

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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORTION,

Applicant,

- and -

**5684961 MANITOBA LTD., 6315402 MANITOBA LTD.
and K & P PROPERTIES INC.,**

Respondents.

FILED FEB 06 2024

**NOTICE OF MOTION OF THE RECEIVER
(SALE APPROVAL AND VESTING ORDER)
BEFORE THE HONOURABLE MR. JUSTICE MARTIN
Tuesday, February 13, 2024 at 10:00 a.m.**

PITBLADO LLP
Barristers and Solicitors
2500 - 360 Main Street
Winnipeg, MB R3C 4H6

Catherine E. Howden

Telephone No. (204) 956-0560
Fax No. (204) 957-0227

(File No. 61972/3)

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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORTION,

Applicant,

- and -

**5684961 MANITOBA LTD., 6315402 MANITOBA LTD.
and K & P PROPERTIES INC.,**

Respondents.

NOTICE OF MOTION

MNP Ltd., in its capacity as receiver and manager (the "**Receiver**") of all the assets, undertakings and properties of the Respondent, 5684961 Manitoba Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, and any and all beneficial ownership interests as may be held by the Respondent 6315402 Manitoba Ltd. and the Respondent K & P Properties Inc. in such assets, undertakings and properties, including all proceeds thereof (the "**Property**"), will make a Motion before the Honourable Mr. Justice Martin on Tuesday, the 13th day of February, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard, at The Law Courts, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR an Order, substantially in the form attached hereto and marked as Schedule "A" (the "**Sale Approval and Vesting Order**"), providing for:

1. An order that service of this motion is hereby abridged and validated such that this motion is properly returnable on the stated hearing date with no further service required;
2. An order approving the sale transaction (the "**Transaction**") contemplated by the asset purchase agreement, dated December 21, 2023 (the "**Sale Agreement**"), between the Receiver, as vendor, and 4589093 Manitoba Ltd., as purchaser (the "**Purchaser**"), entered into by the Receiver and Purchaser pursuant to the Receiver's powers under paragraphs 3, (h), (k), (l), and (m) of the Order made herein on March 17, 2023 (the "**Receivership Order**");
3. An order vesting in the Purchaser all of the Debtor's right, title and interest in and to the assets described in the Sale Agreement, namely the Debtor's right, title and interest in and to the lands, buildings and fixtures (collectively the "**Purchased Assets**") free and clear of any claims or encumbrances, except permitted encumbrances, all as set out in the Sale Approval and Vesting Order;
4. An order that the Confidential Supplement to the Third Report of the Receiver (the "**Confidential Report**"), be sealed;
5. An order approving the Third Report, the Confidential Report, the activities of the Receiver described therein, including approval of the Receiver's Statement of Receipts and Disbursements, and the Sale Process (as hereinafter defined);
6. An order approving the fees and estimated fees and disbursements of the Receiver and its legal counsel;
7. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the **Receivership Order**, MNP Inc. was appointed as the Receiver of the Debtor's Property, including the Purchased Assets;
2. In the Receivership Order, this Honourable Court empowered and authorized the Receiver to, *inter alia*, sell, convey, transfer, lease, or assign the Purchased Assets or any part or parts thereof, out of the ordinary course of business, with the approval of this Court in respect of any transaction in which the purchase price exceeds \$100,000.00, and to apply for a vesting order or other orders necessary to convey the Purchased Assets to a purchaser, free and clear of any liens or encumbrances affecting such Purchased Assets;
3. Pursuant to the Order of the Honourable Justice Martin pronounced July 7, 2023, the Receiver was authorized and directed to list the Purchased Assets for sale with Avison Young Commercial Real Estate (Manitoba) Inc. and to initiate and perform its obligations and to take all reasonable steps to carry out the Sales Solicitation Process ("SSP") as defined therein;
4. The Receiver has engaged in efforts to sell the Purchased Assets, as described in the Third Report (the "**Sales Process**");
5. The Receiver has determined that the offer from the Purchaser is the most favourable offer for the Purchased Assets;
6. The Receiver has entered into the Sale Agreement with the Purchaser for the Purchased Assets. Pursuant to the Sale Agreement, and subject to approval of this Honourable Court, the transaction will close the later of 10 business days following the date on which the proposed Sale Approval and Vesting Order is obtained or such date as the parties may agree to in writing;

