

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.

**NOTICE OF MOTION OF THE RECEIVER
BEFORE THE HONOURABLE MR. JUSTICE MARTIN
Wednesday, June 14, 2023 at 9:00 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
Email: howden@pitblado.com

(File No. 61972.3)

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IN THE MATTER OF:

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

Respondents.

NOTICE OF MOTION

MNP LTD. (the "**Receiver**") in its capacity as receiver and manager of the Respondent, 5684961 Manitoba Ltd. (the "**Debtor**"), will make a Motion before the Honourable Mr. Justice Martin on Wednesday, the 14th day of June, 2023 at 9:00 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", as follows:

1. An order validating or otherwise abridging the time for service of this Notice of Motion, such that the motion is properly returnable on the stated hearing date with no further service required;

2. An order approving the proposal for sale and authorizing and directing the Receiver to execute an agreement to list the Property for sale with Avison Young Commercial Real Estate (Manitoba) Inc., consistent with the terms of the proposal for sale, as more particularly set out in the Second Report of the Receiver dated June 9, 2023 ("**Second Report**") and the Confidential Supplement to the Second Report dated June 9, 2023 (the "**Confidential Supplement**"), pursuant to the Receiver's powers under paragraphs 3(d), 3(k), 3(l) and 3(m) of the Receivership Order pronounced March 17, 2023 (the "**Receivership Order**") and authorizing and directing the Receiver to initiate and perform its obligations and to take all reasonable steps to carry out the SSP;
3. An Order sealing the Confidential Supplement to the Second Report;
4. An Order approving the Second Report and the activities of the Receiver described therein;
5. An Order that the Receiver's motion to amend paragraph 20 of the Receivership Order to increase its Borrowing Charge be adjourned *sine die*; and
6. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 17, 2023, this Court pronounced the Receivership Order appointing MNP Ltd. as receiver of all of the assets, undertakings and properties of the Respondent, 5684961 Manitoba Ltd. (the "**Debtor**"). The Receiver has complied with the Receivership Order and its activities to date have assisted the court in the administration of the Receivership;

2. The Receivership Order at paragraph 3(d) empowers and authorizes the Receiver to engage, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties;

3. The Receivership Order, at paragraphs 3(k), 3(l) and 3(m) empowers and authorizes the Receiver to, *inter alia*, market any or any all of the Property, including advertising and soliciting offers in respect of the Property, negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; to, *inter alia*, sell the Property out of the ordinary course of business with approval of the court and to apply for a vesting order to transfer title to a purchaser, free and clear of any liens or encumbrances;

4. On April 28, 2023, this Court pronounced an Order approving the sale solicitation process ("**SSP Approval Order**") and the Receiver was authorized and directed to initiate and perform its obligations and to take all reasonable steps to carry out the SSP, subject to approval of the court of the proposal for sale, which shall come back before the Court on Wednesday, June 14, 2023 at 9:00 a.m.;

5. The Receiver issued a request for proposals for sale of the Property and based on the proposals received, the Receiver recommends that the Property be listed on an "as is" basis with Avison Young Commercial Real Estate (Manitoba) Inc.;

6. The Receiver's process to obtain the proposal for sale was fair and transparent, commercially reasonable and will optimize the chances of securing the best possible price for the sale of the Property, to the benefit of all stakeholders;

7. The information contained in the Confidential Supplement is sensitive commercial information, and a sealing order is necessary as there is a real and substantial risk of harm to

the interest of stakeholders in this proceeding in the event such sensitive information is disclosed in advance of the completion of the SSP and a successful sale approval and vesting order is issued by the court and the transaction closes, or upon further order of this Honourable Court;

8. The Receiver is of the opinion that if the requested sealing order is not granted, the SSP and the marketing and sale of the Property will be impaired;

9. The salutary effects of the sealing order with respect to the Confidential Supplement outweigh any considerations relating to the public interest in open and accessible court proceedings;

10. As the increase in the Receiver's Borrowing Charge is not required at this time, the Receiver requests that its motion to amend paragraph 20 of the Receivership Order to increase the Borrowing Charge be adjourned *sine die*;

