termination of employment.
29. The Receiver is of the view that the approach taken under the PSA with respect to the employees is fair and reasonable.
30. The RVO structure contemplated in the PSA requires that:
  - i. certain excluded assets and liabilities of 3624 Farms, 3688 Farms, and 3648 Farms (collectively the "**Nominees**") all be transferred by the Vendor into Sunny Beach;



- ii. all of the issued and outstanding shares in the capital of each of the Nominees shall be transferred to the purchaser, 486 BC Ltd.;
  - iii. the Nominees be removed from the receivership proceedings and released from the purview of all orders of the Court granted in respect of the receivership proceedings, save and except for RVO; and
  - iv. the Receiver shall assign Sunny Beach and the Living Beachside LP into bankruptcy following the closing of the transaction.
31. The Receiver understands that the RVO structure is generally being proposed (rather than a 'conventional' approval and vesting order) to avoid payment of property transfer tax ("PTT") payable to the Government of British Columbia pursuant to the *Property Transfer Act* (British Columbia). The estimated amount of PTT saved under an RVO structure is \$365,000.00.
32. The Receiver has consulted with its legal counsel on the recent guidance provided by the British Columbia courts in the context of reverse vesting orders. The Receiver understands that the recent decision of *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, 2023 BCSC 1476 supports the RVO structure being used in this fashion to avoid PTT. Accordingly, the Receiver is supportive of the RVO and is of the view the RVO structure is sensible to pursue in this instance.
33. The PSA also provides that 486 BC Ltd. will fund the Receiver's borrowings required to complete the receivership. Pursuant to the PSA, the Receiver's borrowings advanced by 486 BC Ltd. will form a part of the credit bid and the charge created will rank behind the first mortgage.

## V. CASH FLOW FORECAST AND RECEIVER'S BORROWINGS

34. The Receiver has prepared a summary of the actual receipts and disbursements from March 9, 2023 to September 15, 2023 plus the forecast from September 16, 2023 to October 31, 2023 of the Companies.

	Actual	Forecast		Total Actual plus Forecast	Ref.
	Mar 9 to Sep 15, 2023	Sep 16-30 2023	Oct 2023		
<b>Cash Inflows</b>					
Receiver's Borrowings	460,000	320,000	-	780,000	i
Revenues	1,201,361	15,000	35,000	1,251,361	
	<b>1,661,361</b>	<b>335,000</b>	<b>35,000</b>	<b>2,031,361</b>	
<b>Cash Outflows</b>					
Payroll	265,179	25,000	30,000	320,179	
Property tax	197,896	-	-	197,896	ii
Insurance	104,864	-	75,000	179,864	iii
Repairs and maintenance	96,728	5,000	5,000	106,728	
Marketing and merchant services	100,127	6,000	3,000	109,127	
Utilities	79,525	11,700	10,400	101,625	
GST and PST paid	81,215	35,000	20,000	136,215	
Receiver's fees	58,009	290,000	100,000	448,009	iv
Motel supplies	48,203	5,000	5,000	58,203	
Property manager	53,550	-	17,850	71,400	
Trustee's fees for bankruptcy	-	-	25,000	25,000	v
Legal fees	26,306	75,000	75,000	176,306	vi
Miscellaneous expenses	15,594	550	550	16,694	
Contingency	-	30,000	30,000	60,000	
<b>Total Cash Outflows</b>	<b>1,127,196</b>	<b>483,250</b>	<b>396,800</b>	<b>2,007,246</b>	
<b>Net Cash Inflow (Outflow)</b>	<b>534,165</b>	<b>(148,250)</b>	<b>(361,800)</b>	<b>24,115</b>	
<b>Opening Cash Balance</b>	<b>14,200</b>	<b>548,365</b>	<b>400,115</b>	<b>14,200</b>	
<b>Closing Cash Balance</b>	<b>548,365</b>	<b>400,115</b>	<b>38,315</b>	<b>38,315</b>	

Notes to the cash flow forecast:

- i. Additional funds of \$320,000 are required to operate the motels until the sale completes.
- ii. The Receiver paid all outstanding property taxes to eliminate penalties in 2023.
- iii. Estimated cost of \$75,000 to extend the insurance coverage for the Properties which expires October 15, 2023.
- iv. Outstanding Receiver's fees and disbursements for the period April 1, 2023 to August 31, 2023 plus the Receiver's estimated fees to discharge.
- v. Estimated Trustee's fees of \$25,000 to administer the bankruptcies of the companies as contemplated in the PSA.
- vi. Estimated fees of the Receiver's legal counsel for the period July 1, 2023 to August 31, 2023 plus an estimate to completion of the proceedings.

35. The Receivership Order authorized the Receiver to borrow up to a limit of \$500,000 before interest charges. To date the Receiver has issued Receiver's Certificates totalling \$460,000 before interest charges.
36. The Receiver requests that the Court approve an increase to the Receiver's borrowing charge limit by \$280,000 to \$780,000 in order to complete the receivership proceedings as outlined in the cash flow forecast. The \$280,000 increase in Receiver's borrowings is to be funded by the proposed purchaser and the charge would rank behind the first mortgage charge.
37. 486 BC Ltd. is agreeable to funding the increase in the Receiver's borrowings as stated in the PSA.

## VI. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

38. A copy of the Receiver's Interim Statement of Receipts and Disbursements for the period March 1, 2023, to September 15, 2023 summarized below and attached as **Appendix C**:

Interim Statement of Receipts and Disbursements for the period March 1, 2023 to September 15, 2023	
	\$'s
<b>Receipts</b>	
Revenue collected	1,070,938
Receiver's borrowings	460,000
GST and PST collected	144,623
	<u>1,675,561</u>
<b>Disbursements</b>	
Payroll	265,179
Property tax	197,896
Insurance	104,864
GST and PST paid	81,215
Utilities	79,525
Marketing costs	75,665
Contract labour	75,309
Repairs and maintenance	74,969
Receiver's fees	58,009
Motel supplies	48,203
Legal fees	26,306
Merchant fees and bank charges	24,462
IT services	6,531
Security deposit refunds	5,317
Miscellaneous expenses	3,746
	<u>1,127,196</u>
<b>Excess receipts over disbursements</b>	<u><b>548,365</b></u>

## VII. CONCLUSION AND RECOMMENDATIONS

39. Based upon the foregoing the Receiver seeks the following orders from the Court:

- i. approval of the PSA and sale of the Properties to 486 BC Ltd., including the use of the RVO;
- ii. An increase in the Receiver's borrowing charge limit from \$500,000 to \$780,000;
- iii. An authorization allowing the Receiver to assign Sunny Beach and Living Beachside LP into bankruptcy; and
- iv. approval of the Receiver's activities to date.

All of which is respectfully submitted to this Honourable Court this 29th day of September 2023.

### **MNP Ltd.**

in its capacity as Receiver and Manager of Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., Portliving Farms (3624 Parkview) Investments Inc., Portliving Farms (3648 Parkview) Investments Inc., and Portliving Farms (3688 Parkview) Investments Inc. and not in its personal or corporate capacity.

Per:



Mario Mainella CPA, CA, CIRP, LIT  
Senior Vice President

## **Appendix A**

**Colliers Marketing Activity Report dated September 13, 2023**



## MARKETING ACTIVITY

**To:** **MNP LTD.**, IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC., PORT LIVING FARMS (3688 PARKVIEW) INVESTMENTS INC., PORTLIVING (3648 PARKVIEW) INVESTMENTS INC., PORT CAPITAL GROUP INC., PORTLIVING PROPERTIES INC., MACARIO TEODORO REYES, PORT CAPITAL DEVELOPMENT (FARMS) INC., AND 1341550 B.C. LTD. (**"PENTICTON MOTELS"**) (in such capacity, the **"Receiver"**)

**Date:** September 13, 2023

**From:** Bill Randall, Executive Vice President  
Colliers (the **"Agent"**)

**RE: 3624, 3648 & 3688 Parkside Street, Penticton, BC**  
**("The Property")**

### We have engaged in the following marketing activities

- Listed May 4<sup>th</sup>, 2023
- Multiple emails to our select Colliers' investor & developer database which contains over 2,500 recipients
- Multiple emails to our hospitality owner's database which has over 500 recipients
- Advertised monthly in the Western Investor
- The Penticton Motels have been continuously marketed on Bill Randall's personal website.
- The Penticton Motels have been continuously marketed on the Colliers' website
- Brochure created ([link to brochure](#))
- Distribution to all Colliers offices in Canada
- Over 200 packages sent out
- Over 150 personal phone calls made
- Over 250 phone calls received
- Sent out twice to Commercial Broadcast, an email service which goes to over 4,000 realtors in BC
- The property was initially listed with no asking price and was then priced at \$10,000,000 on August 8<sup>th</sup>, 2023

The attached Data Room ([link to data room](#)) has been distributed to the following parties who have expressed interest in the Penticton Motels.

- ✓ Liquidation Order
- ✓ Property taxes for all 3 properties
- ✓ Financials
- ✓ Title search for all 3 properties
- ✓ Income statements
- ✓ Expense statements
- ✓ Photos
- ✓ Zoning information
- ✓ Appraisal
- ✓ Environmental

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**Interested Parties – Due Diligence package received –** [REDACTED]

168 requests and CA's filled out to receive the Due Diligence package.

**Comments**

The properties have received strong interest with 168 potential buyers receiving access to the Data Room for due diligence on the properties.

The majority of the interest has been from investors, hotel operators and developers. The activity from Funds, REITS, and other investment companies has been somewhat limited. With 168 inquiries, we would expect more than 3 offers, however, we feel the reason for this is rising interest rates and banks have become very stringent on lending with more capital requirements, lower loan to value ratios and lengthy approval times. The majority of the interest has been in the portfolios as a whole.

**Offers**

All 3 groups that have offered are very well capitalized and capable of closing.

[REDACTED] | \$7,500,000 | unconditional | received August 3, 2023  
[REDACTED] | \$8,000,000 | 14-day condition | received August 17, 2023  
[REDACTED] | \$7,500,000 | 20-day business day condition | received September 8, 2023

Best Regards,



**Bill Randall**  
Personal Real Estate Corporation  
Executive Vice President  
+1 604 671 3077  
bill.randall@colliers.com

**Appendix B**

**Purchase and Sale Agreement dated September 1, 2023**



## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is dated for reference September 1, 2023 and is made

BETWEEN:

**MNP LTD., in its capacity as Receiver of Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., PortLiving Farms (3648 Parkview) Investments Inc., and certain assets of PortLiving Properties Inc. and Port Capital Development (Farms) Inc.**

(the "Vendor")

AND:

**1351486 B.C. LTD.**

(the "Purchaser")

### BACKGROUND:

- A. Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving Farms (3648 Parkview) Investments Inc. (collectively, the "**Companies**") own certain lands located in Penticton, British Columbia, on which they operate three motels known as "Beachside Motel", "Sunny Beach Motel" and "Waterfront Inn" (collectively, the "**Business**");
- B. On March 1, 2023, on the application of the Purchaser, the Supreme Court of British Columbia (the "**Court**") made an order (the "**Receivership Order**") appointing MNP Ltd. (the "**Receiver**") as receiver of the assets, undertakings and properties of the Companies (the "**Companies' Property**") and authorized the Receiver to, among other things, sell the Property;
- C. The Purchaser has a security interest in all of the Companies' Property which ranks in priority to the security interests therein of all other persons with the exception of Synvest Investment Management Inc. ("**Synvest**") (which took an assignment of the security interests of 1341550 B.C. Ltd.) and the Receiver, pursuant to the Receiver's Charge, and any lender to the Receiver under the Receiver's Borrowings Charge (as those terms are defined in the Receivership Order); and
- D. The Purchaser has agreed to purchase, and the Receiver has agreed to sell, the Purchased Assets (as hereafter defined) on the terms and conditions of this agreement (the "**Sale Transaction**").