7. The Sale Process leading up to the execution of the Sale Agreement was commercially reasonable and fair, and the Receiver made sufficient efforts to obtain the best price, and has not acted improvidently. The Applicant, First National Financial GP Corporation ("FNF"), as the primary secured creditor with an interest in the Purchased Assets, is supportive of the Transaction;
8. The information contained in the Confidential Report is sensitive commercial information, and a sealing order is necessary as there is a real and substantial risk of harm to the interests of stakeholders in this proceeding in the event such sensitive information is disclosed in advance of the completion of the Transaction;
9. The salutary effects of a sealing order with respect to the Confidential Report outweigh any considerations relating to the public interest in open and accessible court proceedings;
10. It is appropriate to approve the Third Report, Confidential Report, the Receiver's activities and conduct, and the professional fees and estimated fees and disbursements of the Receiver and its legal counsel;
11. Paragraphs 17, 18, 19, 24, 25, 26, and 27 of the Receivership Order;
12. Section 95 of *The Corporations Act*, C.C.S.M. c., C225;
13. Sections 37 and 77 of *The Court of King's Bench Act*, C.C.S.M. c. C280;
14. Court of King's Bench Rules 2.03, 3.02, 16.04, 16.08 and 37;
15. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. C.368;
16. Such further and other grounds as counsel may advise and as this Honourable Court may allow.

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

- (a) Receivership Order pronounced March 17, 2023;
- (b) Affidavits of Sonia Pacheco sworn February 13, 2023 and March 8, 2023;
- (c) The Receiver's First Report dated April 25, 2023;
- (d) The Confidential Supplement to the Receiver's First Report, dated April 25, 2023;
- (e) Order of the Honourable Mr. Justice Martin pronounced April 28, 2023;
- (f) The Receiver's Second Report dated June 9, 2023 and Supplement to the Second Report dated June 29, 2023;
- (g) The Confidential Supplement to the Receiver's Second Report dated June 9, 2023 and Second Confidential Supplement to the Second Report dated June 29, 2023;
- (h) Order of the Honourable Mr. Justice Martin pronounced July 7, 2023;
- (i) The Receiver's Third Report, to be filed;
- (j) The Confidential Supplement to the Receiver's Third Report, to be filed; and

- (k) Such further and other evidence as counsel may advise and this Honourable Court may allow.

February 6, 2024

PITBLADO LLP
Barristers and Solicitors
2500 – 360 Main Street
Winnipeg, MB R3C 4H6

Catherine E. Howden
Counsel for the Receiver, MNP Ltd.

Telephone No. 956-0560
Facsimile No. 957-0227

TO: THE ATTACHED SERVICE LIST

AND TO: MURRAY & BRENNAN
Barristers and Solicitors
100 – 1600 Ness Avenue
Winnipeg, MB R3J 3W7
KARL PETERS
Counsel for 4589093 Manitoba Ltd.

AND TO: MAJOR ELECTRIC LTD.
c/o ANDREW TRAVIS MAJOR
38 Claremont Ave.
Winnipeg, MB R2H 1V8

AND TO: OMAR'S ENVIRONMENTAL LTD.
c/o BONI SINGBEIL STIENSTRA LLP
2151 Henderson Hwy
Winnipeg, MB R2G 1P9

SCHEDULE "A"

File No. CI 23-01-39421

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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION,

Applicant,

- and -

**5684961 MANITOBA LTD., 6315402 MANITOBA LTD.
and K & P PROPERTIES INC.,**

Respondents.

SALE APPROVAL AND VESTING ORDER

PITBLADO LLP
Barristers and Solicitors
2500, 360 Main Street
Winnipeg, MB R3C 4H6

Catherine E. Howden

Telephone: (204) 956-0560
Facsimile: (204) 957-0227
Email: howden@pitblado.com

(File No. 61972/3)

THE KING'S BENCH
Winnipeg Centre

THE HONOURABLE) Tuesday the 13th day of February, 2024
)
MR. JUSTICE MARTIN)

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 *KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION,

Applicant,

- and -

**5684961 MANITOBA LTD., 6315402 MANITOBA LTD.
and K & P PROPERTIES INC.,**

Respondents.

SALE APPROVAL AND VESTING ORDER

THIS MOTION made by MNP Ltd., in its capacity as receiver and manager (the "Receiver") of all the assets, undertakings and properties of 5684961 Manitoba Ltd. (the "Debtor") for, *inter alia*, an Order approving the sale transaction (the "Transaction") contemplated by the asset purchase agreement dated December 21, 2023 (the "Sale Agreement") between the Receiver and 4589093 Manitoba Ltd. (the "Purchaser"), as referenced in the Third Report of the Receiver dated February ____, 2024 (the "Third Report"), and vesting in the Purchaser of all the Debtor's right, title and interest to the assets described in the Sale Agreement (the "Purchased Assets") and other ancillary relief, was heard this day at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the First Report of the Receiver, the Confidential Supplement to the First Report of the Receiver, the Second Report of the Receiver and Supplement thereto, the Confidential Supplement to the Second Report of the Receiver and Supplement thereto, the Third Report of the Receiver, the Confidential Supplement to the Third Report of the Receiver, the Affidavits of Sonia Pacheco sworn February 13, 2023 and March 8, 2023, and on hearing the submissions of counsel for the Receiver, the Applicant, the Debtor, and the Respondent K & P Properties Inc., no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Chantale DeBlois sworn February ____, 2024;

