

*In the Supreme Court of British Columbia*

Between

PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE  
PEOPLES

Petitioner

and

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS  
LIMITED PARTNERSHIP, WESTCASTLE HOLDINGS LTD.,  
WESTCASTLE LAND DEVELOPMENTS CORP.,  
BOULEVARD CONSTRUCTION CORPORATION,  
RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO, also  
known as PHILIP SALGADO, CHRIS YORK, also known as  
CHRISTOPHER YORK, MACKAY CONTRACTING LTD.,  
KULKON CONSTRUCTION CORP., 1111053 B.C. LTD.  
DOING BUSINESS AS JJ MECHANICAL, GAUER POWER  
LTD., IKA BUILDERS INC., 689048 ALBERTA LIMITED,  
DOUGLAS HOWG doing business as STP PAINTING,  
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE  
SUBJECT LANDS AND PREMISES

Respondents

**IN THE MATTER OF THE RECEIVERSHIP OF PEAK DEVELOPMENTS CORP. and  
PEAK DEVELOPMENTS LIMITED PARTNERSHIP**

**NOTICE OF APPLICATION**

**Name of applicant:** PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE  
PEOPLES

To: The respondents

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on May 6, 2025 at 10:00 a.m. for the order(s) set out in Part 1 below.

The applicant estimates that the application will take 60 minutes.

☒ This matter is not within the jurisdiction of an associate judge.

## Part 1: ORDER(S) SOUGHT

1. An order,
  - a) abridging the time for service of this petition; and
  - b) substantially in the form attached as Schedule "A" to this petition, appointing D. MANNING & ASSOCIATES INC. as RECEIVER AND MANAGER (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of PEAK DEVELOPMENTS CORP. and PEAK DEVELOPMENTS LIMITED PARTNERSHIP (collectively "**Peak Developments**" or the "**Borrower**") acquired for, or used in relation to a business carried on by Peak Developments in constructing a residential real estate development located at 500 – 302<sup>nd</sup> Avenue, Kimberley, British Columbia.

## Part 2: FACTUAL BASIS

### The Parties' Roles and Interests

1. Peoples is a trust company which provides services as a commercial real estate lender. Peoples loaned monies to Peak Developments for the purposes of a real estate construction project (the "**Project**"). Peak Developments, in turn, granted first priority mortgage and personal property security in favour of Peoples. Peoples' security is discussed in greater detail below.
2. Peak Developments owns a residential real estate development located at 500 – 302<sup>nd</sup> Avenue, Kimberley, BC, V1A 3H7, and legally described as follows:

Parcel Identifier: 031-836-780  
LOT 1 DISTRICT LOT 2378  
KOOTENAY DISTRICT PLAN EPP124173

(the "**Lands**").
3. Peak Developments is in the business of developing 9 buildings on the Lands intended as residential rental properties. The buildings are in various states of completion. 2 buildings are believed by Peoples to be approximately 90-95%

completed. One building has not started and the other 6 are between 65% and 90% completed.

### **The loan agreement and security**

4. Pursuant to a commitment letter dated August 26, 2022 (the “**Commitment Letter**”), Peoples and Peak Developments entered into a loan agreement on the terms and conditions set out in the Commitment Letter.
5. Under the Commitment Letter, the borrower is Peak Developments. The covenantors are Peak Developments LP, Westcastle Holdings, Westcastle Land, Boulevard, Mr. Salgado, Mr. York and Riverview. The principal amount of the loan was \$20,454,000.00. The term is 30 months.
6. The loan is insured by Canada Mortgage Housing Corporation. The loan matures on June 1, 2025.
7. Pursuant to the Commitment Letter, Peoples was granted security which included the following:
  - a) A mortgage and assignment of rents granted by Peak Developments in favour of Peoples and registered in first position against the Lands in priority to the interest therein or claims thereto of the respondents;
  - b) A mortgage of beneficial interest executed by Peak Developments LP in favour of Peoples;
  - c) A project specific security agreement granted by Peak Developments in favour of Peoples charging all of Peak Developments’ present and after acquired personal property situated at, arising out of, used in connection with or relating to the Lands and registered in the British Columbia Personal Property Registry in priority to the interest therein or claims thereto of the respondents;
  - d) A cost overrun, debt service and completion agreement;

