

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

APPLICATION RECORD

September 15, 2021

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AND TO:	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8</p> <p>insolvency.unit@ontario.ca</p>

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Electronically issued : 15-Sep-2021
Délivré par voie électronique
Toronto

BETWEEN:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing
In person

By telephone conference

X By video conference

at the following location:

[ZOOM DETAILS TO FOLLOW]

on September 20, 2021 at 12:00pm.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or,

where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September , 2021

Issued by: _____
Local registrar

Address of 330 University Avenue, 9th Fl.
Court office Toronto, ON M5G 1R7

TO: **RIVERSIDE PROFESSIONAL CENTRE INC.**
100 King Street W
C/O Gowling WLG 1 First Canadian Place, Suite #1600
Toronto, ON M5X 1G5

APPLICATION

1. The Applicant, The Manufacturers Life Insurance Company ("**Manulife**"), makes application for an order substantially in the form attached as **Schedule "A"**:

- (a) appointing MNP Ltd. ("**MNP**") as receiver of the property, assets and undertaking of Riverside Professional Centre Inc. ("**Riverside**" or the "**Debtor**");
- (b) if necessary, validating service of the notice of application and the application record in the manner effected, abridging the time for service thereof (if necessary), and dispensing with service thereof on any party other than the parties served; and
- (c) such further and other relief as this Honourable Court deems just;

2. The grounds of the application are:

Overview

- (a) Manulife brings this application for the appointment of a receiver over Riverside, its borrower and the owner of a medical office building in Ottawa ("**Building**"), pursuant to the loan and security agreements made between the parties.
- (b) Riverside has, for two years, been in default of substantial (\$625,000) and growing municipal property tax obligations. As a result of this failure, Riverside is in default not only of the loan and security agreements with Manulife, but also Riverside's ground lease for the Building with The Ottawa Hospital ("**Ottawa Hospital**"), the lessor and owner of the land on which the Building is situated.

- (c) Riverside's ongoing default of the ground lease is of critical concern to Manulife because it permits Ottawa Hospital to terminate the ground lease thereby potentially eliminating Manulife's security.
- (d) Additionally, to add to this concern, Riverside is embroiled in acrimonious and longstanding litigation with Ottawa Hospital in respect of the Building. Riverside's claims in the litigation were recently summarily dismissed in their entirety (and with costs), a result that Riverside is on record as saying would render it insolvent.
- (e) Despite the severity of these defaults and its apparent insolvency, Riverside has declined to enter into a satisfactory form of forbearance agreement with Manulife, or to otherwise provide Manulife with sufficient comfort that its loan and security are protected.

Background

- (f) Manulife advanced a loan of \$7,500,000 to Riverside ("**Loan**") pursuant to the terms of a commitment letter dated December 15, 2011.
- (g) As security for the Loan, Manulife took a charge ("**Mortgage**") against Riverside's leasehold interest in the property municipally known as 1919 Riverside Drive, Ottawa, Ontario ("**Property**").
- (h) The Property is owned by Ottawa Hospital and is located in the centre of Ottawa Hospital's Riverside Campus.

- (i) The Building is approximately 48,000 square feet spread over four storeys and has direct access to the Ottawa Hospital. Space in the Building is leased to doctors, dentists, and other medical professionals.
- (j) Riverside leases the Property from Ottawa Hospital pursuant to an indenture, dated September 1, 1989, as assigned ("**Ground Lease**"). The initial term of the Ground Lease is 49 years, with an option to renew for a further 49 year term.
- (k) The maturity date of the Loan is February 1, 2022.
- (l) The Mortgage is registered against title to the Property.
- (m) As additional security for the Loan, Riverside provided Manulife with a general security interest over all of Riverside's personal property and undertaking, pursuant to a general security agreement, dated February 16, 2012 ("**GSA**").
- (n) Further, and pursuant to the Commitment Letter, The K Trust ("**Trust**") agreed to indemnify Manulife from, among other things, losses arising from actions by a third party in respect of the Property, and Riverside's failure to adequately maintain and insure the Property.
- (o) A search conducted against Riverside under the personal property registration system discloses two registrations: one in favour of Manulife, and one in favour of Stuart Budd & Sons Ltd., an automobile retailer.

