

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: December 2, 2024 at 10:00 AM
BEFORE THE HONOURABLE JUSTICE J. CHARTIER

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**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,

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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 (the "**Project Premises**"), 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, December 2, 2024 at 10 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.

THIS MOTION IS FOR:

1. An Order substantially in the form of the Draft Order attached hereto as Schedule "A", *inter alia*:
 - a) Abridging the time for service of the Notice of Motion and materials filed in support of this motion (if required), such that this motion is properly returnable on December 2, 2024 at 10:00 AM, and dispensing with further service thereof;
 - b) Approving the broker selection process, and proposed engagement of the broker (the "**Broker**") pursuant to an agreement substantially in the form attached as Appendix "B" to the Second Report (as hereinafter defined) (redacted) and Confidential Appendix "2" to the Second Report (as hereinafter defined) (unredacted) in respect of a Court-approved sale process of the Project;
 - c) Approving the sale process in respect of the Project (the "**Sale Process**") and its implementation in accordance with the Sale Process procedures (the "**Sale Procedures**"), as attached hereto as Schedule "B";
 - d) Declaring that the Debtor's, or any party through the Debtor, right to redeem the mortgage in respect of the Project shall conclude upon the commencement of the Sale Process;
 - e) Amending paragraph 3 of this Court's Order pronounced August 29, 2023 (the "**Receivership Order**") to add subparagraph (u) to empower and authorize the Receiver to take control over the Debtor's RC0001 and

RT0001 tax accounts for the purpose of making the necessary filings for the filing periods both prior to and after the Receivership date;

- f) Amending paragraph 6 of the Receivership Order to add reference to paragraph 3(u) of the Amended Receivership Order;
- g) Directing the directors of the Debtor to comply with paragraph 6 of the Receivership Order in respect of amended paragraph 3(u) of the Receivership Order;
- h) Ordering the production of an accounting, together with supporting documentation and invoices, in respect of the Debtor's general account with the Debtor's counsel Knight Law Office ("**Knight Law**");
- i) Ordering the return of the non-holdback funds, currently held in trust with Knight Law, to be paid to the Receiver forthwith;
- j) Ordering and declaring that all unresolved property claims to materials or equipment that were onsite at the Project as at the date of the Receiver's appointment and in the possession of the Receiver are "Property" under the Receivership Order;
- k) Sealing Confidential Appendices Nos. "1" and "2" of the Second Report until further Order of the Court;
- l) Approving the Second Report of the Receiver dated November 26, 2024 (the "**Second Report**") and the activities and actions of the Receiver as described therein, including the approval of the Receiver's interim receipts and disbursements; and

- m) Approving the fees and disbursements of the Receiver for the period of October 30, 2023 to September 30, 2024, and the fees and disbursements of its legal counsel for the period of November 1, 2023 to October 26, 2024; and
2. Such further and other relief as this Honourable Court may deem just.

GROUNDS FOR THIS MOTION ARE:

Urgency

- 1. The Receivership must proceed with urgency for the following reasons:
 - a. Carrying costs for the 13 buildings, consisting of 208 rental units in aggregate, is quickly eroding the benefit to creditors.
 - b. The insurance for the Project expires January 1, 2025.
 - c. The Contractor is to be demobilized from the Project by the end of December, leaving the Property more vulnerable to risk and difficult to insure.
 - d. The inclement weather over the winter months exacerbates this risk and poses increased management and maintenance costs.

Broker Engagement, Sale Process and Right to Redeem

- 2. The terms of the Broker Engagement Letter between the Receiver and Colliers International Group Inc. attached as Appendix “B” to the Second Report in a redacted form and attached as Confidential Appendix “2” in an unredacted form are reasonable, provide the appropriate amount of control over the Sale Process for the Receiver, and properly incentivize both the Broker to achieve the best

outcome in the Sale Process and any cooperating broker to participate in the Sale Process.

