

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 VESTING ORDER)**

BEFORE THE HONOURABLE )  
JUSTICE MASUHARA ) ~~27~~  
 ) October 28, 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 ~~27~~ 28<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 "**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 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".

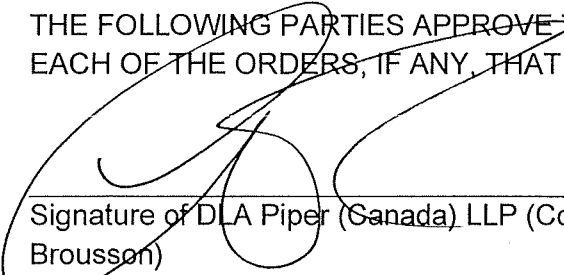
5. Upon the delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order together with any applicable registration fees, all Governmental Authorities exercising jurisdiction with respect to the Nominees or the Purchased Assets are hereby authorized, requested and directed 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.
- 14. Endorsement of this order by counsels 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



Schedule A - Appearance List

<u>Name of Counsel</u>	<u>Party Representing</u>
Owen James	His Majesty the King in Right of the Province of British Columbia
Kibben Jackson Rebecca Ngvinambaye	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 – 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**

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