FOR CONSIDERATION, the receipt and sufficiency of which is acknowledged by each of the parties, the parties agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 Definitions. In this Agreement:

- (a) **"Accounting Firm"** means a nationally-recognized, independent firm of chartered accountants reasonably acceptable to the Purchaser and the Vendor.
- (b) **"Accounting Standards"** means at any time the accounting standards for private enterprises so described and established by the Accounting Standards Board which are applicable at such time.
- (c) **"Accounts Receivable"** means all accounts receivable, trade accounts receivable, notes receivable, book debts and other debts due or accruing due to the Vendor in respect of the Business, and the full benefit of any related security, net of applicable reserves in accordance with the Accounting Standards.
- (d) **"Adjustments"** has the meaning given to it in section 2.4(b).
- (e) **"Approved Contracts"** means those Contracts which the Purchaser has approved in writing on or before the Closing Date.
- (f) **"Assignment Order"** means an order or orders of the Court, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the receivership of the Vendor and (iii) the vesting in the Purchaser of all right, title and interest of the Vendor in such Consent Required Contracts.
- (g) **"Bankruptcy Assignment"** has the meaning given to it in Section 12.18.
- (h) **"Beneficial Owner Entities"** means the Limited Partnership and Sunny Beach Motel Inc.
- (i) **"Benefit Plans"** any employee benefit, bonus, incentive, profit sharing, termination, deferred compensation, pension, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to current or former Employees.
- (j) **"Break Fee"** has the meaning given to it in Section 2.8.
- (k) **"Buildings"** means all building(s) and improvements located on the Lands.
- (l) **"Business"** has the meaning given to it in Recital A.

- (m) **"Business Day"** means any day that is not a Saturday, Sunday, Boxing Day, Easter Monday or statutory holiday in British Columbia.
- (n) **"Business Records"** means all documents, files, records, reports, agreements, plans, specifications, drawings, surveys, correspondence, licenses and permits in the possession or control of the Vendor relating to the Business or any of the Purchased Assets, including without limitation: all digital records; client data; copies of all Contracts; copies of the Permits and Licenses; tax notices and assessments; plans and surveys of the Property; copies of all Warranties; a non-itemized description of all Chattels and Expendables; a list of all Intellectual Property including registration details in respect of all Intellectual Property for which registration in any public office has been made; details of capital expenditures made in the most recent two fiscal periods; operating statements and financial statements for the most recent two fiscal periods; detailed general ledgers; detailed sales reports relating to the Business; building condition reports, structural reports, mechanical and life safety reports, environmental reports or assessments; notices or orders received from any agency having authority over the Property, the Purchased Assets or the Business; reasonable evidence of the Vendor's insurance relating to the Property, the Purchased Assets or the Business; current accounts receivable reports in respect of the Business; the minute books for each of the Nominees; tax returns for each of the Nominees for each of the past six (6) years.
- (o) **"CASL"** means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23.*
- (p) **"Chattels"** means all of the personal property owned by the Vendor used in the maintenance, management or operation of the Property, the Purchased Assets or any part thereof or the operation of the Business, including without limitation, all fixtures, personal property, plant, and equipment, including spare parts, furniture whether moveable or built-in, computer hardware, point of sale equipment, tools and supplies.
- (q) **"Closing"** means the successful completion of the Sale Transaction.
- (r) **"Closing Date"** means the date that is 28 days after the date the Vesting Order is pronounced by the Court, provided that if the Land Title Office is not open on such date, the Closing Date will be on the next Business Day, or any other date as may be agreed by the Vendor and Purchaser and, in any event, no earlier than November 2, 2023.
- (s) **"Closing Documents"** has the meaning given to it in Section 9.4.
- (t) **"Closing Statement"** has the meaning given to it in Section 2.4(b).
- (u) **"Companies"** has the meaning given to it in Recital A.

- (v) **"Companies' Debt Obligations to the Purchaser"** has the meaning given to it in Section 2.3(b).
- (w) **"Companies' Property"** has the meaning given to it in Recital B.
- (x) **"Consent Required Contract"** has the meaning set out in Section 6.2.
- (y) **"Contracts"** means all contracts or agreements relating to the use or operation of the Property, the Purchased Assets, or any part thereof or the operation of the Business, including, without limitation, purchase and sale agreements, options to purchase, contracts relating to the operation, maintenance, cleaning, security, signage, fire protection or servicing of the Property or any part thereof made by or on behalf of the Vendor.
- (z) **"Court"** has the meaning given to it in Recital B.
- (aa) **"Current Assets"** means the Accounts Receivable, prepaid expenses, GST/HST receivables, cash and cash equivalents, income tax receivables and balances due from shareholders and related parties.
- (bb) **"Current Liabilities"** means accounts payable and accrued liabilities, GST/HST payable, PST payable, vacation expense accruals, bonus accruals and deferred revenue. For clarity, Current Liabilities excludes bank indebtedness, other short-term borrowings including amounts due to shareholders and related parties, and income taxes payable.
- (cc) **"Deposit"** means the sum of Five Hundred Thousand Dollars (\$500,000.00) to be paid by the Purchaser to the Vendor pursuant to Section 2.4(a) and held in accordance with the terms of Section 2.9.
- (dd) **"Employee Documents"** has the meaning given to it in Section 3.1.
- (ee) **"Employees"** means an individual who is employed by the Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.
- (ff) **"Encumbrance"** means 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 including, without limiting the generality of the foregoing:
  - (i) any encumbrances or charges created by the Receivership Order;
  - (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;
  - (iii) any legal notation, charge, lien, interest or other encumbrance or title defect of whatever kind or nature, regardless of form;

- (iv) any agreement, lease, license, option or claim, easement, right of way, restriction, execution or other encumbrance (including any notice or other registration in respect of any of the foregoing) affecting title to or the ownership of the Purchased Assets or any part thereof or interest therein.
- (gg) **"Estimated Adjustments"** has the meaning given to it in Section 2.4(c).
- (hh) **"ETA"** has the meaning given to it in Section 10.1.
- (ii) **"Excluded Assets"** means: (i) Contracts which are not Approved Contracts; (ii) the rights of the Vendor under this Agreement; (iii) corporate income taxes receivable and GST refunds; (v) cash and cash equivalents; and (vi) any proceedings, claims or causes of action for the benefit of the Vendor.
- (jj) **"Excluded Liabilities"** means any Liabilities of the Companies that are not expressly assumed by the Purchaser under this Agreement including without limitation:
  - (i) any taxes of or relating to the Business or the Purchased Assets, including statutory deductions and remittances, GST, and sales taxes, in respect of any period prior up to and including the Closing Date;
  - (ii) any Liabilities or Encumbrances in respect of any litigation involving the Vendor, the Purchased Assets or the Business commenced or threatened or resulting from any event or circumstance prior to the Closing Date;
  - (iii) any other Encumbrances made, filed, claimed, perfected or otherwise arising or resulting from any event or circumstance prior to the Closing Date;
  - (iv) any Liabilities owing to or Encumbrances claimed by or in favour of any Employees that relate to any period prior to and including the Closing Date, including without limitation outstanding salaries, wages and bonuses owing to any Employees, any severance or other termination obligations, including payment in lieu of notice, and any Liability for employer health tax payable;
  - (v) all executive personnel agreements, officer or director agreements, employee benefit plans or payments, pension obligations, employee tax withholding obligations, employee health or dental plan obligations, all employee complaints or claims, labour relations board actions or other employee proceedings and similar obligations of the Nominees;
  - (vi) all shares of capital stock or other equity interest in securities in any entity other than the Shares;
  - (vii) any partnership interest in the Limited Partnership;
  - (viii) Contracts which are not Approved Contracts;
  - (ix) any Liabilities of the Companies arising prior to the Closing Date including, but not limited to, Liabilities owed to lenders, service contractors or third parties of any kind including all Liabilities under the Approved Contracts;

- (x) any Liabilities relating to or arising out of the assets of the Vendor which are not being acquired by the Purchaser, including, without limitation, Liabilities for terminating, not complying with or defaulting under any Contract;
  - (xi) all Liabilities for payment of fees for operation of the Purchased Assets up to the Closing Date;
  - (xii) the Liabilities of the Nominees under or within the receivership proceedings;
  - (xiii) any Liabilities for a breach or non-compliance with any applicable law;
  - (xiv) the Liabilities of the Nominees under this Agreement; and
  - (xv) any other assets, property or obligations which pursuant to the terms and conditions of this Agreement, remain the property of the Vendor after the completion of the transactions contemplated herein including, without limitation, the rights of the Vendor under this Agreement.
- (kk) **“Execution Date”** means the date that this Agreement is executed by the Vendor.
- (ll) **“Expendables”** means all china, glassware, linens, towels, washcloths, bedding, napkins, washcloths, silverware, kitchen and bar small goods, kitchen utensils, pots, pans, paper goods, guest supplies, cleaning and maintenance supplies, office supplies, operating supplies and printing and stationary and uniforms at the Property and owned by the Vendor.
- (mm) **“Governmental Authority”** means (i) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise), (ii) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government, (iii) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions, and (iv) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.
- (nn) **“GP”** means Port Capital Farms (Beach) Inc.
- (oo) **“GST”** has the meaning given to it in Section 10.1.
- (pp) **“GST Certificate”** has the meaning given to it in Section 10.1.
- (qq) **“Intellectual Property”** means all intellectual property and proprietary rights of any kind currently owned by the Vendor pertaining to the Business, including the following: (a) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a’s or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (b)

copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (c) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (d) computer software, computer programs, and databases (whether in source code, object code or other form); (e) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith; and (f) all websites and all telephone and facsimile numbers.

- (rr) **"Interim Period"** means the period commencing on the Execution Date until and including the Closing Date.
- (ss) **"Lands"** means the lands and premises used by the Vendor in the Business and which are more particularly described in Part 1 of **Schedule A**.
- (tt) **"Liability"** means, any debts, claim, liability, duty, responsibility, obligations, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, or due or to become due and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.
- (uu) **"Limited Partnership"** means Beachside Development Limited Partnership.
- (vv) **"Mutual Condition"** has the meaning given to it in Section 8.2.
- (ww) **"Nominees"** means collectively PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving Farms (3648 Parkview) Investments Inc.
- (xx) **"Non-Assignable Interests"** means any Purchased Assets which, by their nature cannot be legally or practically sold and assigned by the Vendor to the Purchaser hereunder, including without limitation any Consent Required Contracts for which an Assignment Order or counterparty consent has not been obtained.
- (yy) **"Permits and Licenses"** licenses, approvals, permits, consents or other rights entered into or obtained by the Vendor from any Governmental Authority, and used in connection with the Business or in respect of any of the Purchased Assets.
- (zz) **"Permitted Encumbrances"** means the Encumbrances set out in Part 2 of **Schedule A**.
- (aaa) **"Property"** means the Vendor's freehold or leasehold interest in the Lands and the Buildings.
- (bbb) **"PST"** has the meaning given to it in Section 10.2.