- e) An assignment of agreements granted by Peak Developments in favour of Peoples pursuant to which Peak Developments absolutely assigned and granted in favour of Peoples a security interest in any:
    - i) Insurance proceeds;
    - ii) All agreements entered into by Peak Developments with respect to the Project;
    - iii) Plans, permits, approvals, licenses, contracts and agreements relation to the construction and operation of the Project;
    - iv) Letters of Credit;
    - v) Revenues, and other rights; and
  - f) The guarantees and postponement of claims of Peak Developments LP, Westcastle Holdings, Westcastle Land, Boulevard, Riverview; Salgado and York.
8. The mortgage and assignment of rents were filed in the Nelson Land Title Office on December 12, 2022, under numbers CB383780 and CB383781.
9. A financing statement was registered at the British Columbia Personal Property Registry on November 28, 2022, under Base Registration Number 222486P, naming Peoples as secured party, and Peak Developments Corp. and Peak Developments Limited Partnership, as debtor.
10. A financing statement was registered at the British Columbia Personal Property Registry on November 28, 2022, under Base Registration Number 222508P, naming Peoples as secured party, and Peak Developments Corp. and the guarantors as debtor.
11. Under the terms of the mortgage, Peak Developments is required to pay all property taxes in connection with the Lands (as well as any other amounts that

could form a charge in priority to Peoples's security). Under the terms of the mortgage, Peak Developments is also prohibited from permitting or suffering the registration of a builders lien against title to the Lands.

12. The terms of the mortgage, the security agreement, the cost overrun agreement and the assignment of contracts agreement grant Peoples, *inter alia*, the right to appoint a receiver and manager over Peak Developments upon the occurrence of an event of default.

#### **The loan is in arrears**

13. The mortgage loan made under the Commitment Letter has a principal amount of \$20,454,000.00. The balance owing to Peoples is \$17,153,910.36 as at April 1, 2025. The loan is now in arrears.

#### **The Project is overbudget**

14. The Project is overbudget and Peak Developments has no money to either complete the Project or to keep the site secure.
15. Property taxes are in arrears for 2025 in the amount of \$16,951.96 with interest accrued to April 1, 2025, in the amount of \$388.53, and penalties totalling \$1,695.20. The sums owed for property taxes form a priority charge against the Lands and erode Peoples's security position.
16. Buildings liens have registered against the Project as follows:

Date	Charge No.	Name	Amount
January 20, 2025	CB1826406	MacKay Contracting Ltd.	\$524,062.32
February 14, 2025	CB1876435	Kulkon Construction Corp.	\$1,197,145.17
March 12, 2025	CB1921687	1111053 BC Ltd., dba JJ Mechanical	\$185,879.37
March 14, 2025	CB1927320	Gauer Power Ltd.	\$172,783.62

Date	Charge No.	Name	Amount
March 14, 2025	CB1927469	Riverview Custom Homes Ltd.	\$3,463,451.47
March 18, 2025	HB12546	IKA Builders Inc.	\$944,011.32
March 21, 2025	CB1939465	Westcastle Holdings Ltd.	\$371,487.02
March 25, 2025	CB1944843	689048 Alberta Limited	\$162,162.02
April 9, 2025	HB13198	Steven Douglas Howg	\$4,000.00

17. The Project has stalled and site security and the potential for damage or waste are urgent concerns.

#### Plan

18. The immediate needs are financing to secure the site, to obtain information, and to develop a plan for the Project.
19. In order to secure the site, the fuel supplier needs to be paid to keep the buildings heated, and the site needs to be secured. Keeping labour on site may be the best way to keep the site secured and to keep insurance in place. These needs require immediate financing.
20. A reasonable scenario for recovery is a build out, but that needs to be considered on the basis of objective evidence and information that is lacking at this stage. It can only be determined with an appraisal, a plan with a budget, and an assessment of the validity of the liens and payables. A court appointed receiver is in the best position to gather the required information and move forward with the Project.
21. Peoples wishes to appoint a receiver to secure the site, develop a plan, and implement the plan.
22. Peoples reserves all other rights and remedies.

### **The Proposed Receiver**

23. D. Manning & Associates Inc. is a licensed insolvency trustee and has substantial experience as a receiver and officer of the court, including with respect to appointments of this nature. Its proposed senior building consultant for this project, Mr. Chysik, is a builder with a great deal of experience in the construction industry, and receiverships. Specifically, he has a great deal of experience in wood frame town homes.
24. D. Manning & Associates Inc. has consented to act as Receiver and Manager of Peak Developments.

### **Part 3: LEGAL BASIS**

#### **Receivership Application**

25. The *Law and Equity Act*, RSBC 1996, c 253, provides:

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

26. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, provides:

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

27. The purpose and object of a receivership authorized by the *BIA* is to facilitate and enhance the preservation and realization of the assets of an insolvent debtor for the benefit of the creditors in accordance with their priority rankings.