3. The proposed Sale Process provides the best opportunity to broadly market the Project and maximize value. Further, the proposed Sale Process was developed in collaboration with the Broker, and the Broker is supportive of the Sale Process.
4. The senior creditor, Peoples Trust Company is supportive of the Sale Process and Sale Procedures.
5. The Sale Process and Sale Procedures are fair, transparent and have integrity.
6. The Sale Process and Sale Procedures have commercial efficacy in these circumstances.
7. The Sale Process and Sale Procedures will optimize the chances of securing the best possible price for the Property.
8. Pursuant to paragraph 10 of the Receivership Order, all rights and remedies against the Debtor in relation to the Property are suspended except with written consent of the Receiver or leave of this Court, precluding the Debtor's right to exercise any right of redemption without written consent of the Receiver or leave of this Court.
9. Paragraph 10 of the Receivership Order suspends the Debtor's right to redeem under *The Mortgage Act*, CCSM c M200, section 15.
10. The Debtor has had more than a year to redeem the Project and has not requested to do so, nor has it applied to this Honourable Court to do so.
11. By letter dated November 12, 2024 the Debtor was informed by the Receiver that in order to preserve the integrity of the Sale Process and to ensure a competitive

Sale Process that the Receiver would be seeking relief from the Court at the hearing on December 2, 2024 that the Debtor's right to redeem (if any) would conclude upon the commencement of the Sale Process. To date no response has been received.

12. The market of potential interested parties may be dissuaded from participating in the Sale Process if there is any indication that the Debtor or parties related to the Debtor may regain control of the Project, other than by participating in the Sale Process, negatively impacting the integrity and efficacy of the Sale Process.
13. To allow the Debtor to exercise the right to redeem throughout the Sale Process would make a mockery of the Receivership and create a chilling effect on securing the best offer.
14. As an equitable remedy, the substantial delay of the Debtor to exercise its right (if any) to redeem the Project and the prejudice to the Sale Process weigh against any right to redeem and against the reasonable business sense of the Receiver.

Tax Returns

15. Pursuant to the Receivership Order, the Receiver was appointed as receiver and manager of all the assets and undertakings of the Debtor in respect of the Project, including the development of the Project and all proceeds thereof.
16. The Receiver was not appointed over the Debtor in its entirety.

17. To carry out its duties, the Receiver opened a separate GST account (RT0002) with Canada Revenue Agency (“**CRA**”) under the Debtor’s business number, solely with respect to the premises on which the Project is located.
18. To date, the Receiver has filed GST returns for the Project under the RT0002 account for the period from August 29, 2023, to October 31, 2024, (and will continue to file GST returns on a monthly basis during the receivership proceedings).
19. On or about August 19, 2024, CRA issued a GST assessment for the RT0002 GST returns filed, stating that refunds would be held due to non-compliance by the Debtor with respect to their tax accounts.
20. The Debtor has outstanding returns for their RC0001 account (FY2022 and FY2023 returns) and RT0001 account (since December 2022).
21. Income tax and GST returns will also need to continue to be filed on a timely basis for the period following the Receivership date (August 29, 2023), to remain compliant with the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, the *Income Tax Act*, and the *Excise Tax Act*, R.S.C., 1985, c. E-15
22. As the Receiver is not appointed over the Debtor in its entirety, it does not have control over the Debtor’s RC0001 and RT0001 tax accounts and cannot make filings for periods prior to the Receivership date on the Debtor’s behalf.
23. On or about September 11, 2024, the Receiver sent the Debtor a letter requesting that the Debtor complete its outstanding RC0001 and RT0001 returns and provide the Receiver with the estimated completion date for these returns.

24. The Debtor has not filed the returns and has not provided the Receiver with an update.
25. The Receiver requires additional information to complete the returns.
26. The Debtor's non compliance with the *Income Tax Act* and the *Excise Tax Act* is impeding access to funds.
27. As at October 25, 2024, the total being withheld by CRA amounts to a sum of \$302,847.00.