- (ccc) **"Purchase Price"** means the amount calculated in accordance with Section 2.3.
- (ddd) **"Purchased Assets"** means:
- (i) the Shares; and
  - (ii) all the Vendor's right, title and interest, in and to all assets and properties of the Vendor used or held in the Business, excluding the Excluded Assets, but including, without limitation:
    - (A) the Approved Contracts;
    - (B) the Business Records.
    - (C) the Chattels and the Expendables;
    - (D) the Current Assets;
    - (E) the Intellectual Property;
    - (F) the Permits and Licenses;
    - (G) the Property;
    - (H) the Warranties; and
    - (I) any consents related to the Business obtained by the Vendor from a third person which permit or purport to permit communication with the third person in compliance with CASL.
- (eee) **"Purchaser's Condition"** has the meaning given to it in Section 8.1.
- (fff) **"Purchaser's Portion of Receiver's Borrowings Charge"** has the meaning given to it in Section 2.4(a)(ii)(B).
- (ggg) **"Purchaser's Solicitors"** means Fasken Martineau DuMoulin LLP or such other firm of solicitors or agents as are retained by the Purchaser from time to time and written notice of which is provided to the Vendor.
- (hhh) **"Receiver"** has the meaning given to it in Recital B.
- (iii) **"Receiver's Borrowings Charge"** has the meaning given to it in the Receivership Order.
- (jjj) **"Receiver's Charge"** has the meaning given to it in the Receivership Order.
- (kkk) **"Receivership Order"** has the meaning given to it in Recital B.
- (lll) **"ResidualCo"** means Sunny Beach Motel Inc., to which all of the Excluded Assets and Liabilities of the Nominees will be transferred by the Vendor in connection with the closing of the transactions contemplated herein.



- (mmm) "Sale Transaction" has the meaning set out in Recital D.
- (nnn) "Shares" means all of the issued and outstanding shares in the capital of each of the Nominees.
- (ooo) "Synvest" has the meaning given to it in Recital C.
- (ppp) "Synvest Obligations" means outstanding obligations owing by the Companies pursuant to the mortgage and assignment of rents registered against title to the Lands under nos. CA9786244 and CA9786245 respectively in favour of Synvest (as assigned by 1341550 B.C. Ltd.), including the principal amount of such claims and interest and fees accrued thereon as of the Closing Date.
- (qqq) "Vendor's Agent" means any brokerage and agent retained by the Vendor with respect to the Sale Transaction.
- (rrr) "Vendor's Solicitors" means DLA Piper (Canada) LLP.
- (sss) "Vesting Order" has the meaning given to it in Section 8.2.
- (ttt) "Warranties" means all subsisting warranties and guarantees benefiting any of the Purchased Assets or any part thereof that are assignable without consent and in effect on the Closing Date.

## ARTICLE 2 – PURCHASE AND SALE

- 2.1 **Agreement of Purchase and Sale.** Subject to the terms and conditions of this Agreement and based on the representations and warranties contained in this Agreement, the Vendor agrees to sell and the Purchaser agrees to purchase the Purchased Assets for the Purchase Price on the Closing Date free and clear of all Excluded Liabilities and Encumbrances, except for the Permitted Encumbrances. For avoidance of doubt, the Purchaser will not assume any liability in respect of the Excluded Liabilities.
- 2.2 **As Is, Where Is.** The Purchaser is purchasing the Purchased Assets "as is, where is" as of the Closing Date. Neither the Vendor, nor anyone on its behalf, represents or warrant the condition or state of repair of any of the Purchased Assets. The Purchaser must satisfy itself, and accept the Purchased Assets on a strictly "as is, where is" basis on the terms of this Agreement.
- 2.3 **Purchase Price.** The Purchase Price to be paid by the Purchaser to the Vendor in consideration of the purchase and sale of the Purchased Assets in accordance with this Agreement will be:
- (a) the amount sufficient to pay for all amounts owing in respect of any claim against the Companies which ranks in priority to the claims of the Purchaser, including without limitation:
- (i) the Receiver's Charge;

- (ii) the Receiver's Borrowings Charge (to be increased from the amount currently contemplated in the Receivership Order as contemplated in the form of Vesting Order attached as **Schedule B**);
- (iii) the Synvest Obligations;
- (iv) outstanding property taxes (as adjusted); and
- (v) an amount equal to the commission payable by the Vendor to the Vendor's Agent pursuant to Section 12.17 in cash (which amount for certainty may be paid directly by the Purchaser's Solicitors to the Vendor's Agent in accordance with typical closing procedures and on typical undertakings between the Purchaser's Solicitors and the Vendor's Solicitors regarding same);

PLUS

- (b) the amount sufficient to pay for all obligations of the Companies to the Purchaser, which are secured under, among other things, the mortgage and assignment of rents registered against title to the Lands under nos. CA9786318 and CA9786319 respectively in favour of the Purchaser, including the principal amount of such claims and interest and fees accrued as of the Closing Date (the "**Companies' Debt Obligations to the Purchaser**").

#### 2.4 Payment of Purchase Price.

- (a) The Purchase Price will be payable as follows:
  - (i) by payment of the Deposit by way of certified cheque, bank draft or wire transfer, payable to the Vendor's Solicitors, in trust, on or before September 15, 2023, which Deposit will be held in accordance with Section 2.9; and
  - (ii) provided that the Purchaser's Condition and Mutual Condition have been satisfied or waived in accordance with Sections 8.1 and 8.2, the balance of the Purchase Price, increased by any Adjustments payable to the Vendor and decreased by any Adjustments payable to the Purchaser, by the Purchaser by paying cash on Closing, which when added to the Deposit, is sufficient to pay for all amounts owing in respect of any claim against the Companies which ranks in priority to the claims of the Purchaser, including without limitation:
    - (A) the Receiver's Charge;
    - (B) the Receiver's Borrowings Charge (to be increased from the amount currently contemplated in the Receivership Order as contemplated in the form of Vesting Order attached as **Schedule B** provided that for the purposes of this Agreement the principal amount together with interest and fees accrued thereon as of the Closing Date in respect of any increase in funding provided by the Purchaser (the "**Purchaser's Portion of Receiver's Borrowings Charge**") shall form part of (iii) below);

- (C) the Synvest Obligations;
  - (D) outstanding property taxes (as adjusted); and
  - (E) an amount equal to the commission payable by the Vendor to the Vendor's Agent pursuant to Section 12.17 in cash (which amount for certainty may be paid directly by the Purchaser's Solicitors to the Vendor's Agent in accordance with typical closing procedures and on typical undertakings between the Purchaser's Solicitors and the Vendor's Solicitors regarding same); and
- (iii) the remaining balance of the Purchase Price by setting-off against the Purchaser's Portion of Receiver's Borrowings Charge and the Companies' Debt Obligations to the Purchaser as full and final satisfaction of such amounts.
- (b) Except as otherwise provided herein, the Vendor will be responsible for all expenses and liabilities and will be entitled to receive all revenues, accrued in respect of the Purchased Assets prior to the Closing Date. The Purchaser will be responsible for all expenses and liabilities accruing from and including the Closing Date, and will be entitled to receive all revenues accruing from and including the Closing Date in respect of the Purchased Assets. Except as otherwise herein specifically provided to the contrary, all taxes, charges, amounts relating to Current Assets, Current Liabilities, Contracts, Permits and Licences, utilities, cablevision, deposits, prepaid accommodation, gratuities payable to Employees, realty taxes, local improvement charges, prepaid expenses, sewer and water rates, Employment Obligations, accrued guest charges as per the guest ledger and all other items customarily the subject of adjustments on the sale of a similar commercial undertaking will be adjusted between the Vendor and the Purchaser as at the Closing Date (the "**Adjustments**"), but it is specifically agreed by the Vendor and the Purchaser that, irrespective of the time of registration of the guests, 100% of receipts for accommodation on the night immediately preceding the Closing Date will be payable to the Purchaser. All adjustments will be based on the cost to the Vendor without mark-up.
- (c) Not less than one (1) Business Day prior to the Closing Date, the Vendor and Purchaser will settle a statement (the "**Closing Statement**") of the estimated Adjustments ("**Estimated Adjustments**") to be made on Closing. The Closing Statement will set forth the Estimated Adjustments, if any, and the estimated Purchase Price payable at the Closing Date. The Closing Statement shall have annexed to it complete details, to the extent available, of the calculations used by the Vendor to arrive at all debits and credits on the Closing Statement. The Vendor will provide the Purchaser with the draft Closing Statement not less than five (5) Business Days prior to the Closing Date. On request, the Vendor shall give the Purchaser reasonable access to the Vendor's working papers and backup materials in order to confirm the Estimated Adjustments.
- (d) The estimated Purchase Price payable at the Closing Date and any subsequent Adjustments to the Purchase Price shall be paid by wire transfer of immediately available funds.

## 2.5 Adjustments Dispute Settlement

- (a) During the period from the date of delivery of the draft Closing Statement until one (1) business day that is prior to the Closing Date, the Vendor shall give the Purchaser and its representatives such assistance and access to the Business Records as the Purchaser and its representatives may reasonably request in order to enable them to reasonably assess the draft Closing Statement and the Estimated Adjustments. If the Purchaser does not give a notice of objection in accordance with Section 2.5(b), the Purchaser shall be deemed to have accepted the draft Closing Statement prepared by the Vendor which shall be final and binding on the parties and the draft Closing Statement and the Estimated Adjustments shall constitute the Closing Statement and the Adjustments for purposes of this Agreement.
- (b) If the Purchaser objects to any matter in the draft Closing Statement prepared pursuant to Section 2.4(c), then the Purchaser shall give notice (which notice may be by email) to the Vendor no later than one (1) business day prior to the Closing Date. Any notice given by the Purchaser shall set forth in detail the particulars of such objection. Notwithstanding the delivery of a notice of objection, such objection shall not entitle the Purchaser to delay the Closing or relieve the Purchaser of the obligations to complete the Sale Transaction. However, the parties shall then use reasonable efforts to resolve such objection for a period of 30 days following the giving of such notice. If the matter is not resolved by the end of such 30 day period, then the dispute shall be submitted by the parties to the Accounting Firm for a determination. The Accounting Firm shall, as promptly as practicable (but in any event, within 45 days following its appointment), make a determination as to the Adjustments or other matters in dispute on the Closing Statement, based solely on written submissions of the parties given by them to the Accounting Firm. The submissions of each party shall be disclosed to the other party and each other party shall be afforded a reasonable opportunity to respond thereto. The proper Adjustments as determined by the Accounting Firm shall be final and binding upon the parties and shall constitute the Adjustments for purposes of this Agreement. The Purchaser and the Vendor shall each pay one-half of the fees and expenses of the Accounting Firm with respect to the resolution of the dispute.
- (c) If any item subject to adjustment cannot be finally determined by the Closing Date, the Estimated Adjustment for such item will be used for the purposes of Closing and a final adjustment shall be made when the particular item can be determined in accordance with this Section 2.5(c). The Vendor and Purchaser each undertake to readjust and pay the amount of any such adjustments that cannot be finally determined on the Closing and any errors, omissions or other changes to the final Closing Statement as may be determined pursuant to the provisions of this Agreement (the "Post-Closing Adjustments"). All claims for Post-Closing Adjustments must be made on or before the first Business Day which is 45 days following the Closing Date (the "Final Adjustment Date"). After the Final Adjustment Date, the Adjustments and Post-Closing Adjustments made by the parties as at that date shall be final and binding.