*British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246, para. 21,  
leave to appeal refused, May 1, 2025 (SCC)

28. The court will appoint a receiver and manager when “just or convenient.”

*Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477  
*Royal Bank of Canada v Kingsley Trucking Ltd.*, 2025 BCSC 756, para. 22  
*Golf Properties of Florida, LLC v Hentosz Resources Ltd.*,  
2025 ABCA 93, para 16

29. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver on default, the burden on the applicant is relaxed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, the nature of the remedy is not extraordinary or equitable in circumstances where commercial parties have expressly contemplated the appointment in a contract governing their relationship.

*Textron* at paras 50 and 75

*Royal Bank of Canada v Kingsley Trucking Ltd.*, at para. 21

30. It is just and convenient for the court to appoint D. Manning & Associates Inc. as receiver of Peak Developments for reasons including:

- a) This is a commercial loan involving sophisticated commercial entities and, as part of the balancing of the parties' respective rights and obligations, Peoples was granted the contractual right to appoint a receiver under both the mortgage and the security agreement;
- b) Related to the above point, the combination of the mortgage, the security agreement and the cost overrun agreement establishes that the parties

objectively intended, in the event of default, Peoples would have the ability to control all aspects of the Lands;

- c) Peoples's security is at risk and there is a potential for Peoples to suffer a shortfall – i.e., Peoples faces the prospect of suffering irreparable harm and a Receiver is immediately required to assess and, to the extent possible, mitigate the risk of harm;
- d) Peak Developments is not meeting its liabilities as they come due and is, accordingly, insolvent and unable to pay priority claims or to fund completion of construction, in both cases, to the considerable detriment of Peoples's security position;
- e) Construction has ceased and, thus, a receiver is required to:
  - i) Secure the property and keep it from wasting or otherwise be put at risk;
  - ii) Assess the status of the construction, the lien claims and the costs to complete; and
  - iii) If appropriate in the circumstances, complete the remaining work or any portion thereof in order to maximize the value of the Lands;
- f) The actions described under this paragraph ought to benefit all secured and unsecured creditors of Peak Developments through the reduction of the rate at which indebtedness accrues in priority to their claims and/or through the increase of the value of the Lands; and
- g) Peak Developments has committed numerous, serious defaults under loan.

### **Priority of Secured Lender**

31. Section 32 of the *Builders Lien Act*, SBC 1997, c 45, provides as follows:

(5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.

(6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that

- (a) the advances will be applied to complete the improvement, and
- (b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.

32. Subsections (5) and (6) create an exception to the general scheme of lien priority whereby advances made after a lien has been filed may obtain priority through a court order. Such an order is mandatory when the requirements of ss. 32(5) and (6) are met; the provision therefore gives the court no room to contemplate the fairness or desirability of allowing the application.

*Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4, leave to appeal refused 2013 CanLII 2397 (SCC)

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Paul De Luca, to be sworn.
2. Affidavit #1 of Kim MacDonald, made May 1, 2025.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that
  - i) you intend to refer to at the hearing of this application, and
  - ii) has not already been filed in the proceedings, and
- c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - i) a copy of the filed application response;

- ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: MAY 1, 2025

Jonathan L. Williams  
Signature of lawyer for applicant  
Jonathan L. Williams

***To be completed by the court only:***

Order made

- ☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of [ ] Judge  
[ ] Associate Judge

**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial

- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE A

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE  
PEOPLES

Petitioner

AND:

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS LIMITED  
PARTNERSHIP, WESTCASTLE HOLDINGS LTD., WESTCASTLE LAND  
DEVELOPMENTS CORP., BOULEVARD CONSTRUCTION CORPORATION,  
RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO, also known as PHILIP  
SALGADO, CHRIS YORK, also known as CHRISTOPHER YORK, MACKAY  
CONTRACTING LTD., KULKON CONSTRUCTION CORP., 1111053 B.C. LTD.  
DOING BUSINESS AS JJ MECHANICAL, GAUER POWER LTD., IKA  
BUILDERS INC., 689048 ALBERTA LIMITED, STEVEN DOUGLAS HOWG,  
also known as STEVEN DOUGLAS HOWG doing business as STP PAINTING,  
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE SUBJECT LANDS  
AND PREMISES