Accounting and Non-holdback Funds

28. Pursuant to paragraphs 6 and 7 of the Receivership Order, the Debtor and their legal counsel are obligated to provide access to information and co-operate with the Receiver, giving unfettered access and delivering information of any kind related to the business or affairs of the Debtor in relation to the property.
29. Counsel for the Receiver has requested information about the following concerns:
 - a. Certain payments, fees and contracts between the Debtor and various parties; and
 - b. The reasons for two holdback payments that were released in November 2021 and June 2022.
30. Counsel for the Receiver has made numerous efforts to obtain this information; however, to date the Debtor has not provided the requested information.
31. In or around January 9, 2024, counsel for the Debtor provided certain financial records to the Receiver which, *inter alia*, indicated as of January 9, 2024, Knight Law was holding \$43,207 in non-holdback funds for the Project.

32. Pursuant to section 7 of the Receivership Order, all Persons shall deliver all such Property to the Receiver upon the Receiver's request.
33. On or about January 25, 2024, the Receiver sent to counsel for the Debtor a letter requesting the non-holdback funds be transferred to the designated Receiver's account and provided wire instructions.
34. Counsel for the Receiver thereafter continued to request the non-holdback funds be transferred.
35. As at the date of this Second Report the non-holdback funds have not yet been received.

Unresolved Material and Equipment Claims

36. As of filing, claims by 6332189 Manitoba Ltd ("**Gateway**") and SLK Contracting Ltd. ("**SLK**") for materials and equipment ("**Materials and Equipment**") on site as at the date of the Receivership Order have not been proven (the "**Unresolved Property Claims**") despite the Receiver's seeking further substantiation from Gateway and SLK.

Sealing

37. The public disclosure of Confidential Appendices "1" and "2" poses a serious risk to a commercial interest, which constitutes an important public interest (the "**Identified Interest**").
38. 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.

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

Approval of the Receiver's Activities and Report

40. The Receiver's actions and activities in the Second Report are consistent with its powers and duties under the Receivership Order and in accordance with the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended.
41. An Order approving of the activities of the Receiver as set out in the Second Report, including the interim statement of receipts and disbursements is necessary, appropriate and in accordance with the standard practice of this Court in Court supervised proceedings.

Authorization of Fees

42. Paragraph 19 of the Receivership Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements.
43. Paragraph 20 of the Receivership Order provides that the Receiver and its legal counsel shall pass their accounts from time to time.
44. The Receiver's accounts are reasonable and in each case at the standard rates and charges.
45. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, section 243.

46. *The Court of King's Bench Act*, C.C.S.M. c. C280, section 77.
47. *Court of King's Bench Rules*, Man. Reg. 553/88, as amended, Rules 2.03, 3.02, 16, 37 and 59.06.
48. *The Mortgage Act*, CCSM c M200, section 15.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Brian Jahoor sworn August 23, 2023;
2. The Affidavit of Darcy Shaver sworn August 25, 2023;
3. The Receivership Order;
4. The First Report of the Receiver;
5. The Second Report of the Receiver, to be filed; and
6. Such further and other documentation as counsel may advise and this Honourable Court may permit.

November 27, 2024

MLT AIKINS LLP

Barristers and Solicitors
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TO: ATTACHED SERVICE LIST

SCHEDULE "A"

File No. CI 23-01-42328

**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.

ORDER

MLT AIKINS LLP

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SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY
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OF *THE COURT OF KING'S BENCH ACT*, C.C.S.M. c. C280

THE HONOURABLE MR.)	MONDAY, THE 2 ND
)	
JUSTICE CHARTIER)	DAY OF DECEMBER, 2024

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 (the "**Project Premises**"), 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 Affidavit of Brian Jahoor sworn August 23, 2023, the Affidavit of Darcy Shaver sworn August 25, 2023, the First Report of the Receiver dated November 16, 2023 (the “**First Report**”), the Second Report of the Receiver dated November 26, 2024 (the “**Second Report**”), and each of the respective confidential supplements thereto and on hearing the submissions of counsel for the Receiver, counsel for People’s Trust Company, counsel for the Debtor, counsel for [REDACTED], no one appearing for any other person on the Service List, although properly served as appears from the affidavit of [REDACTED] sworn November [REDACTED], 2024, filed:

SERVICE

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.