**2.6 Allocation of Purchase Price.** The parties agree to use reasonable efforts to agree prior to the Closing Date on an allocation of the Purchase Price among the components of the Purchased Assets. However, the parties further agree that failure to agree on such an allocation prior to

the Closing Date will not render this Agreement unenforceable or result in a termination of this Agreement, and in such case each of the Vendor and the Purchaser will make its own determination of allocation. Notwithstanding the foregoing, the Vendor and the Purchaser agree that \$3.00 of the Purchase Price will be allocated to the Shares.

- 2.7 Bidding Procedures.** The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval. The Purchaser acknowledges and agrees that, notwithstanding acceptance of this offer by the Vendor, other prospective purchasers may attend in Court in person or by agent at the hearing of the motion to approve this Agreement and such prospective purchasers may make competing offers which may be approved by the Court. The Vendor may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Purchased Assets. The Vendor gives no undertaking to advocate the acceptance of this Agreement. To protect his, her or its interest in purchasing the Purchased Assets, the Purchaser acknowledges and agrees that he, she or it should attend at the Court hearing in person or by agent and be prepared there to make such amended or increased offer to purchase the Purchased Assets as the Court may permit or direct.
- 2.8 Break Fee.** In consideration for the Purchaser's expenditure of time and money in connection with the preparation of this Agreement, and in performing due diligence with respect to the Purchased Assets, the Purchaser shall be entitled to a break fee equal to the amount of Twenty-Five Thousand Dollars (\$25,000), inclusive of all applicable taxes ("Break Fee"). Notwithstanding any other provision in this Agreement, the Break Fee shall only be payable to the Purchaser if the Receiver accepts, obtains Court-approval of, and closes a superior offer from a prospective purchaser that is not a party to this Agreement (the "Superior Offer"). The Break Fee is subject to Court approval and shall be payable to the Purchaser out of the sale proceeds derived from, and upon completion of, the Superior Offer. The parties agree that if the Vendor accepts a Superior Offer, then (i) this Agreement will automatically be null and void upon the delivery of notice of the same by the Vendor to the Purchaser; and (ii) the Vendor shall use all commercially reasonable efforts to cause the transaction contemplated under such Superior Offer to be completed. Each of the Receiver and the Purchaser acknowledge and agree that the Break Fee is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets.
- 2.9 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 Purchaser's Condition in Section 8.1 and the Mutual Condition in Section 8.2 herein are satisfied or waived, the Purchaser fails to complete the purchase of the Purchased Assets in accordance with this Agreement or if the Purchaser repudiates this Agreement, then the Deposit will be forfeited to the Vendor as liquidated damages, as the Vendor's sole and exclusive remedy; or
  - (c) if the Purchaser's Condition in Section 8.1 or the Mutual Condition in Section 8.2 herein are not satisfied or waived within the applicable time periods contemplated in Sections 8.1 and 8.2, the Deposit will be returned to the Purchaser forthwith without any deduction; or

- (d) 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 Purchased Assets 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.

### ARTICLE 3- DOCUMENTS AND INSPECTION

- 3.1 **Business Documents.** The Vendor covenants that it has made and until the Closing Date will make available to the Purchaser full, accurate and complete copies of all Business Records within the Vendor's possession or control, and the Purchaser will be entitled to make photocopies of such of the material in those files as the Purchaser may reasonably request. The Vendor further covenants to make available to the Purchaser a list of each employee and independent contractor/consultant of the Vendor, showing salaries, wage rates, commissions and consulting fees, bonus arrangements, benefits, positions, ages, status as a full-time or part-time employee, status as a union or non-union employee, location of employment, cumulative length of service with the Vendor, annual vacation entitlement in days, accrued and unused vacation days, any other annual paid time off entitlement in days, copies of any contract governing the terms and conditions of employment, Benefit Plans, contracts, collective agreements affecting the Property (if any), letters or correspondence (collectively, the "Employee Documents") with respect to any employee of the Vendor for inspection by the Purchaser in relation to its assessment of the Purchased Assets. If for any reason the Sale Transaction contemplated in this Agreement is not completed, then the Purchaser will promptly return any such Business Records or Employee Documents without retaining any copies.
- 3.2 **Inspection.** The Purchaser and its advisors will be entitled upon reasonable notice to the Vendor and in accordance with the Vendor's reasonable requirements as to security to enter the Property and carry out tests and inspections of the Purchased Assets, provided that such access for such purposes will be at reasonable times scheduled by the Vendor at the Purchaser's request and, at the option of the Vendor, subject to the Vendor's supervision. The Purchaser will be responsible for and indemnify the Vendor for all costs, injuries or damages to the Purchased Assets, or to the Vendor, its agents or employees, directly arising out of such entry by the Purchaser and such indemnity will survive the completion of the transactions contemplated herein or earlier termination of this Agreement. In carrying out such tests and inspections and entry the Purchaser will not disrupt or unduly interfere with the Business carried out on the Property.
- 3.3 **Authorization.** The Vendor hereby authorizes the Purchaser and its agents, consultants and advisors to meet with or correspond with appropriate statutory or governmental authorities having jurisdiction over the Purchased Assets, the Property, or the Vendor for the purposes of this transaction, including but not limited to inquiries with respect to compliance with laws, by laws, regulations and assessments. The Vendor will promptly, at the Purchaser's request, execute and deliver any authorizations reasonably required by the Purchaser to authorize the statutory or governmental authorities to release information to the Purchaser, provided such authorizations explicitly do not authorize or request any inspections with respect to the Property.

## ARTICLE 4 – GENERAL COVENANTS

### 4.1 Covenants of the Vendor. The Vendor:

- (a) throughout the Interim Period will keep, maintain and repair the Purchased Assets in their present condition, reasonable wear and tear excepted, and will operate the Business in a professional and diligent manner as a going concern and as a careful and prudent owner would do in accordance with its current management practices in compliance with all applicable laws, regulations and orders;
- (b) throughout the Interim Period will notify the Purchaser of any material changes to the information delivered or made available to the Purchaser under or in connection with this Agreement;
- (c) throughout the Interim Period will maintain in full force and effect all existing policies of insurance currently maintained by the Vendor and maintain insurance on all the Purchased Assets at least to the levels as they are insured on the date of this Agreement, and following the Closing Date, will maintain adequate general liability insurance policies for such tail periods as may be required to reasonably insure against Liabilities that relate to any period prior to and including the Closing Date;
- (d) throughout the Interim Period will not enter into any commitment or agreement or Contract, any agreement to lease, offer to lease or lease the Purchased Assets or modify any material terms or terminate any of the Contracts, Permitted Encumbrances, Permits and Licenses or any mortgage or charge relating to the Purchased Assets or that would form an Encumbrance on the Purchased Assets without the prior written consent of the Purchaser, which the Purchaser may withhold in its sole discretion, or without Order of the Court;
- (e) throughout the Interim Period, will continue to carry on the operations of the Business in the ordinary course consistent with past practice, subject to changes in the business practice arising from any public health emergency;
- (f) throughout the Interim Period will not enter into any arrangements or agreements with any of the Employees altering the terms of employment (other than terminating on employee) or materially increasing their compensation, benefits or severance entitlements or altering any union contract or collective agreement without the consent in writing of the Purchaser, acting reasonably;
- (g) will observe and perform all of its obligations under the Contracts and the Permitted Encumbrances, and enforce the terms of all Contracts and Permitted Encumbrances as would a prudent owner, subject to the Receiver's powers and obligations under the Receivership Order, and any other Court order or statute;
- (h) will promptly notify the Purchaser if the Vendor becomes aware that, after the date of this Agreement, any of its representations or warranties in this Agreement become untrue or incorrect or if any covenants, terms or conditions in this Agreement are breached or cannot be performed;

- (i) will promptly forward to the Purchaser any search results from government offices which are directed to the Vendor in response to any due diligence inquiries made by or at the request of the Purchaser;
- (j) will use any cash on hand or cash the Vendor receives from the collection of an Account Receivable to pay ongoing operational costs of the Vendor including Excluded Liabilities; and
- (k) will fund the increase to the Receiver's Borrowings Charge with financing provided by the Purchaser on terms to be mutually agreed upon by the parties, which financing the Purchaser agrees to provide with it being understood by the parties that any such financing provided by the Purchaser will rank in terms of priority behind the Synvest Obligations and any portion of the Receiver's Borrowings Charge that was funded by Synvest including the principal amount of such funding together with interest and fees accrued thereon as of the Closing Date.

#### **ARTICLE 5 – RISK**

- 5.1 Risk.** The Purchased Assets will be at the risk of the Vendor until completion of closing on the Closing Date and thereafter at the risk of the Purchaser.

#### **ARTICLE 6 – POSSESSION**

- 6.1 Possession Date.** The Purchaser will, upon completion of the purchase and sale have possession of the Property and all Purchased Assets as of the Closing Date free and clear of all Encumbrances subject only to Permitted Encumbrances.
- 6.2 Non-assignable Assets.** In the event that there are any Approved Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:
- (a) nothing in this Agreement will be construed as an assignment of any such Contract (each a "Consent Required Contract");
  - (b) until the Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;
  - (c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Vesting Order, the Purchaser may request, at the Purchaser's own cost, that the Receiver bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Vesting Order, or at such later date as may be designated by the Purchaser;
  - (d) pending obtaining consent or Assignment Order, the Vendor shall hold the Consent Required Contract in trust for the exclusive benefit of the Purchaser as a Non-Assignable Interest, and shall use commercially reasonable efforts to continue to



perform its obligations under the Consent Required Contract and to continue to seek consent, approval or waiver; and

- (e) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

#### ARTICLE 7 – REPRESENTATIONS AND WARRANTIES

**7.1 Purchaser's Representations and Warranties.** The Purchaser represents and warrants to the Vendor, regardless of any independent investigation that the Vendor may cause to be made that:

- (a) the Purchaser is a corporation incorporated and existing under the laws of British Columbia;
- (b) the Purchaser has the corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (c) neither the Purchaser's entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject.