Respondents

IN THE MATTER OF THE RECEIVERSHIP OF PEAK DEVELOPMENTS CORP. and  
PEAK DEVELOPMENTS LIMITED PARTNERSHIP

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE MILMAN

)  
)  
)  
)

TUESDAY, THE 6<sup>TH</sup> DAY OF MAY, 2025

ON THE APPLICATION of the Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the “**LEA**”) appointing D. MANNING & ASSOCIATES INC. as RECEIVER AND MANAGER (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and property of PEAK DEVELOPMENTS CORP. and PEAK DEVELOPMENTS LIMITED PARTNERSHIP (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor in constructing residential and commercial strata lots located at 500 – 302<sup>nd</sup> Avenue, Kimberley, British Columbia, legally described as, City of Kimberley, Parcel Identifier 031-836-780, Lot 1, District Lot 2378, Kootenay

District, Plan EPP124173 (the “**Lands**”), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of Paul DeLuca, sworn May \_\_\_, 2025 and the Affidavit #1 of Kim MacDonald, sworn May 1, 2025 and the pleadings filed herein and the consent of D. MANNING & ASSOCIATES INC. to act as the Receiver; AND ON HEARING Jonathan L. Williams, Counsel for PEOPLES TRUST COMPANY and other counsel as listed on Schedule “B” hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, D. MANNING & ASSOCIATES INC. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, acquired for or used in relation to a business carried on by the Debtor in constructing a residential development at and on the Lands including all proceeds (the “**Property**”).

### **RECEIVER’S POWERS**

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all rents, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including, without limitation, those conferred by this Order;
  - (e) to take those steps the Receiver considers necessary for the construction or completion of the construction of any buildings or improvements on the lands included in the Property, to make any existing buildings or improvements on the Property continually habitable, but without liability to the Receiver for permissive or voluntary waste.

- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order, including, without limitation, Speculation and Vacancy Tax Declarations in respect of the Debtor and the Property;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (k) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any Licensed Insolvency Trustee appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,
- (r) to receive further advances of the Petitioner's loan to the Debtor, up to \$3,000,000 (which amount may be further increased be either by the agreement of the parties hereto or further Order of this Court) for the purpose of carrying on its duties

pursuant hereto which advances will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Debtor; (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or

other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.
11. Any person who has provided policies of insurance or indemnities (including, without limitation, New Home Warranty) at the request of the Receiver shall be required to continue or renew such policy of insurance or indemnity following the date of this Order provided that the Receiver make payment of the premium (on the usual commercial terms) as if this proceeding had not been commenced.

## CONTINUATION OF SERVICES

12. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, rental income from all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## EMPLOYEES

14. Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a

contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

16. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
  - (a) before the Receiver's appointment; or,
  - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in

priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands:
  - (a) Against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel in respect of carrying out any of the foregoing activities (and such amounts shall constitute advances against its remuneration and disbursements when as approved by this Court;
  - (b) In payment of any charges for taxes, utilities, or insurance premiums with relate to any of the Property;
  - (c) In repayment of the Receiver's interim advances from the Petitioner pursuant to the Petitioner's loan to the Debtor;
  - (d) In reduction of the amount owing under the Petitioner's mortgage and subsequent to payment thereof to the Respondent mortgagees, as per their respective priorities, in reduction of the amounts owing thereunder.

#### SERVICE AND NOTICE OF MATERIALS

23. The Receiver shall establish and maintain a website in respect of these proceedings at: [www.manning-trustee.com](http://www.manning-trustee.com) (the "**Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
24. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further

notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.

25. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the “**Service List**”). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
26. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
27. Notwithstanding paragraph 26 of this Order, or the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
28. The Receiver and its counsel are authorized to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

29. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
30. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a Licensed Insolvency Trustee of the Debtor.
32. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, 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 such courts, tribunals and regulatory and administrative bodies are 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.

33. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
35. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

BY THE COURT

---

Signature of  
lawyer for Petitioner

REGISTRAR

**Schedule "A"**

**Demand for Notice**

**TO:** [Name of Applicant]  
c/o [Name of Counsel to the Applicant]  
Attention:  
Email:

**AND TO: D. MANNING & ASSOCIATES INC.**

Attention:  
Email:

**Re: In the matter of the Receivership of PEAK DEVELOPMENTS CORP.**

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_

SCHEDULE A

**Schedule "B"**

**Counsel Appearing**

SCHEDULE A

Action No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH  
COLUMBIA

BETWEEN:

Peoples Trust Company  
Petitioner

- and -

PEAK DEVELOPMENTS  
CORP. and others  
Respondents

RECEIVERSHIP ORDER