Substantial Ongoing Default in Payment of Property Taxes

- (p) Pursuant to the Loan and Mortgage, Riverside is required to (among other things) pay municipal property taxes when due. Riverside is also required to pay municipal taxes under the Ground Lease.
- (q) Riverside has failed to pay municipal taxes to the City of Ottawa since 2019. As of May 7, 2021, the total outstanding tax balance is \$624,853.58, including \$528,870.61 in taxes and \$95,982.97 in penalties and interest ("**Tax Arrears**").
- (r) Riverside's failure to pay the Tax Arrears is significant because it is a material default of the Ground Lease and accords termination rights and remedies to the ground lessor, the Ottawa Hospital.

Failed Litigation with Ottawa Hospital

- (s) On September 29, 2017, Riverside commenced an action against Ottawa Hospital for the hospital's alleged breach of the Ground Lease by, among other things, failing to remit certain parking revenue to the Debtor, failing to ensure that Riverside could use certain parking spaces at the Building, and using an access road on the Property without an easement ("**Lease Litigation**"). Riverside sought \$4.6 million in damages.
- (t) By motion returnable November 24 and 25, 2020, the Debtor sought summary judgment in the Lease Litigation.

- (u) Justice Robert Smith released written reasons for decision on March 8, 2021 dismissing all of Riverside's claims and awarding Ottawa Hospital an easement over the Property.
- (v) Subsequently, in reasons released May 18, 2021, Justice Smith ordered that Riverside pay the Ottawa Hospital costs totalling \$398,000 in costs of the Lease Litigation.
- (w) Riverside has appealed the dismissal of its claims. The company is purporting to act in person on the appeal, a fact which is in itself of concern as the Rules of Court do not permit companies to act in person.
- (x) Riverside filed a factum in support of the summary judgment motion stating that "it will go bankrupt if its parking rights are not recognized".

Demands and Notices

- (y) Beginning in October 2020, pursuant to Manulife's rights under paragraph 4(i) of the GSA and term 5.17 of the Mortgage, counsel for Manulife made a series of requests regarding Riverside's business, finances and operations, cash flow, vacancy rates, the Lease Litigation, and the status of the Trust.
- (z) It appears that Riverside delayed responding to Manulife's information requests while it awaited the outcome of the Lease Litigation. To the extent that Riverside did provide requested information, it was largely piecemeal, incomplete, and provided after numerous prompts, requests

and follow-ups. The material provided did not address Manulife's concerns about Riverside's solvency.

- (aa) On May 4, 2021, Ottawa Hospital noted Riverside in default of the Ground Lease as a result of the Tax Arrears ("**Default Letter**"). In the Default Letter the hospital asked the Debtor to provide evidence that it had paid the Tax Arrears.
- (bb) Although Riverside responded to the Default Letter, it does not appear to have taken any concrete steps to address the issues raised in the Default Letter as being of concern to its ground lessor.
- (cc) In all of the above circumstances, Manulife issued a demand for payment and notice of intention to enforce security on June 11, 2021.

Forbearance Discussions

- (dd) Thereafter, Manulife sought to work with Riverside to more formally address its concerns regarding tax arrears, and the jeopardy of the Ground Lease.
- (ee) To this end, on July 7, 2021, counsel for Manulife sent a proposed forbearance agreement to counsel for Riverside setting out the terms by which Manulife would be willing to forbear from enforcing its security. Among other terms, Riverside was required to pay the Tax Arrears.
- (ff) Despite Manulife's best efforts, no progress has been made on the forbearance agreement.

- (gg) Manulife's security remains at risk for the reasons outlined above, including the Tax Arrears, and the judgment and costs award in the Lease Litigation.

Receivership

- (hh) Paragraph 13(a) of the GSA and the standard charge terms to the Mortgage provide that Manulife has the right to appoint a receiver in the event that the Mortgage is in default. Pursuant to term 6.1.1 of the Mortgage:

6.11.1 Appointed and removal. When we enforce the security, we may in writing appointed anyone to be a receiver or a receiver and manager as to the property, on any terms, including remuneration, that we think are reasonable.... We need not obtain security from the receiver and are not limited by nay law in our choice of the receiver. We may make the appointment even if we have taken possession of the property and, when we do so, we will be treated as having gone out of possession.... We may also ask a court to appoint a receiver.