#### ARTICLE 8 – CONDITIONS PRECEDENT

**8.1 Closing Condition Precedent in favour of the Purchaser.** The obligation of the Purchaser to complete the Sale Transaction is subject to following condition (the "**Purchaser's Condition**"):

- (a) the Vendor having performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Date, including the delivery of each of the items required pursuant to Section 9.2.

The foregoing condition is for the exclusive benefit of the Purchaser. The condition in this Section 8.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing.

**8.2 Mutual Condition.** The obligation of the parties to complete the transactions contemplated by this Agreement will be subject to the following mutual condition (the "**Mutual Condition**"), for the benefit of both the Vendor and the Purchaser:

- (a) that on or before the date that is forty-five (45) days following execution of this Agreement by both parties, the Vendor will have obtained (at the sole cost of the Vendor) an Order or Orders of the Court substantially in the form set out in **Schedule B** and satisfactory to the Vendor and the Purchaser (collectively, the "**Vesting Order**"):
  - (i) approving the sale of the Purchased Assets to the Purchaser on the terms of this Agreement;

- (ii) transferring and assigning all of the Excluded Assets and Liabilities of the Nominees to ResidualCo;
- (iii) on completion of the Sale Transaction under this Agreement, vesting title to the Purchased Assets (including, without limitation, the Shares) in and to the Purchaser, free and clear of all Encumbrances except the Permitted Encumbrances;
- (iv) approving the Nominees granting any security required with respect to any mortgage financing to be obtained by the Purchaser to fund the payment of the Purchase Price, authorizing the registration of a Form B mortgage and assignment of rents against title to the Property in favour of the Purchaser's lender, and appointing a signatory of the Purchaser as an authorized signatory of each of the Nominees to execute the mortgage and assignment of rents, and any other security documents required by the Purchaser's lender as part of such mortgage financing, in the name and on behalf of the Nominees (provided that the Purchaser will provide the name of such authorized signatory to the Vendor on or before the date that is thirty (30) days following execution of this Agreement by both parties);
- (v) removing the Nominees from the receivership proceedings and releasing them from the purview of all orders of the Court granted in respect of the receivership proceedings, save and except for the Vesting Order;
- (vi) releasing the Purchaser, the Nominees and the Purchased Assets from any and all claims arising from or in respect of: (A) any or all claims or Encumbrances and the Excluded Liabilities against or relating to any of the Nominees or the Purchased Assets existing immediately prior to the Closing Date; (B) the insolvency of any of the Nominees prior to the Closing Date; (C) the commencement or existence of the receivership proceedings; or (D) the completion of the Sale Transaction;
- (vii) approving an increase in the amount of the Receiver's Borrowings Charge to be provided by the Purchaser on terms mutually agreed upon by the parties; and
- (viii) authorizing and directing the Vendor to assign the Beneficial Owner Entities and ResidualCo into bankruptcy within a reasonable period not to exceed thirty days after the Closing Date.

The Mutual Condition is for the mutual benefit of the Vendor and the Purchaser and may not be waived unilaterally by either party. Both parties agree that they will use all reasonable commercial efforts to satisfy the Mutual Condition. If the Mutual Condition has not been satisfied by the applicable deadline provided for in this Section 8.2, then the Purchaser's and Vendor's obligation to complete the Sale Transaction pursuant to this Agreement will be an end with the exception of the Break Fee pursuant to Section 2.8.

## ARTICLE 9– CLOSING

- 9.1 **Closing.** The closing of the Sale Transaction will commence at 10:00 a.m. (Vancouver time) on the Closing Date in the offices of the Purchaser's Solicitors.
- 9.2 **Vendor's Closing Documents.** On or before the Closing Date, the Vendor will deliver, or cause the Vendor's Solicitors to deliver, to the Purchaser's Solicitors in trust to be held in escrow as provided in this Agreement, the following documents duly executed as applicable and all in a form satisfactory to the Purchaser, acting reasonably:
- (a) Court certified copy of the Vesting Order and any other Orders of the Court as are necessary, all in a form registerable in all necessary offices required to effect the transfer of the Purchased Assets to the Purchaser;
  - (b) a beneficial transfer conveying the beneficial interest in the Property to the Purchaser;
  - (c) the Closing Statement;
  - (d) an assignment and assumption of Approved Contracts, Permits and Licenses wherein the Purchaser assumes the rights and obligations under the Approved Contracts and Permits and Licenses as of the Closing Date and the Purchaser indemnifies the Vendor for all Liability under the Approved Contracts and Permits and Licenses arising after the completion of the transactions contemplated herein and the Vendor retains all Liability under the Approved Contracts and Permits and Licenses arising prior to the Closing Date and indemnifies the Purchaser for all Liability under the Approved Contracts and Permits and Licenses arising prior to the completion of the transactions contemplated herein;
  - (e) an assignment and assumption of Permitted Encumbrances;
  - (f) a bill of sale conveying the Chattels, Expendables, the Business Records and the Current Assets to the Purchaser;
  - (g) an assignment of all of the Vendor's rights under any and all Warranties wherein the Purchaser acquires all rights under the Warranties whether arising prior to or after the Closing Date;
  - (h) an assignment of Intellectual Property;
  - (i) if applicable, an election under section 167 of the ETA pursuant to Section 10.3;
  - (j) a transfer of the Shares together with all resolutions, certificates and acknowledgments of the Limited Partnership and GP as may be reasonably required by the Purchaser to effectively transfer the Shares;
  - (k) a certificate dated as of the Closing Date of a senior officer of the Vendor having knowledge of the facts certifying, on behalf of the Vendor and without personal liability, that the Vendor's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects;

- (l) 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);
- (m) a notice from the Vendor to each of the other parties under the Approved Contracts giving notice of the assignment of such Approved Contract;
- (n) all corporate records and account books of the Nominees that are in the possession or control of the Vendor;
- (o) all access cards, security cards, keys (including master keys) relating to the Property which are in the possession or control of the Vendor; and
- (p) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

**9.3 Purchaser's Closing Documents.** In addition to payment of the Purchase Price, on or before the Closing Date, the Purchaser will deliver, or cause the Purchaser's Solicitors to deliver, to the Vendor's Solicitors in trust to be held in escrow as provided in this Agreement, the following duly executed as applicable:

- (a) the Closing Statement;
- (b) an assignment and assumption of Approved Contracts, Permits and Licenses;
- (c) an assignment and assumption of Permitted Encumbrances;
- (d) the GST Certificate or an election under section 167 of the ETA pursuant to Section 10.3;
- (e) a certificate dated as of the Closing Date of a senior officer of the Purchaser having knowledge of the facts certifying, on behalf of the Purchaser and without personal liability, that the representations and warranties set out in Section 7.1 are true and correct in all material respects as at the Closing Date and that the Purchaser's covenants and agreements to be observed or performed on or before the Closing Date pursuant to the terms of this Agreement have been duly observed and performed in all material respects;
- (f) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

**9.4 Preparation and Form of Documents.** The closing documents contemplated in Sections 9.2 and 9.3 (other than the Closing Statement and the Vesting Order) (collectively, the "Closing Documents") will be prepared by the Purchaser's Solicitors and delivered to the Vendor's Solicitors at least five Business Days before the Closing Date. The Closing Documents (including the Closing Statement and the Vesting Order) will be in a form and substance reasonably satisfactory to the parties and their respective solicitors. The Vendor will provide the Purchaser with drafts of all material to be filed with the Court no later than three (3) Business Days prior to the date of any hearing of the Court regarding the Vesting Order or such other date as may be agreed to by the parties.

- 9.5 Payment into Trust.** On or before the Closing Date, the Purchaser will pay to the Purchaser's Solicitors in trust, by way of certified cheque, bank draft, or wire transfer, funds in an amount equal to the Purchase Price, as adjusted, and less the amount, if any, to be advanced to the Purchaser on the Closing Date under any mortgage financing charging the Property arranged by the Purchaser.
- 9.6 Registration.** If the Purchaser is relying upon a new mortgage to finance the Purchase Price, the Purchaser, while still required to pay the Purchase Price on the Closing Date, may wait to pay the Purchase Price to the Vendor until after the transfer and new mortgage documents have been lodged for registration in the Land Title Office, but only if, before such lodging, the Purchaser has deposited with its solicitor or notary that portion of the Purchase Price not secured by the new mortgage, fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration and made available to the Vendor a lawyer's or notary's undertaking to pay the Purchase Price upon the lodging of the transfer and new mortgage documents and the advance by the mortgagee of the mortgage proceeds.
- 9.7 Closing Procedure.** All Closing Documents, funds, and other items delivered by the parties will be held in trust by the Vendor's Solicitors and the Purchaser's Solicitors until completion of closing on the Closing Date in accordance with this Agreement (except that the Vesting Order may be submitted for registration in accordance with this Section). Forthwith following the payment set forth in Section 9.5 and after receipt by the Purchaser's Solicitors of the documents and items referred to in Section 9.1, the Purchaser will cause the Purchaser's Solicitors to file the Vesting Order (together with such other documents as are required to be filed) in the Land Title Office concurrently with any security documents applicable to any mortgage financing arranged by the Purchaser in connection with the Sale Transaction. Upon the Purchaser's Solicitors obtaining a post application title search of the Lands which indicates that in normal Land Title Office routine, title to the Lands will remain registered in the name of the Nominees subject only to the Permitted Encumbrances and any documents filed by the Purchaser, and the state of title is in accordance with the terms and conditions of this Agreement, the Purchaser will cause the Purchaser's Solicitors to pay to the Vendor's Solicitors by wire transfer, the balance of the Purchase Price and upon payment of the Purchase Price the Closing Documents will be released to the appropriate parties.
- 9.8 Concurrent Requirements.** It is a condition of Closing that all matters of payment, execution and delivery of documents by each party to the other pursuant to the terms of this Agreement will be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the closing until everything required as a condition precedent at the closing has been paid, executed and delivered.
- 9.9 Delivery of Business Records.** The Vendor will table at Closing and, on release of escrow, after completion of the Sale Transaction, will deliver originally executed copies of the Business Records, if in possession or control of the Vendor, to the Purchaser, to the extent not previously delivered.
- 9.10 Payment by Wire Transfer.** Notwithstanding anything else contained herein, the Purchaser will make all commercially reasonable efforts to ensure that the balance of the Purchase Price (the "Closing Payment") will be paid to and received by the Vendor's Solicitors on or before 5:00 p.m. (Vancouver time) on the Closing Date. If for any reason out of the control of the Purchaser (which, for greater certainty, will not include any event which is a default by the Purchaser under this Agreement), the Purchaser cannot ensure that such amount will be

received by the Vendor's Solicitors on or before 5:00 p.m. (Vancouver time) on the Closing Date, then provided the Purchaser's Solicitors confirm in writing to the Vendor's Solicitors on the Closing Date that the Purchaser's Solicitors are holding the Closing Payment in their trust account, they may make the payment to the Vendor's Solicitors on or before 5:00 p.m. (Vancouver time) on the next Business Day following the Closing Date and the Purchaser will pay to the Vendor, in addition to the Closing Payment, simple interest on such amount at a rate equal to three percent (3.0%) per annum for each day after the Closing Date until the adjusted Purchase Price is received by the Vendor's Solicitors (and if it is received after 5:00 p.m. (Vancouver time) on any day, then an additional day's interest will be added). For example, if the Closing Date occurs on a Friday, the funds are wired on the following Monday and the adjusted Purchase Price is received by the Vendor's Solicitors at 6:00 p.m. (Vancouver time) the day after wiring, the Purchaser will pay the Vendor four days' interest on the balance of the Purchase Price.