1. THIS COURT ORDERS that time for service of the Notice of Motion and the supporting materials is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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:

- (a) any encumbrances or charges created by the Order of the Honourable Mr. Justice Martin dated March 17, 2023 (the "**Receivership Order**");
- (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system; and
- (c) those Claims listed on Schedule "C" hereto;

all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed in Schedule "D" hereto (the "**Permitted Encumbrances**"), 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. THIS COURT ORDERS that upon registration in the Winnipeg Land Titles Office ("**WLTO**") of a Transmission in the form prescribed by *The Real Property Act* (Manitoba) duly executed by the Purchaser, and accompanied by a certified true copy of this Order, title to the real property identified in Schedule "B" hereto (the "**Real Property**") shall vest in the Purchaser and the District Registrar is hereby directed to expunge from title all of the Encumbrances listed in Schedule "C" hereto.

5. THIS COURT ORDERS that this Order shall be accepted by the District Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period be and is hereby expressly waived.
6. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances 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 that possession or control immediately prior to the sale.
7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser;
8. THIS COURT ORDERS THAT, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy Order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy Order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any licensed insolvency trustee 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 nor be deemed a fraudulent preference, assignment, fraudulent conveyance, transfer at

undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, or shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS that the Confidential Supplement to the Third Report of the Receiver shall be sealed, kept confidential and shall not form part of the public record, and shall remain in a sealed envelope and/or be stored electronically with this Court on an encrypted basis, limiting access only to the Registrar of this Court and the Presiding Judge, except:
- (a) by further Order of this Court;
 - (b) upon the date on which the Receiver files with the Court a written notice certifying that the Sale Agreement has closed to the satisfaction of the Receiver;

whichever shall first occur, whereupon the Confidential Supplement to the Third Report of the Receiver shall form part of the public record and shall no longer be sealed.

10. THIS COURT APPROVES the Third Report, the Confidential Supplement to the Third Report and the activities of the Receiver and its counsel described therein, including the Receiver's Statement of Receipts and Disbursements and the accounts, fees and estimated fees and disbursements of the Receiver and its counsel as reflected in the Third Report, without the necessity of a formal passing of accounts;

11. THIS COURT ORDERS that this Order shall be served by email to all parties on the Service List, and any other party who appeared at the hearing of this motion, and further service is hereby dispensed with.

February , 2024

Justice Martin

vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming:

- i. the payment by the Purchaser of the Purchase Price for the Purchased Assets;
- ii. that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- iii. the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER 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 conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- 3. The Transaction has been completed to the satisfaction of the Receiver.
- 4. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba, on the ____ day of _____, 2024.

MNP LTD. in its capacity as Receiver, and not in its personal capacity

Per: _____
Victor Kroeger, Senior Vice President

SCHEDULE "B"
DESCRIPTION OF REAL PROPERTY

Title No. 2551809/1

LOTS 8 AND 9 PLAN 313 WLTO (W DIV)
IN RL 73 PARISH OF ST JAMES

SCHEDULE "C"
ENCUMBRANCES TO BE EXPUNGED

- Mortgage No. 4119823/1
- Caveat No. 4119824/1
- PPSN No. 4119825/1
- Amending Agreement No. 4147247/1
- Amending Agreement No. 4214343/1
- Transfer of Mortgage No. 4427771/1
- Assignment of Caveat No. 4427775/1
- Mortgage No. 4852462/1
- Builder's Lien no. 5106419/1
- Transfer of Mortgage No. 5137970/1
- Notice Exercising Power of Sale No. 5150372/1
- Application for Order for Sale No. 5173068/1
- Assignment of Caveat No. 5464077/1
- Application for Order for Sale No. 5464078/1
- Builder's Lien No. 5516941/1

SCHEDULE "D"
PERMITTED ENCUMBRANCES

- Caveat No. 5397709/1 Compliance Order – City of Winnipeg
- Caveat No. 5529739/1 – Compliance Order – City of Winnipeg
- Caveat No. 5529740/1 – Compliance Order – City of Winnipeg

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:

FIRST NATIONAL FINANCIAL GP CORPORATION,

Applicant,

- and -

5684961 MANITOBA LTD., 6315402 MANITOBA LTD. and K & P
PROPERTIES INC.,

Respondents.