APPROVAL OF SALE PROCESS, ENGAGEMENT OF BROKER & REDEMPTION

2. THIS COURT ORDERS that the broker selection process, and proposed engagement of the broker (the “**Broker**”) pursuant to an agreement substantially in the form attached as Appendix “B” to the Second Report (redacted) and Confidential Appendix “2” to the Second Report (unredacted) in respect of a Court-approved sale process of the Project, is hereby approved and authorized.

3. THIS COURT ORDERS that the sale process in respect of the Project (the “**Sale Process**”) and its implementation in accordance with the Sale Process procedures (the

“**Sale Procedures**”), as attached hereto as Schedule “B”, is hereby approved and authorized.

4. THIS COURT ORDERS that the Monitor and the Broker are hereby authorized and directed to do all things as are reasonably necessary to conduct and give full effect to the Sale Process and Sale Procedures.

5. THIS COURT ORDERS the Debtor’s, or any party through the Debtor, right to redeem the Mortgage in favour of the Applicant (being Mortgage No. 1217450/3) in respect of the Project shall conclude upon the commencement of the Sale Process and notice being given by the Receiver, by email to the Service List, of same.

TAX RETURNS

6. THIS COURT ORDERS that the Order (Appointing Receiver) pronounced by the Honourable Mr. Justice Chartier on August 29, 2023 (the “**Receivership Order**”) is hereby amended to add the following as subparagraph 3(u):

“to take control over the Debtor’s RC0001 and RT0001 tax accounts for the purpose of making the necessary filings for the filing periods both prior to and after the Receivership date.”

7. THIS COURT ORDERS that the Receivership Order is amended to add “*and subparagraph 3(u)*” following the words “in relation to the Property” in paragraph 6.

8. THIS COURT ORDERS that BOKHARI, MOHAMMED, BOKHARI, SYED and SHAVER, DARCY comply with paragraph 6 of the amended Receivership Order.

NON-HOLDBACK FUNDS & ACCOUNTING

9. THIS COURT ORDERS that the Debtor's counsel Knight Law Office ("**Knight Law**") produce an accounting, together with supporting documentation and invoices, in respect of its general account in respect of the Debtor.

10. THIS COURT ORDERS that Knight Law pay to the Receiver all non-holdback funds currently held by it in respect of the Debtor forthwith.

EQUIPMENT AND MATERIAL CLAIMS

11. THIS COURT ORDERS AND DECLARES that 6332189 Manitoba Ltd. ("**Gateway**") and SLK Contracting Ltd. ("**SLK**") shall have until thirty days from the date hereof, being January 2, 2025 (the "**Claims Bar Deadline**") to prove their claims to the Receiver in respect of the Unresolved Property Claims (as defined in the Second Report). In addition to proving its claim, Gateway must also: , (i) provide a joint direction executed by both Karampal Sandhu and Russell Sawatzky specifying the individual to whom the Receiver is to release the property; or (ii) provide to the Receiver a certified copy of a Court Order which determines the ownership of Gateway between Karampal Sandhu and Russell Sawatzky by the Claims Bar Deadline. In the event that Gateway and/or SLK dispute the Receiver's determination they shall have until January 10, 2025 to file a motion, together with supporting evidence in these proceedings, failing which the subject Materials and Equipment (as defined in the Second Report) shall be Property under the Receivership Order and the Receiver shall be free to deal with the said Materials and Equipment in accordance with the powers granted to it by the Orders of this Honourable Court.

SEALING

12. THIS COURT ORDERS that Confidential Appendices Nos. 1 and 2 to the Second Report be filed under seal, kept confidential, and not form part of the public record. Confidential Appendices Nos. 1 and 2 shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Honourable Court and the presiding Judge and shall only be accessible or form part of the public record upon further Order of this Court.

REPORT APPROVAL

13. THIS COURT ORDERS the Second Report and the activities, actions and conduct of the Receiver as described therein, including the approval of the Receiver's interim receipts and disbursements are hereby approved.

FEE APPROVAL

14. THIS COURT ORDERS that the fees and disbursements of the Receiver and its legal counsel as set out in the Second Report, are hereby approved.

November ____, 2024

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

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

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Applicant,

- and -

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Respondent.

SERVICE LIST
As at November 26, 2024

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***Please note that this Service List does not include an e-mail address for Neeraj Kumar.**