**9.11 Termination.** Notwithstanding any other provision of this Agreement:

- (a) if the transactions contemplated by this Agreement do not complete on or prior to **November 30, 2023** other than as a result of the default of the Purchaser, then the Purchaser may, in its sole discretion, terminate this Agreement with written notice delivered to the Vendor without any further liability;
- (b) this Agreement will automatically terminate upon the completion of the transactions contemplated herein, upon which, all of the representations, warranties and covenants contained herein will merge and there will be no survival of any representation, warranties or covenants contained in this Agreement except for pursuant to Sections 2.5, 2.8 and 12.7; and
- (c) the Vendor may terminate this Agreement at any time prior to receipt of the Vesting Order if the Vendor determines it is inadvisable to present this Agreement to the Court for any reason whatsoever, and in any such event the Vendor shall have no further obligations or liability to the Purchaser under this Agreement or otherwise except for pursuant to Sections 2.5, 2.8 and 12.7.

**9.12 Purchaser Financing.** If, as part of any mortgage financing arranged by the Purchaser in connection with its purchase of the Purchased Assets, it is necessary for the Nominees to execute any mortgage financing documents, the Vendor will co-operate with the Purchaser and will appoint a signatory of the Purchaser as an authorized signatory of each of the Nominees to execute such mortgage financing documents, and any other security documents, and grant such charges over the Purchased Assets in the name and on behalf of the Nominees (provided that the Purchaser will provide the name of such authorized signatory to the Vendor on or before the date that is thirty (30) days following execution of this Agreement by both parties), as the Purchaser's lender may require the Nominees to execute or grant in connection with the transaction contemplated herein. Notwithstanding the foregoing, the Vendor and the Purchaser agree that no agreements, instruments or other documents passed or executed by or on behalf of the Nominees shall be effective unless and until the transactions contemplated by this Agreement have completed. In addition, it is understood and agreed that the Nominees shall have no liabilities or obligations under any such agreements, instruments or other documents until after the Closing Date.

## ARTICLE 10- TAXES

- 10.1 GST.** The Purchaser represents and warrants to Vendor that it is and will be, as of the closing on the Closing Date, registered for the purposes of Part IX of the *Excise Tax Act* (Canada) (the "ETA") in accordance with the requirements of Subdivision D of Division V of the ETA and will assume responsibility to account for, report and remit any goods and services tax and harmonized sales tax (collectively, the "GST") payable under the ETA in connection with the transaction contemplated in this Agreement. Subject to Section 10.3, on the Closing Date, the Purchaser will deliver to the Vendor a certificate (the "GST Certificate") of a senior officer of the Purchaser certifying, on behalf of the Purchaser and without personal liability (a) that the Purchaser is registered under Part IX of the ETA as of the Closing Date; (b) its registration number; and (c) that the Purchaser will account for, report and remit any GST payable in respect of the purchase of the Purchased Assets in accordance with the ETA. If the Purchaser delivers such GST Certificate, then the Purchaser will not be required to pay to the Vendor, and the Vendor will not be required to collect from the Purchaser nor report or remit, any GST in connection with the transaction contemplated in this Agreement. The Purchaser will indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability under the ETA arising as a result of any breach of this Section 10.1, the GST Certificate or any declaration made therein and such indemnity will survive the completion of the transactions contemplated herein.
- 10.2 Provincial Sales Tax ("PST").** The Purchaser acknowledges that it is liable to pay provincial sales tax in respect of its purchase of some or all of the Chattels and it will report and remit as required by applicable law any such sales tax that is due directly to the applicable taxing authority. The Purchaser will indemnify and hold the Vendor and its directors, officers, employees, advisors and agents harmless from any liability related to the Vendor's failure to account for, or report and remit such provincial sales tax and such indemnity will survive the completion of the transactions contemplated herein.
- 10.3 Tax Elections.** Notwithstanding the above, the Vendor will cooperate with the Purchaser to execute any election available under applicable law that may reduce or defer the amount or due date of any GST, PST, or other tax payable by the Purchaser provided such election will not result in any increased cost or tax liability for the Vendor. At the Closing, each of the Vendor and the Purchaser shall execute jointly an election under subsection 167(1) of Part IX of the *Excise Tax Act* (Canada), in the prescribed form and within the prescribed time therefor, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such election with the Canada Revenue Agency.
- 10.4 Other Taxes.** The Purchaser will be responsible for all transfer taxes, fees and expenses in connection with the registration of the Vesting Order or transfer of the Purchased Assets and the Vendor will be responsible for any taxes or fees in respect of the disposition of the Purchased Assets including, without limitation, income tax.
- 10.5 Preparation of Tax Returns Before Closing.** Prior to the Closing Date, the Vendor will cause any outstanding NIL income tax and other tax returns for previous fiscal years to be prepared and filed for the Nominees. Once filed, the Vendor will provide copies of such filed returns to the Purchaser.
- 10.6 Preparation of Tax Returns After Closing.** Forthwith following closing on the Closing Date the Vendor will, in consultation with the Purchaser and the Purchaser's professional advisors and

accountants, cause income tax and other tax returns consequent to the closing to be prepared for the Nominees. The Purchaser will be responsible for all reasonable costs related to the preparation and filing of these returns along with the costs of the Purchaser's own accountant and other consultants in reviewing the same. The Vendor will also provide reasonable assistance in preparing and filing all financial statements, tax returns and other documents required by law in respect of any government charges or in respect of any federal, provincial, municipal or other taxing statute for fiscal periods of the Nominees ending for tax purposes on or before the Closing Date.

#### ARTICLE 11 – EMPLOYEES

- 11.1 **Retained Employees.** On or before the date that is five days prior to the Closing Date, the Purchaser will deliver to the Vendor a list of the non-union Employees that the Purchaser wishes in its sole discretion to continue to employ at the business after the Closing Date (each such employee, a “Retained Employee”).
- 11.2 **Termination and Employment Obligations.** On or before the Closing Date, the Vendor will deliver to each of the non-union Employees written notices of employment termination in form and substance satisfactory to the Purchaser’s and Vendor’s respective solicitors. The Vendor covenants and agrees to be liable and responsible for the all wages, salaries, commissions, bonuses, pension or other payments or benefits to or in respect of the Employees, including obligations and liabilities to Employees and any governmental authority in respect of accrued pay and salaries, commissions, vacation and holiday pay, severance and termination entitlements, worker’s compensation levies, withholding deductions for federal and provincial income taxes, other payroll deductions and payments in respect of such employees, due or accruing due up to the Closing Date (collectively, the “Employment Obligations”) and to pay all such amounts by the Closing Date. All payroll deductions required by law to be made by the Vendor in respect of the Employees of the Business to the Closing Date will have been made and have been or will be remitted as and when required by law, along with all necessary employer’s contributions to the proper government authority or authorities. All Employment Obligations of the Employees of the Business have been accrued by and will be paid by the Vendor to the Closing Date.
- 11.3 **Employment Offers.** The Purchaser hereby covenants to extend an employment offer to each Retained Employee with effect as of the Closing Date. To this effect, the Purchaser will deliver to each Retained Employee concurrently with the list described in paragraph (a), a written offer of employment (in form and substance satisfactory to the Purchaser’s and Vendor’s representative solicitors) under which the Purchaser will:
- (a) continue to employ the Employee on substantially the same terms and conditions as such Retained Employee had been employed by the applicable Company;
  - (b) provide the Retained Employees with credit for past years of service with the applicable Company for the purposes of their employment entitlements, including without limitation vacation entitlement and notice entitlement upon termination of employment; and
  - (c) agree to waive any vesting periods for any applicable employee benefits



(collectively, the "Employment Offers").

Subject to this Section 11.3, the Purchaser will not be liable for the Employment Obligations of the Retained Employees arising prior to the Closing Date.

- 11.4 Union Employees.** For clarity, the employment by the Purchaser of the employees who are subject to any collective agreement with respect to the Property will continue to the Purchaser as a successor of the Vendor.

## ARTICLE 12 - GENERAL

- 12.1 Further Assurances.** Each of the parties will execute and deliver all such further documents and do such further acts and things as may be reasonably required from time to time to give effect to this Agreement.
- 12.2 No Merger.** The execution and delivery of the Closing Documents is not intended to and will not in any way merge or otherwise restrict the terms, covenants, conditions, representations, warranties or provisions made or to be performed or observed by the parties contained in this Agreement other than the obligation to deliver the Closing Documents.
- 12.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Vendor and the Purchaser pertaining to the purchase and sale of the Purchased Assets and supersedes all prior agreements and undertakings, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser and there are no representations, warranties, covenants or agreements between the Vendor and Purchaser except as set out in this Agreement.
- 12.4 Amendment.** Subject to Section 12.5, this Agreement may only be altered or amended by an agreement in writing executed by all of the parties.
- 12.5 Solicitors as Agents.** Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors, on behalf of the Purchaser, and by the Vendor's Solicitors, on behalf of the Vendor, and any tender of Closing Documents and the Purchase Price may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.
- 12.6 Notices.** Any notice, document or communication required or permitted to be given under this Agreement will be in writing and delivered by hand or electronic transmission as follows:

(a) if to the Purchaser:

1351486 B.C. LTD  
1556 Kebet Way  
Port Coquitlam, BC V3C 5M5

Attention: Luke Pretty  
E-mail: [luke@dynamic.global](mailto:luke@dynamic.global)

with a copy to the Purchaser's Solicitors:

Fasken Martineau DuMoulin LLP  
2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3

Attention: Kibben Jackson and Sarah Batut  
E-mail: [kjackson@fasken.com](mailto:kjackson@fasken.com), [sbatut@fasken.com](mailto:sbatut@fasken.com)

(b) if to the Vendor:

MNP Ltd.  
505 Burrard Street, Suite 430  
Vancouver, BC V7X 1M3

Attention: Mario Mainella and Kevin Koo  
E-mail: [mario.mainella@mnp.ca](mailto:mario.mainella@mnp.ca), [kevin.koo@mnp.ca](mailto:kevin.koo@mnp.ca)

with a further copy to the Vendor's Solicitors:

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

Attention: Colin Brousson and Richard Lord  
E-mail: [colin.brousson@dlapiper.com](mailto:colin.brousson@dlapiper.com), [richard.lord@dlapiper.com](mailto:richard.lord@dlapiper.com)

or to such other address in Canada as either party may in writing advise. Any notice, document or communication will be deemed to have been given on the Business Day when delivered by hand if delivered prior to 5 p.m. (Vancouver time), otherwise will be deemed to be delivered and received on the next Business Day; or, if made by email, will be deemed to have been given on the Business Day when transmitted if it is so transmitted prior to 5 p.m. (Vancouver time) on the day of transmittal, otherwise will be deemed to be given and received on the next Business Day.

