

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

**ORDER MADE AFTER APPLICATION**  
(APPROVAL AND REVERSE VESTING ORDER)

BEFORE THE HONOURABLE )  
JUSTICE MASUHARA ) )  
October 28<sup>th</sup>, 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 13<sup>th</sup> 27<sup>th</sup> day of October, 2023; AND ON HEARING Colin D. Brousson and Samantha Arbor, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one else appearing, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated September 29, 2023 (the "First 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 "B" to the First 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.

19. The First Report and the activities of the Receiver as set out therein are hereby approved.

### **Receiver's Borrowings**

20. The Receiver's Borrowings Charge as defined in the Receivership Order dated January 30, 2023 (the "**Receivership Order**") be increased from \$500,000 to \$ 780,000 such that paragraph 24 of the Receivership Order shall read as follows:

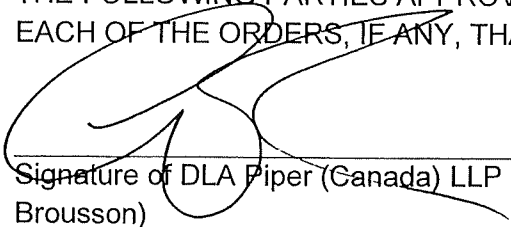
"The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ 780,000 (or such greater amount as this Court may by further Order 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**


21. 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.
22. 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.

23. Endorsement of this order by counsel appearing other than counsel for the Receiver is hereby dispensed with.

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

  
\_\_\_\_\_  
Signature of DLA Piper (Canada) LLP (Colin D. Brousson)  
Lawyer for the Receiver

  
BY THE COURT

  
\_\_\_\_\_  
REGISTRAR

CHECKED  




Schedule A - Appearance List

Name of Counsel	Party Representing
<del>John Brussa</del>	
Owen James	His Majesty the King in Right of the Province of British Columbia
Kibben Jackson Rebecca Nguinambaye	1351486 BC Ltd.

**Schedule B - Receiver's Certificate**

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

**RECEIVER'S CERTIFICATE**

- A. Pursuant to an Order of the Honourable Justice Masuhara of the Supreme Court of British Columbia (the "**Court**") dated January 30, 2023, MNP Ltd. was appointed as the receiver and manager of all of the 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**", and collectively with 3624 Farms and 3688 Farms, the "**Nominees**") (collectively referred to as the "**Companies**"), and certain assets of PortLiving Properties Inc. and Port Capital Development (Farms) Inc.
- B. Pursuant to an order of the Court dated \_\_\_\_\_, 2023, the Court approved the agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 1351486 B.C. LTD. (the "**Purchaser**") dated September 1, 2023, and provided for the vesting in the Purchaser of the Nominees' right, title and interest in and

to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon delivery by the Receiver to the Purchaser of a certificate confirming (i) payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement.
2. The Transaction has been completed to the satisfaction of the Receiver.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2023.

**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. and not in its personal or corporate capacity

Per:

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

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

2. 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

3. PID: 011-610-263

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KP7123

4. PID: 008-974-462

Legal Notations:

None

Charges, Liens and Interests:

- Statutory Right of Way KR1616