- (ii) It is in the best interests of all parties that a receiver be appointed to bring stability and accountability to the current situation, and to realize on Riverside's assets, including the Ground Lease, in a manner that is efficient, open, and transparent.
- (jj) The proposed receiver, MNP, would be required to seek court approval for the sale of the Ground Lease on notice to all interested parties, including Ottawa Hospital.
- (kk) It is just and convenient in the circumstances to appoint a receiver over the undertaking, property, and assets of Riverside with the power to market and sell the Ground Lease for the benefit of Manulife and any other creditors.

(ll) MNP is prepared to act as receiver if so appointed.

Other

(mm) Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

(nn) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(oo) Such other grounds as the lawyers may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) Affidavit of Robert Amos, sworn September 14, 2021; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September, 14 2021

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Lawyers for the Applicant

THE MANUFACTURERS LIFE INSURANCE COMPANY and RIVERSIDE PROFESSIONAL CENTRE INC.
Applicant Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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Lawyers for the Applicant

TAB 2

**ONTARIO
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B E T W E E N:

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- and -

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APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C.
1985, c. B-3, as amended

**AFFIDAVIT OF ROBERT AMOS
(sworn September 14, 2021)**

I, Robert Amos, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a Director, Credit & Collateral Surveillance with The Manufacturers Life Insurance Company ("**Manulife**"), the applicant in this proceeding. I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.
2. I swear this affidavit in support of Manulife's application to appoint MNP Ltd. ("**MNP**") as receiver over the property, assets, and undertaking of its borrower, Riverside Professional Centre Inc. ("**Riverside**" or the "**Debtor**").

I. OVERVIEW

3. Riverside is the owner of a medical office building in Ottawa, Ontario (“**Building**”). The Building is approximately 48,000 square feet and is spread over four storeys with direct access to The Ottawa Hospital (“**Ottawa Hospital**”). Space in the Building is leased to doctors, dentists, and other medical professionals.

4. The Building is located on property owned by Ottawa Hospital and leased by the hospital to Riverside pursuant to a ground lease.

5. For the past two years, Riverside has been in default of substantial and ongoing municipal property tax obligations in connection with the Building. As of May 7, 2021, the Debtor owed \$624,853.58 (the “**Outstanding Property Taxes**”) to the City of Ottawa for outstanding municipal taxes. From that time the Debtor has paid estimated go forward property taxes to Manulife into an escrow account. Interest and penalties continue to accrue on the Outstanding Property Taxes.

6. As consequence of its failure to pay the Outstanding Property Taxes, Riverside is in default not only of its loan and security documents with Manulife, but also its ground lease for the Building with Ottawa Hospital.

7. Riverside is additionally involved in longstanding and acrimonious litigation, spanning more than ten years, with Ottawa Hospital in respect of the ground lease. Riverside’s claims in the litigation were recently summarily dismissed in their entirety (and with costs).

8. In the circumstances, Manulife believes that the appointment of a receiver is just and convenient and will provide for an orderly marketing and sale of the Debtor's business.

II. BACKGROUND

A. Parties

9. Manulife is a life insurance company and a wholly owned subsidiary of Manulife Financial Corporation. Manulife was incorporated on June 23, 1887, by a Special Act of Parliament of the Dominion of Canada, and was converted into a mutual life insurance company in 1968. Pursuant to Letters Patent of Conversion, effective September 23, 1999, Manulife implemented a plan of demutualization under the *Insurance Companies Act*, S.C. 1991, c. 47, as amended, and was converted into a life insurance company.

10. Riverside is an Ontario corporation with its registered office in Toronto, Ontario. It carries on business as an operator of commercial medical buildings including the Building. Attached as **Exhibit "A"** is a copy of the corporate profile report for Riverside.

B. Loan

11. Manulife advanced a loan of \$7,500,000 to Riverside ("**Loan**") pursuant to a commitment letter dated December 15, 2011 ("**Commitment Letter**"). Attached as **Exhibit "B"** is a copy of the Commitment letter. Attached as **Exhibit "C"** is a copy of the February 8, 2012 letter extending and amending the December 15, 2011 letter.