SERVICE LIST
As at July 7, 2023

PITBLADO LLP
Barristers and Solicitors
2500 - 360 Main Street
Winnipeg, MB R3C 4H6

CATHERINE E. HOWDEN

Telephone No. (204) 956-0560
Fax No. (204) 957-0227

(File No. 61972.3)

SERVICE LIST

Party/Counsel	Telephone	Facsimile	Party Represented
<p>THOMPSON DORFMAN SWEATMAN LLP 1700-242 Hargrave Street Winnipeg, Manitoba, R3C 0V1</p> <p>ROSS A. MCFADYEN Email: RAM@tdslaw.com</p> <p>MEL M. LABOSSIÈRE Email: MML@tdslaw.com</p>	<p>(204) 934-2378</p> <p>(204) 934-2508</p>	<p>(204) 934-0538</p> <p>(204) 934-0570</p>	<p>Counsel for First National Financial GP Corporation</p>
<p>MNP LTD. 1700-242 Hargrave Street Winnipeg, Manitoba, R3C 0T8</p> <p>VICTOR KROEGER Email: victor.kroeger@mnp.ca</p> <p>RICK ANDERSON Email: rick.anderson@mnp.ca</p>	<p>(204) 927-2912</p> <p>(403) 537-8437</p>		<p>Receiver</p>
<p>PITBLADO LLP 2500 – 360 Main Street Winnipeg, Manitoba, R3C 4H6</p> <p>CATHERINE HOWDEN Email: howden@pitblado.com</p>	<p>(204) 956-3532</p>	<p>(204) 957-0227</p>	<p>Counsel for the Receiver</p>
<p>MANITOBA JUSTICE – CIVIL LEGAL SERVICES 730 - 405 Broadway Winnipeg, Manitoba, R3C 3L6</p> <p>SHELLEY HANER Email: shelley.haner@gov.mb.ca</p>	<p>(204) 792-6471</p>	<p>(204) 948-2826</p>	<p>Counsel for Manitoba Taxation</p>

<p>PACIFIC INSOLVENCY INTAKE CENTRE Surrey National Verification and Collection Centre Canada Revenue Agency 9755 King George Boulevard Surrey, British Columbia, V3T 5E1</p>	1-866-891-7403	1-833-697-2389	Canada Revenue Agency
<p>6315402 MANITOBA LTD. c/o L.C. Taylor & Co. Ltd. in its capacity as Trustee in Bankruptcy for Doug Thiessen Winnipeg, Manitoba, R3C 3R6 Email: jasmine@lctaylor.net</p>	(204) 956-2335		Debtor Company
<p>5684995 MANITOBA LTD. and K&P PROPERTIES INC. c/o Patrick Penner 285 – 971 Corydon Avenue Winnipeg, Manitoba, R3M 3S7 PATRICK PENNER Email: pkharpenn@shaw.ca</p>	(204) 797-6742		Debtor Companies
<p>JAMES W. HEDLEY LAW OFFICE 193 Henlow Bay Winnipeg, Manitoba, R3Y 1G4 JAMES W. HEDLEY Email: jwh@hedleylaw.ca</p>	(204) 999-8671		Counsel / Agent for Pro Auto Ltd.
<p>D'ARCY & DEACON LLP 2200-One Lombard Place Winnipeg, Manitoba, R3B 0X7 JONATHAN L. GOLDENBERG Email: jgoldenberg@darcydeacon.com</p>	(204) 925-5371		Counsel / Attorney for Service for GFL Environmental Inc. (formerly, Omar's Environmental Ltd.)

<p>CITY OF WINNIPEG – LEGAL SERVICES 3-185 King Street Winnipeg, Manitoba, R3B 1J1</p> <p>ROBERT COX Email: rcox@winnipeg.ca</p>	(204) 915-5473		Counsel for the City of Winnipeg
<p>SMITH NEUFELD JODOIN LLP 85 PTH 12 North Steinbach, MB, R5G 1A7</p> <p>GRANT DRIEDGER Email: gdriedger@snj.ca</p> <p>LINDSAY FOREST Email: lforest@snj.ca</p>	(204) 346-5112 (204) 346-5124		Counsel for 5684995 Manitoba Ltd. and K&P Properties Inc.

E-mail List

RAM@tdslaw.com; MML@tdslaw.com; victor.kroeger@mnp.ca ; howden@pitblado.com;
shelley.haner@gov.mb.ca; jasmine@lctaylor.net; jwh@hedleylaw.com;
jgoldenbergl@darcydeacon.com; pkharpenn@shaw.ca; gdriedger@snj.ca ;
lforest@snj.ca; rick.anderson@mnp.ca; rcox@winnipeg.ca