

**THE KING'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3 AS AMENDED, AND SECTION 55 OF *THE COURT OF KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

PEOPLES TRUST COMPANY,

Applicant,

-and-

BOKHARI DEVELOPMENT INC.,

Respondent.

**NOTICE OF MOTION
HEARING DATE: MONDAY, NOVEMBER 20, 2023 AT 9:00 AM
BEFORE THE HONOURABLE MR. JUSTICE CHARTIER**

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File No. 0088420.00003

THE KING'S BENCH
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BETWEEN:

PEOPLES TRUST COMPANY,

Applicant,

-and-

BOKHARI DEVELOPMENT INC.,

Respondent.

NOTICE OF MOTION

KPMG Inc., the court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and property of Bokhari Development Inc. (the "**Debtor**") comprising, located at, arising from, or in any way relating to the property commonly known as 1801 – 1825 Park Drive in Portage la Prairie, Manitoba, including the development of the project (the "**Project**") located thereon and all proceeds thereof (collectively, the "**Property**"), will make a motion before the Honourable Mr. Justice Chartier on Monday, the 20th day of November, 2023 at 9 o'clock in the forenoon or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Schedule “A” hereto for, *inter alia*:
 - a. Abridging the time for service of the Notice of Motion and materials filed in support of this motion, such that this motion is properly returnable on Monday, November 20, 2023 at 9:00 AM, and dispensing with further service thereof;
 - b. Approving and authorizing the Receiver to engage NDC Construction Ltd. (“**NDC Construction**”) as contractor of the Project pursuant to an agreement substantially in the form of *Contract* – CCDC 3 - 2016 Edition and Supplementary Conditions thereto (together, the “**Contract**”) attached as **Appendix “A”** to the Receiver’s First Report dated November 16, 2023 (the “**First Report**”);
 - c. Approving, authorizing and directing the execution of the Contract by the Receiver;
 - d. Amending paragraph 2 of the Order (Appointing Receiver) pronounced by the Honourable Mr. Justice Chartier on August 29, 2023 to add:

“and legally described as LOTS 1 AND 2 BLOCK 1 PLAN 1810 PLTO EXC ALL MINES AND MINERALS VESTED IN THE CROWN (MANITOBA) BY THE REAL PROPERTY ACT IN RL 56 and 57 PARISH OF PORTAGE LA PRAIRIE (Manitoba Land Titles Registry Status of Title No. 3015541/3)”

immediately following the words “*commonly known as 1801-1825 Park Drive in Portage la Prairie, Manitoba*”.

- e. Approving of the actions of the Receiver to date in respect of its administration of these receivership proceedings and approving the First Report, including the statement of receipts and disbursements contained in the First Report and the activities of the Receiver described therein.
 - f. Approving the fees and disbursements of the Receiver from August 22, 2023 to October 29, 2023, and the fees and disbursements of its legal counsel from August 22, 2023 to October 31, 2023.
 - g. An Order sealing **Confidential Appendix "1"** of the First Report (the "**Confidential Appendix**").
2. Such further and other relief as the Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. By means of the Order (Appointing Receiver) of the Honourable Mr. Justice Chartier pronounced in these proceedings on August 29, 2023 (the "**Receivership Order**"), KMPG Inc. was appointed Receiver of the Property.

The Contract

2. On or about October 11, 2023, the Receiver issued a Request for Proposal ("**RFP**") to potential bidders to act as contractor pursuant to the Contract for the completion of essential work on the exterior envelope of the Project.

3. The Receiver received bids in response to the RFP. Following consultation with the Applicant, the Receiver selected the bid submitted by NDC Construction, as it considered it to be the best offer received.

4. The Receiver is of the view that NDC Construction has sufficient expertise and experience as a contractor to perform the Contract and that the Contract is fair and reasonable.

5. The Applicant is supportive of the engagement of NDC Construction and the execution of the Contract.

6. The Receiver recommends the engagement of NDC Construction pursuant to the Contract and the execution of the Contract, as in its view, doing so is in the best interests of the Debtor and its stakeholders.

Amending Receivership Order

7. On or about September 18, 2023, counsel for the Receiver submitted a request to the Manitoba Land Titles Registry (the “**LTO**”) to register a notice of appointment of a receiver/manager (“**Notice of Appointment**”) and a Caveat (the “**Caveat**”) to provide notice of the Receiver’s Charge and Receiver’s Borrowing Charge (each as defined in the Receivership Order) on title to the Property.

8. On or about September 22, 2023, counsel was advised by the LTO that it cannot register the Notice of Appointment or Caveat on title to the Property unless the Receivership Order is amended to include the legal description and status of title number of the Property in addition to the civic address.

9. It is in the best interest of the Debtor and its stakeholders that the Receivership Order be amended as requested herein, so that notice of the Receiver's Charge, Receiver's Borrowing Charge and Notice of Appointment will be available to the public on title to the Property.