**12.7 Fees.** Each of the parties will pay its own legal fees and fees of its consultants. The Purchaser will pay all registration costs and property transfer tax payable in connection with its purchase of the Purchased Assets.

**12.8 Accounting Terms.** Accounting terms used herein and not expressly defined will be deemed to have such meanings as may apply on the application of the Accounting Standards.

- 12.9 Time.** Time is of the essence of this Agreement.
- 12.10 Tender.** Unless otherwise set out herein, any tender of documents or money may be made upon the party being tendered or upon its solicitors and money will be tendered by certified cheque, bank draft, or wire transfer.
- 12.11 Enurement.** This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 12.12 Assignment.** Until the Closing Date, the Purchaser will be entitled to assign its rights and obligations under this Agreement without the consent of the Vendor if: (i) the Purchaser delivers written notice of such assignment to the Vendor; (ii) the assignee enters into an agreement pursuant to which the assignee agrees to be bound by all of the obligations and Liability of the Purchaser under this Agreement as if it was the original Purchaser; and (iii) the Purchaser is not released from its obligations and Liability under this Agreement until the completion of the transactions contemplated in this Agreement, at which time the assignor will be automatically released from all of its obligations and Liability under this Agreement without the need for any further deliveries or instruments of release.
- 12.13 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 applicable in it.
- 12.14 Waiver.** No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision nor will any waiver constitute a continuing waiver unless otherwise expressed or provided.
- 12.15 Currency.** All dollar amounts referred to are Canadian dollars.
- 12.16 Construction.** The division and headings of this Agreement are for reference only and are not to affect construction or interpretation.
- 12.17 Commission.** The Vendor will be responsible for and shall pay the commission due to the Vendor's Agent, which commission shall not exceed \$75,000.00 plus taxes.
- 12.18 Bankruptcy of Beneficial Owner Entities and ResidualCo.** Following the Closing, the Vendor shall assign the Beneficial Owner Entities and ResidualCo into bankruptcy (the "Bankruptcy Assignment"). Notwithstanding any terms to the contrary herein, it is understood and agreed that, until such time as the Bankruptcy Assignment has been completed, any net proceeds from the sale of the Purchased Assets (including the Deposit and the cash portion of the balance of the Purchase Price contemplated in Section 2.4(a)(ii)) shall remain in trust with the Vendor's Solicitors, not to be distributed until after the completion of the Bankruptcy Assignment.
- 12.19 Counterparts and Execution.** This Agreement may be executed in counterparts and delivered by electronic transmission including by PDF format, and each such counterpart will constitute an original and all such counterparts together will constitute one and the same agreement.
- 12.20 Schedules.** The following schedules are attached to and form a part of this Agreement:

Schedule A – Legal Description and Permitted Encumbrances

Schedule B - Form of Vesting Order

*[Signature page follows]*

The parties are signing this Agreement as of the date set out above.

**MNP LTD., in its capacity as Receiver of Living Beachside Development Limited Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving Farms (3648) Parkview Investments Inc., and certain assets of PortLiving Properties Inc. and Port Capital Development (Farms) Inc.**

By: 

Name: Mario Mainella

Title: Authorized Signatory

**1351486 B.C. LTD.**

By: 

Name: Luke Pretty

Title: Authorized Signatory

**SCHEDULE A  
LEGAL DESCRIPTION AND PERMITTED ENCUMBRANCES**

**Part 1 – Legal Description of Lands**

The following:

- 3624 Parkview Street, Penticton, BC  
Lot 1, Block 212, District Lot 189, Similkameen Division Yale District, Plan 397 Except Plan 40551  
PID: 012-474-983  
Registered Owner: PortLiving Farms (3624 Parkview) Investments Inc.
  
- 3648 Parkview Street, Penticton, BC  
Lot A, District Lot 189, Similkameen Division Yale District, Plan 1389  
PID: 011-610-263  
Registered Owner: PortLiving Farms (3648 Parkview) Investments Inc.
  
- 3688 Parkview Street, Penticton, BC  
Lot 1, District Lot 189, Similkameen Division Yale District, Plan 14620  
PID: 008-974-462  
Registered Owner: PortLiving Farms (3688 Parkview) Investments Inc.

**Part 2 – Permitted Encumbrances**

- PID: 012-474-983  
Legal Notations:
  - This title may be affected by a permit under Part 26 of the Local Government Act, see KX41597
  - This title may be affected by a permit under Part 26 of the Local Government Act, see KX41598Charges, Liens and Interests:
  - Statutory Right of Way KP11588
  
- PID: 011-610-263  
Legal Notations:  
None  
Charges, Liens and Interests:
  - Statutory Right of Way KP7123
  
- PID: 008-974-462  
Legal Notations:  
None  
Charges, Liens and Interests:
  - Statutory Right of Way KR16167

**SCHEDULE B  
FORM OF VESTING ORDER**

**[see attached]**

FIRMDOCS: 45058390.8

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED  
PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT  
CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS  
(3624 PARKVIEW) INVESTMENTS INC., PORTLIVING  
FARMS (3688 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING (3648 PARKVIEW) INVESTMENTS INC., PORT  
CAPITAL GROUP INC., PORTLIVING PROPERTIES INC.,  
MACARIO TEODORO REYES, PORT CAPITAL  
DEVELOPMENT (FARMS) INC., and 1341550 B.C. LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND REVERSE VESTING ORDER**

BEFORE THE HONOURABLE )  
 )  
 \_\_\_\_\_, 2023  
 \_\_\_\_\_ )

THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets, undertakings and properties of Living Beachside Development Limited Partnership (the “**Limited Partnership**”), Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc. (the “**General Partner**”), PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving (3648 Parkview) Investments Inc. (collectively, the “**Borrower**”), and certain assets of the Respondents PortLiving Properties Inc. and Port Capital Development (Farms) Inc. (together with the Limited Partnership, the “**Pledgors**” and, together with the Borrower, the **Debtor**”) coming on for hearing at Vancouver, British Columbia, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023; AND ON HEARING \_\_\_\_\_, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one appearing for \_\_\_\_\_, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated \_\_\_\_\_ (the “**Report**”);



## THIS COURT ORDERS AND DECLARES THAT:

### Definitions

1. Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Purchase and Sale Agreement dated September 1, 2023 (the “**Sale Agreement**”) between the Receiver and 1351486 B.C. LTD. (the “**Purchaser**”), a copy of which is attached as Appendix “**[REDACTED]**” to the Report.
2. In this Order, the following terms shall bear the meanings given to them below:
  - a. “**Claims**” means 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, including, without limiting the generality of the foregoing, all Encumbrances;
  - b. “**Encumbrances**” has the meaning given to it in the Sale Agreement but, for certainty, excludes the permitted encumbrances listed on Schedule “C” hereto;
  - c. “**Excluded Assets**” has the meaning given to it in the Sale Agreement;
  - d. “**Excluded Liabilities**” has the meaning given to in the Sale Agreement;
  - e. “**Nominees**” means collectively PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving Farms (3648 Parkview) Investments Inc.;
  - f. “**Person**” means an individual, partnership (limited or general), corporation, trust, unincorporated organization, government or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual;
  - g. “**Residual Co**” means Sunny Beach Motel Inc.; and
  - h. “**Retained Assets**” means all right, title and interest of the Nominees, if any, in and to the Property, the Approved Contracts, the Business Records, the Chattels and the Expendables, the Current Assets, the Intellectual Property, the Permits and Licenses, the Warranties, and any other assets, property or obligations which, pursuant to the terms and conditions of the Sale Agreement, remain the property of the Nominees after completion of the Transaction.

### Approval of Sale Agreement

3. The sale transaction in relation to the Nominees (the “**Transaction**”) contemplated by the Sale Agreement between the Receiver and the Purchaser 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.

### **Vesting of Assets and Liabilities**

4. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), the following shall occur and be deemed to have occurred commencing at the time of delivery of the Receiver’s Certificate (the “**Effective Time**”) in the following sequence:
  - a. All of the Nominees’ right, title and interest in and to the Excluded Assets (the “**Transferred Assets**”) shall be transferred to, and shall vest absolutely and exclusively, without recourse, in Residual Co;
  - b. All Claims, Encumbrances, and Excluded Liabilities in respect of the Nominees shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in Residual Co, and such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Date, as if the Transferred Assets had not been conveyed and had remained in the possession or control of the person having possession or control of them immediately prior to the transfer;
  - c. All Claims, Encumbrances and Excluded Liabilities in respect of the Nominees shall be irrevocably and forever expunged, released and discharged as against the Purchaser, the Nominees and the Retained Assets; and
  - d. Without limiting subparagraph 4c, any and all security registrations against the Nominees shall be and are hereby forever released and discharged as against the Nominees, and all such security registrations shall attach to the Transferred Assets vested in Residual Co and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the Effective Time, as if the Transferred Assets had not been conveyed and remained in the possession or control of the person having that possession or control immediately prior to the transfer, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by Residual Co of such security registrations.
5. This Order and the Order dated even date herewith with respect to the Transaction shall constitute the only authorization required by the Receiver, the General Partner, or Residual Co to proceed with the Transaction, and except as specifically provided in the Sale Agreement, no director or shareholder approval shall be required and no authorization, approval or other action by or notice to or filing with any Governmental Authority exercising jurisdiction in respect of the General Partner or the Nominees is required for the due execution, delivery and performance by the Receiver, the Nominees, and Residual Co of the Sale Agreement and the completion of the Transaction.
6. As of the Effective Time:

- a. The Nominees shall continue to hold all of their right, title and interest in and to the Retained Assets, free and clear of all Claims and Encumbrances and the Excluded Liabilities of the Nominees; and
  - b. The Nominees shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets.
7. For greater certainty, any person that, prior to the Effective Time, had a Claim or Encumbrance against the Nominees or their assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Nominees or the Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Transferred Assets to be administered by the Receiver in Residual Co from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to Residual Co, and nothing in this Order limits, lessens, modifies (other than by change in Debtor) or extinguishes the Claim or Encumbrance of any Person as against the Transferred Assets to be administered by the Receiver in Residual Co.
8. From and after the Effective Time, the Purchaser and/or the Nominees shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Nominees and the Retained Assets of the Claims, Encumbrances and Excluded Liabilities of the Nominees that are transferred to and vested in Residual Co pursuant to this Order.
9. Upon the delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order together with any applicable registration fees, all Governmental Authorities exercising jurisdiction with respect to the Nominees, the Retained Assets, or the Transferred Assets are hereby authorized, requested and directed to accept delivery of such Receiver's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and conveyances as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances and Excluded Liabilities of the Nominees against or in respect of the Nominees and the Retained Assets, and presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.
10. The Nominees are hereby authorized to grant any security required with respect to any mortgage financing to be obtained by the Purchaser to fund the payment of the Purchase Price, authorizing the registration of a Form B mortgage and assignment of rents against title to the Property in favour of the Purchaser's lender, and Luke Pretty, without personal liability, is hereby appointed as an authorized signatory of each of the Nominees to execute the mortgage and assignment of rents, and any other security documents and such other documents as are required or may be necessary or in the opinion of the Purchaser's lender desirable to give and perfect any security for such financing required by the Purchaser's lender as part of such mortgage financing, in the name and on behalf of the Nominees (collectively, the "**Loan Documents**"). Luke Pretty will incur no liability to any Person as a result of executing the Loan Documents on behalf of the Nominees.