12. As of the date of my affidavit, \$5,560,155.90 remains outstanding under the Loan, exclusive of legal fees.

13. As security for the Loan, Manulife took a charge (“**Mortgage**”) against Riverside’s leasehold interest in the property municipally known as 1919 Riverside Drive, Ottawa, Ontario (“**Property**”). The Mortgage is registered against title to the Property. A copy of the Mortgage is attached as **Exhibit “D”**.

14. The Property is owned by Ottawa Hospital and is located in the middle of the hospital’s campus. A copy of the parcel register for the Property is attached as **Exhibit “E”**.

15. The maturity date of the Loan is February 1, 2022.

16. As additional security for the Loan, Riverside provided Manulife with a general security interest over all of the Riverside’s personal property and undertaking, pursuant to a general security agreement dated February 16, 2012 (“**GSA**”). The GSA was registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended, in February 10, 2012. Attached as **Exhibit “F”** is a copy of the GSA.

17. Riverside also provided Manulife with a general assignment of all leases and rent dated February 16, 2012. The assignment was registered on title to the Property on February 16, 2012. Attached as **Exhibit “G”** is a copy of the general assignment of leases and rents.

18. Further, and pursuant to the Commitment Letter, The K Trust (“**Trust**”) agreed to indemnify Manulife from, among other things, losses arising from actions by a third party in respect of the Property, and Riverside’s failure to adequately maintain and insure the Property.

C. Ground Lease

19. Riverside leases the Property from Ottawa Hospital pursuant to an indenture, dated September 1, 1989, as assigned (“**Ground Lease**”). The Ground Lease was registered on title to the Property on April 12, 1990. A copy of the Ground Lease is attached as **Exhibit “H”**.

20. The Ground Lease has an initial 49 year term that expires in 2038, with an option to renew for a further 49 year term.

21. Among other things, Section 5.02 of the Ground Lease requires Riverside to pay “all taxes, including Municipal Taxes” each year. The Ground Lease defines “Municipal Taxes” as “the aggregate of all property, utility, business taxes, local improvement charges or similar charges, duties, rates and assessments charged or levied against the Demised Premises and the Building or any part thereof, by any lawful authority having jurisdiction over the same.”

D. Other Creditors

22. A search conducted against Riverside under the personal property registration system discloses two registrations: one in favour of Manulife, and one in favour of Stuart Budd & Sons Ltd., a company that sells automobiles. A copy of the personal property registration system search results is attached as **Exhibit “I”**.

E. Lease Litigation

23. On or about September 29, 2017, Riverside commenced an action against Ottawa Hospital seeking \$4.6 million in damages for the hospital’s alleged breach of the Ground Lease by, among other things, failing to remit certain parking revenue to the Debtor, failing to ensure that Riverside could use certain parking spaces at the Building,

and using an access road on the Property without an easement (“**Lease Litigation**”). Attached as **Exhibit “J”** is a copy of the Amended Statement of Claim in the Lease Litigation.

24. By motion returnable November 24 and 25, 2020, Riverside sought summary judgment of its claims against Ottawa Hospital. Attached as **Exhibit “K”** is a copy of Riverside’s October 28, 2020 factum filed in support of the motion for summary judgment.

25. On March 8, 2021, Justice Smith released written reasons for decision dismissing all of Riverside’s claims and awarding Ottawa Hospital an easement over the Property (“**Dismissal Decision**”). Attached as **Exhibit “L”** is a copy of the Dismissal Decision.

26. In the Dismissal Decision Justice Smith found, among other things, that since 2018 the Building has been less than fully occupied with a vacancy rate of 29.55%.

27. Subsequently, in reasons released on May 18, 2021, Justice Smith ordered Riverside to pay Ottawa Hospital costs of the Lease Litigation totalling \$398,000. Attached as **Exhibit “M”** is a copy of the May 18, 2021 decision on costs.

28. Riverside has appealed the dismissal of its claims. An appeal date has been set for early 2022.

III. SUBSTANTIAL AND ONGOING DEFAULT

29. Pursuant to paragraph 8 of the Loan and term 5.3.1 of the Mortgage, Riverside is required to pay municipal property taxes when due. As noted above, Riverside is also required to pay municipal taxes under the Ground Lease.