10. Further, the requested amendment to the Receivership Order is necessary so that the Receiver may receive any notices that are distributed to parties registered on title to the Property.

Receiver's Report and Activities

11. An Order approving the activities of the Receiver to date, inclusive of the Receiver's Statement of Receipts and Disbursements as outlined in the First Report, is necessary, appropriate and in accordance with the standard practice of the Court in Court-supervised receivership proceedings.

Accounts of the Receiver and Counsel

12. Paragraph 19 of the Receivership Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements.

13. Paragraph 20 of the Receivership Order provides that the Receiver and its legal counsel shall pass their accounts from time to time.

14. The Receiver's accounts are reasonable and in each case at the standard rates and charges.

Sealing Order

15. The public disclosure of the Confidential Appendix poses a serious risk to a commercial interest, which constitutes an important public interest (the “**Identified Interest**”);

16. The requested sealing order is necessary to prevent the risk to the Identified Interest and there are no reasonable alternative measures available to prevent this risk;

17. The benefits of granting the requested sealing order outweigh any negative effects;

18. *King’s Bench Rules*, Man. Reg. 553/88, as amended, Rules 2.03, 3.02, 16 and 37.

19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Receivership Order;
2. The First Report of the Receiver dated November 16, 2023; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 16, 2023

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Facsimile No.: 204-957-0840

TO: THE ATTACHED SERVICE LIST

SCHEDULE "A"

File No. CI 23-01-42328

**THE KING'S BENCH
WINNIPEG CENTRE**

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SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985, c. B-3 AS AMENDED, AND SECTION 55
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BETWEEN:

PEOPLES TRUST COMPANY,

Applicant,

-and-

BOKHARI DEVELOPMENT INC.,

Respondent.

ORDER

MLT AIKINS LLP

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THE HONOURABLE MR.)	MONDAY, THE 20 th
)	
JUSTICE CHARTIER)	DAY OF NOVEMBER, 2023

BETWEEN:

PEOPLES TRUST COMPANY,

Applicant,

-and-

BOKHARI DEVELOPMENT INC.,

Respondent.

ORDER

THIS MOTION, made by KPMG Inc. the court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and property of Bokhari Development Inc. (the "**Debtor**") comprising, located at, arising from, or in any way relating to the property commonly known as 1801 – 1825 Park Drive in Portage la Prairie, Manitoba, including the development of the project (the "**Project**") located thereon and all proceeds thereof (collectively, the "**Property**") was heard this day at the Law Courts Building at 408 York

Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the First Report of the Receiver dated November 16, 2023 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for *******, no one else appearing although duly served as appears from the Affidavit of Service of Maryna Kozik sworn November 17, 2023.

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

2. THIS COURT AUTHORIZES AND APPROVES the engagement of NDC Construction Ltd. by the Receiver as contractor of the Project pursuant to an agreement substantially in the form of *Contract – CCDC 3 - 2016 Edition and Supplementary Conditions* thereto (together, the “**Contract**”) attached as **Appendix “A”** to the First Report.

3. THIS COURT APPROVES, AUTHORIZES and DIRECTS the execution of the Contract by the Receiver.

4. THIS COURT ORDERS that the Order (Appointing Receiver) pronounced by the Honourable Mr. Justice Chartier on August 29, 2023 is hereby amended to add:

“and legally described as LOTS 1 AND 2 BLOCK 1 PLAN 1810 PLTO EXC ALL MINES AND MINERALS VESTED IN THE CROWN (MANITOBA) BY THE REAL PROPERTY ACT IN RL 56 and 57 PARISH OF PORTAGE LA PRAIRIE (Manitoba Land Titles Registry Status of Title No. 3015541/3)”

immediately following the words “*commonly known as 1801-1825 Park Drive in Portage la Prairie, Manitoba*”.

5. THIS COURT ORDERS that the actions of the Receiver to date in respect of its administration of these receivership proceedings and the First Report, including the statement of receipts and disbursements contained in the First Report and the activities of the Receiver described therein are hereby approved.

6. THIS COURT ORDERS that the fees and disbursements of the Receiver from August 22, 2023 to October 29, 2023, and the fees and disbursements of its legal counsel from August 22, 2023 to October 31, 2023, are hereby approved.

7. THIS COURT ORDERS that **Confidential Appendix “1”** of the First Report is hereby sealed until the Receiver is discharged, or until further order of this Honourable Court.

November ____, 2023

CHARTIER, J.

I, J.J. BURNELL, OF THE FIRM OF MLT AIKINS LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

AS DIRECTED BY THE HONOURABLE MR. JUSTICE CHARTIER

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WINNIPEG CENTRE

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- and -

BOKHARI DEVELOPMENT INC.,

Respondent.

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As at November 15, 2023

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