## Releases

11. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Receiver, its directors, officers, employees, counsel, advisors and representatives, the Purchaser, the Nominees, or the Retained Assets, in any way relating to, arising from or in respect of:
  - a. the Transferred Assets;
  - b. any and all Claims and Encumbrances and the Excluded Liabilities against or relating to the Nominees, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time;
  - c. the insolvency of the Nominee prior to the Effective Time;
  - d. the commencement or existence of these receivership proceedings; or
  - e. the completion of the Transaction.
12. From and after the Effective Time, the Receiver, its directors, officers, employees, counsel, advisors and representatives shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any taxes (including penalties and interest thereon), as well as penalties for failure to file returns pursuant to section 162 of the *Income Tax Act* (Canada) (the "ITA"), or that relate to the Nominees, including without limiting the generality of the foregoing all taxes, penalties and interest that could be assessed against the Nominees or the Purchaser (including its affiliates and any predecessor corporations) pursuant to section 160 of the ITA, as amended, or any provincial equivalent, in connection with the Nominees (provided, as it related to the Nominees, such release shall not apply to (a) transaction taxes, or (b) taxes in respect of the business and operations conducted by the Nominees after the Effective Time). For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to taxes or obligations in respect thereof that are transferred to Residual Co.

## Residual Co

13. As at the Effective Time, the Nominees shall cease to be Respondents in the within proceedings, the style of cause for this proceedings shall be changed by deleting the Nominees as Respondents and the Nominees shall be deemed released from the purview of all Orders of this Court granted in respect of the within proceedings, save and except for this Order and the Order dated even date herewith.
14. The administration of Residual Co shall remain subject to the Court's oversight and these proceedings.
15. In addition to and without limiting the rights and protections afforded to the Receiver pursuant to the Receivership Order, the Receiver and its employees and representatives

shall not incur any liability as a result of acting in accordance with this Order or administering Residual Co, save and except for gross negligence or wilful misconduct on the part of such parties. All protections afforded to the Receiver pursuant to the Receivership Order (as defined below), any further order granted in these proceedings or the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “*BIA*”) shall continue to apply.

### **Bankruptcies**

16. The Receiver is hereby authorized and directed to file an assignment in bankruptcy on behalf of Residual Co and the Limited Partnership pursuant to the provisions of section 49 of the *BIA*, as amended, within 30 days after the Closing Date (as defined in the Sale Agreement).
17. The Receiver shall not be disqualified from acting as Trustee in Bankruptcy by reason only of its role as Receiver.

### **Miscellaneous**

18. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *BIA* 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 *BIA* 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.

### **Receiver’s Borrowings**

19. The Receiver’s Borrowings Charge as defined in the Receivership Order dated January 30, 2023 (the “**Receivership Order**”) be increased from \$500,000 to \$\_\_\_\_\_ such that paragraph 24 of the Receivership Order shall read as follows:

“The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$\_\_\_\_\_ (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred

upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.”

**General**

- 20. 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.
- 21. 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.

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:

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Signature of DLA Piper (Canada) LLP (Colin D. Brousson)

Party    Lawyer for MNP Ltd.

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BY THE COURT

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REGISTRAR

**Schedule A - Appearance List**

**Schedule B - Receiver's Certificate**



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

2. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

3. PID: 012-474-983

Legal Notations:

- This title may be affected by a permit under Part 26 of the Local Government Act, see KX41597
- This title may be affected by a permit under Part 26 of the Local Government Act, see KX41598

Charges, Liens and Interests:

- Statutory Right of Way KP11588

4. PID: 011-610-263

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KP7123

5. PID: 008-974-462

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KR1616

No. S229506

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED  
PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT  
CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS  
(3624 PARKVIEW) INVESTMENTS INC., PORTLIVING  
FARMS (3688 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING (3648 PARKVIEW) INVESTMENTS INC.,  
PORT CAPITAL GROUP INC., PORTLIVING PROPERTIES  
INC., MACARIO TEODORO REYES, PORT CAPITAL  
DEVELOPMENT (FARMS) INC., and 1341550 B.C. LTD.

RESPONDENTS

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**NOTICE OF APPLICATION**

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DLA Piper (Canada) LLP

Barristers & Solicitors

1133 Melville St, Suite 2700

Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444

Fax No. 604.687.1612

File No.: 016155-00037

CDB/day

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED  
PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT  
CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS  
(3624 PARKVIEW) INVESTMENTS INC., PORTLIVING  
FARMS (3688 PARKVIEW) INVESTMENTS INC.,  
PORTLIVING (3648 PARKVIEW) INVESTMENTS INC., PORT  
CAPITAL GROUP INC., PORTLIVING PROPERTIES INC.,  
MACARIO TEODORO REYES, PORT CAPITAL  
DEVELOPMENT (FARMS) INC., and 1341550 B.C. LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND VESTING ORDER**

BEFORE THE HONOURABLE )  
 )  
 \_\_\_\_\_, 2023  
 \_\_\_\_\_ )

THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets, undertakings and properties of Living Beachside Development Limited Partnership (the “**Limited Partnership**”), Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., PortLiving Farms (3624 Parkview) Investments Inc., PortLiving Farms (3688 Parkview) Investments Inc., and PortLiving (3648 Parkview) Investments Inc. (collectively, the “**Borrower**”), and certain assets of the Respondents PortLiving Properties Inc. and Port Capital Development (Farms) Inc. (together with the Limited Partnership, the “**Pledgors**” and, together with the Borrower, the **Debtor**”) coming on for hearing at Vancouver, British Columbia, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023; AND ON HEARING \_\_\_\_\_, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one appearing for \_\_\_\_\_, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated \_\_\_\_\_ (the “**Report**”);

## **THIS COURT ORDERS AND DECLARES THAT:**

### **DEFINITIONS**

1. Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Purchase and Sale Agreement dated September 1, 2023 (the “**Sale Agreement**”) between the Receiver and 1351486 B.C. LTD. (the “**Purchaser**”), a copy of which is attached as Appendix “\_\_” to the Report.

### **APPROVAL OF THE TRANSACTION**

2. The sale transaction (the “**Transaction**”) contemplated by the Sale Agreement 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 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 Beneficial Owner Entities’ and the Nominees’ respective right, title and interest in and to the Purchased Assets including those listed on Schedule “**C**” hereto (but for certainty, excluding the Nominees’ registered title to the Property which the Nominees shall continue to hold) 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 January 30, 2023; (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; (iii) any agreement, lease, license, option or claim, easement, right of way, restriction, execution or other encumbrance (including any notice or other registration in respect of the foregoing) 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 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 DLA Piper (Canada) LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to, 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. Upon the delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order together with any applicable registration fees, all Governmental Authorities exercising jurisdiction with respect to the Nominees or the Purchased Assets are hereby authorized, requested and directed to accept delivery of such Receiver's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and conveyances as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances against or in respect of the Nominees and the Purchased Assets, and presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.
6. 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.
7. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser.
8. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
9. 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".
10. 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.
11. 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.

12. 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.

13. 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:

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Signature of DLA Piper (Canada) LLP (Colin D. Brousson)  
 Party  Lawyer for MNP Ltd.

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BY THE COURT

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REGISTRAR

**Schedule A - Appearance List**

**Schedule B - Receiver's Certificate**



## Schedule C – Purchased Assets

1. The Shares;
2. the Approved Contracts;
3. the Business Records;
4. the Chattels and the Expendables;
5. the Current Assets;
6. the Intellectual Property;
7. the Permits and Licences;
8. the Warranties;
9. any consents related to the Business obtained by the Vendor from a third person which permit or purport to permit communication with the third person in compliance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23*; and
10. the Property, consisting of:
  - a. 3624 Parkview Street, Penticton, BC  
  
Lot 1 Block 212 District Lot 189 Similkameen Division Yale District Plan 397 Except Plan 40551  
  
PID: 012-474-983
  - b. 3648 Parkview Street, Penticton, BC  
  
Lot A District Lot 189 Similkameen Division Yale District Plan 1389  
  
PID: 011-610-263
  - c. 3688 Parkview Street, Penticton, BC  
  
Lot 1 District Lot 189 Similkameen Division Yale District Plan 14620  
  
PID: 008-974-462

**Schedule D- Claims to be Deleted from Title to Real Property**

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

2. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
3. PID: 012-474-983

Legal Notations:

- This title may be affected by a permit under Part 26 of the Local Government Act, see KX41597
- This title may be affected by a permit under Part 26 of the Local Government Act, see KX41598

Charges, Liens and Interests:

- Statutory Right of Way KP11588

4. PID: 011-610-263

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KP7123

5. PID: 008-974-462

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KR1616

No. S229506

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1351486 B.C. LTD.

PETITIONER

AND:

LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP, SUNNY BEACH MOTEL INC., PORT CAPITAL FARMS (BEACH) INC., PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC., PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC., PORTLIVING (3648 PARKVIEW) INVESTMENTS INC., PORT CAPITAL GROUP INC., PORTLIVING PROPERTIES INC., MACARIO TEODORO REYES, PORT CAPITAL DEVELOPMENT (FARMS) INC., and 1341550 B.C. LTD.

RESPONDENTS

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**NOTICE OF APPLICATION**

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DLA Piper (Canada) LLP

Barristers & Solicitors

1133 Melville St, Suite 2700

Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444

Fax No. 604.687.1612

File No.: 016155-00037

CDB/day

**Appendix C**

**Interim Statement of Receipts and Disbursements for the period  
March 1, 2023 to September 15, 2023**

Estate No. 11-254458

Estate No. 11-254459

Estate No. 11-254460

**In the Matter of the Receivership of Living Beachside Development Limited  
Partnership, Sunny Beach Motel Inc., Port Capital Farms (Beach) Inc., Portliving  
Farms (3624 Parkview) Investments Inc., Portliving Farms (3648 Parkview)  
Investments Inc., and Portliving Farms (3688 Parkview) Investments Inc.  
Interim Statement of Receipts and Disbursements  
For the Period March 1, 2023 to September 15, 2023**

	\$'s
<b>Receipts</b>	
Revenue collected	1,070,938
Receiver's borrowings	460,000
PST collected	96,701
GST collected	47,922
	1,675,561
<b>Disbursements</b>	
Payroll	265,179
Property tax	197,896
Insurance	104,864
Utilities	79,525
Marketing costs	75,665
Contract labour	75,309
Repairs and maintenance	74,969
PST remitted	63,355
Receiver's fees	58,009
Motel supplies	48,203
Legal fees	26,306
Merchant fees and bank charges	24,462
GST paid	15,549
IT services	6,531
Security deposit refunds	5,317
Accounting	2,431
PST on legal fees	1,841
Newspaper advertisement	751
GST remitted	470
Licenses and permits	285
Filing and registration fees	279
	1,127,196
<b>Excess Receipts over Disbursements</b>	<b>548,365</b>