30. As of May 7, 2021, the total outstanding tax balance is \$624,853.58, including \$528,870.61 in taxes and \$95,982.97 in penalties and interest (previously referred to as the Outstanding Property Taxes). A copy of a May 7, 2021 Statement of Tax Account from the City of Ottawa is attached as **Exhibit "N"**.

31. The Debtor started paying property taxes to Manulife, in escrow, to be remitted as post May 7, 2021 property taxes come due. Manulife made a payment from the escrow account on June 9, 2021 in the amount of \$37,021.28. This payment was on account of post May 7, 2021 property tax accruals. Manulife currently holds \$55,531.92 in the property tax escrow account and will remit in the ordinary course. The Outstanding Property Taxes do not reflect accrued interest and penalties from and after May 7, 2021.

32. To the best of my knowledge, the Outstanding Property Taxes remain unpaid.

IV. DEMANDS AND NOTICES

A. Riverside Failed to Completely Respond to Manulife's Document Requests

33. Beginning in October, 2020, pursuant to Manulife's rights under paragraph 4(i) of the GSA and term 5.17 of the Mortgage, counsel for Manulife made a series of requests regarding Riverside's business, finances, operations, cash flow, vacancy rights, the Lease Litigation, and the status of the Trust.

34. On October 22, 2020, counsel for Manulife wrote to Riverside regarding the Outstanding Property Taxes and advised that this was a material payment default under the Loan and Mortgage. Counsel for Manulife invited the Debtor to discuss the same. Attached as **Exhibit "O"** is a copy of the October 22, 2020 letter.

35. Thereafter, during a November 9, 2020 telephone call between counsel for Manulife and counsel for Riverside, the Debtor's counsel advised that Riverside wanted to discuss amending the Loan with Manulife.

36. On November 11, 2020, Manulife sent Riverside a letter regarding the terms of any discussions regarding amendments to the Loan ("**Pre-Negotiation Letter**"). Included in the Pre-Negotiation Letter was a request for certain documents and information from Riverside ("**Document Request**"). Attached as **Exhibit "P"** is a copy the Pre-Negotiation Letter.

37. Nearly two months later, on January 7, 2021, Riverside's counsel provided certain information to counsel for Manulife in response to the Document Request. This information was not a complete response to the request. Among other things, Riverside did not provide a complete set of financial statements, information regarding capital expenditures and disbursements for the Building for the past three years, or the current name of the trustee of the Trust. Attached as **Exhibit "Q"** is a copy of the January 7, 2021 email from Riverside's counsel regarding the same.

38. On January 26, 2021, Manulife reiterated its request for the outstanding items in the Document Request and requested additional information from Riverside, including a 2021 budget and a list of projected capital expenditures. Attached as **Exhibit "R"** is a copy of the January 26, 2021 email from counsel for Manulife regarding the same.

39. On January 29, 2021, counsel for Riverside provided counsel for Manulife with the Debtor's revised budget for 2021, current rent roll, and certain financial statements. Attached as **Exhibit "S"** is a copy of the January 29, 2021 email from counsel for Riverside regarding the same.

40. Although certain of the documents provided by Riverside's counsel were responsive to Manulife's requests, many of Manulife's other requests remained outstanding including information relating to the Debtor's capital expenditures for the past three years, and the identity of the current trustee of the Trust.

41. On March 30, 2021, counsel for Manulife wrote to counsel for Riverside regarding the Outstanding Property Taxes and requested that the Debtor present a detailed plan to address the same. Counsel for Manulife also noted that Riverside had not satisfied the Document Request and asked that Riverside provide the outstanding items. Attached as **Exhibit "T"** is a copy of the March 30, 2021 letter.

42. Counsel for Riverside responded to the March 30, 2021 letter on April 13, 2021, and advised that Riverside was "working on a plan to deal with taxes and all issue related to this property and I will advise in due course." The Debtor's counsel also provided information regarding Riverside's capital expenditures for the past three years, and information for the Trust. Attached as **Exhibit "U"** is a copy of the April 13, 2021 email from counsel for Riverside regarding the same.

43. On May 6, 2021, Manulife wrote to Riverside that it would not be renewing the Loan and to request that Riverside seek alternative financing at its earliest opportunity. Attached as **Exhibit "V"** is a copy of the May 6, 2021 letter.

44. Despite the advice from Riverside’s counsel that the Debtor was working on a plan to deal with the Outstanding Property Taxes, Riverside has failed to pay the same.