11. Paragraphs 3, 25, 26 and 32 of the Receivership Order;

12. Section 95 of *The Corporations Act*, C.C.S.M. c., C225;

13. Section 77 of the Court of King's Bench Act, C.C.S.M. c. C280;

14. King's Bench Rules 2.03, 3.02, 16.04, 16.08 and 37; and

15. 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) The Receiver's First Report dated April 25, 2023;

- (b) The Receiver's Second Report dated June 9, 2023;
- (c) Such further and other evidence as counsel may advise and this Honourable Court may allow.

June 9, 2023

PITBLADO LLP

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

Telephone No. 956-3564
Facsimile No. 957-0227
Email: howden@pitblado.com
Counsel for the Receiver, MNP Ltd.
Catherine E. Howden

TO: THE ATTACHED SERVICE LIST

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 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.

ORDER

PITBLADO LLP

2500 - 360 Main Street
Winnipeg, Manitoba
R3C 4H6

Catherine E. Howden

Phone No. 204-956-0560

Fax No. 204-957-0227

(File No.61972.3)

THE KING'S BENCH

WINNIPEG CENTRE

THE HONOURABLE MR.)
JUSTICE MARTIN) Wednesday, the 14th day of June, 2023
)

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 -

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

Respondents.

ORDER

THIS MOTION made by MNP Ltd. (the "**Receiver**") in its capacity as receiver and manager of the Respondent, 5684961 Manitoba Ltd., (the "**Debtor**") for, *inter alia*, an order approving the proposal for sale as referenced in the Second Report of the Receiver dated June 9, 2023 (the "**Second Report**"), was heard this day at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

ON READING the First Report of the Receiver dated April 25, 2023, the Second Report, and the Affidavit of Service of Elenore Kesterke sworn June ____, 2023, and on hearing the submissions of counsel for the Receiver, the Applicant and the Debtor:

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

2. THIS COURT ORDERS AND APPROVES the proposal for sale, and the Receiver is hereby authorized and directed to execute an agreement to list the Property for sale with Avison Young Commercial Real Estate (Manitoba) Inc., consistent with the terms of the proposal for sale, as more particularly set out in the Second Report and the Confidential Supplement to the Second Report dated June 9, 2023 ("**Confidential Supplement**") and authorizes and directs the Receiver to initiate and perform its obligations and to take all reasonable steps to carry out the SSP.

3. THIS COURT ORDERS AND APPROVES the Second Report and the activities of the Receiver and its counsel described therein.

4. THIS COURT ORDERS that the Confidential Supplement shall be treated as confidential and sealed and shall neither form part of the public record nor be disclosed to any party to this proceeding or otherwise, except:

- (a) by further order of this court, following notice to the Receiver of any motion seeking such an order; or
- (b) upon the date on which the Receiver files with the court a written notice certifying that all transactions relating to the Property referred within the Confidential Supplement have closed to the satisfaction of the Receiver; whichever shall first occur, whereupon the Confidential Supplement shall form part of the public record and shall no longer be sealed.

5. THE COURT ORDERS that the Receiver's motion to amend paragraph 20 of the Receivership Order to increase the Receiver's Borrowing Charge from \$150,000.00 to a principal amount not exceeding \$300,000.00 (or such greater amount as this Court may by further Order authorize) shall be adjourned *sine die*.

June , 2023

J.

I, CATHERINE HOWDEN, OF THE FIRM PITBLADO LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE APPLICANT.

THE KING'S BENCH

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

Respondents.

SERVICE LIST
As at June 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
Email: howden@pitblado.com
(File No. 61972.3)

SERVICE LIST

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

<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.com</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>JANELLE WAGNER Email: janellewagner@winnipeg.ca</p>	(431) 293-8716		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; jgoldenberg@darcydeacon.com; janellewagner@winnipeg.ca ; pkharpenn@shaw.ca; gdriedger@snj.ca ; lforest@snj.ca; rick.anderson@mnp.ca;