45. On May 17, 2021, counsel for Riverside provided Manulife’s counsel with an email from the Building’s property manager, Andrew Palin (“**Palin**”) of PAR-Med Realty Limited containing information related to the Building. In the email Palin states that “Colliers has just been retained to as exclusive listing agent [for the Building] and will be actively targeting new tenants.” Attached as **Exhibit “W”** is a copy of the May 17, 2021 email from Palin. Attached as **Exhibit “X”** is a copy of the Flyer for the Building prepared by Colliers Macaulay Nicolls Inc., Brokerage.

B. Ottawa Hospital Issues Notice of Default

46. On May 4, 2021, Ottawa Hospital noted Riverside in default of the Ground Lease as a result of the Outstanding Property Taxes (“**Default Letter**”). In the Default Letter the hospital asked the Debtor to provide, among other things, evidence that it had paid the Outstanding Property Taxes. Attached as **Exhibit “Y”** is a copy of the May 4, 2021 letter.

47. Although Riverside responded to the Default Letter, it does not appear to have taken any concrete steps to address the issues raised in the Default Letter as being of concern to its ground lessor, including curing the Outstanding Property Taxes.

48. As a result of Riverside's failure to pay the Outstanding Property Taxes, the value of Manulife's security is at risk. Section 11.02 of the Ground Lease states in relevant part that:

If

...

(b) the Lessee shall default in performing or observing any of its other covenants or obligations under this Lease...and the Lessor or the Hospital shall have given to the Lessee notice of such default...and at the expiration of Fifteen (15) days after the giving of such notice the default or contingency shall continue to exist;

the Lessor...may immediately or at any time thereafter re-enter the Demised Premises and the Building...may remove all persons and their property therefrom...and be repossessed and enjoy the Demised Premises, the Building or buildings and all fixtures and improvements upon the Demised Premises without such entry and repossession working a forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

49. Riverside's breach of the Ground Lease is also a breach of term 5.9 of the Mortgage.

C. Manulife Issues a Demand and Notice of Intention to Enforce Security

50. In all of the above circumstances, including Riverside's failure to cure the Outstanding Property Taxes default more than seven months after Manulife's notice to Riverside of the same, Manulife issued a notice of intention to enforce security on June 11, 2021. A copy of the notice of intention to enforce security is attached as **Exhibit "Z"**.

D. Forbearance Discussions

51. Thereafter, Manulife sought to work with Riverside to more formally address its concerns regarding the Outstanding Property Taxes and the jeopardy of the Ground Lease.

52. To this end, on July 7, 2021, counsel for Manulife sent counsel for Riverside a proposed forbearance agreement that sets out the terms by which Manulife would be willing to forbear from enforcing its security, including Riverside's payment of the Outstanding Property Taxes. Attached as **Exhibit "AA"** is a copy of the July 7, 2021 email from counsel for Manulife regarding the same.

53. On July 22, 2021, counsel for RPCI contacted Manulife's counsel to discuss the possibility of a long term forbearance.

54. On July 28, 2021, RPCI and Manulife entered into a standstill agreement (the "**Standstill Agreement**"). The purpose of the standstill agreement was to provide Manulife and RPCI with a period of time to negotiate terms of a long term forbearance agreement. Attached as **Exhibit "BB"** is a true copy of the executed Standstill Agreement.

55. The Standstill Agreement expired on August 17, 2021. The parties were unable to agree upon terms of a long term forbearance agreement.

V. RECEIVERSHIP

56. For the reasons outlined above, including the Outstanding Property Taxes, the Loan default and the default of the Ground Lease, the judgment and costs award in the

Lease Litigation, and the Building's vacancy rate, there is a substantial continuing risk to Manulife's collateral.

57. Paragraph 13(a) of the GSA and the standard charge terms to the Mortgage provide that Manulife has the right to appoint a receiver in the event that the Mortgage is in default. Pursuant to term 6.1.11 of the Mortgage:

6.11.1 **Appointment and removal.** When we enforce the security, we may in writing appoint anyone to be a receiver or a receiver and manager as to the property, on any terms, including remuneration, that we think are reasonable.... We need not obtain security from the receiver and are not limited by any law in our choice of the receiver. We may make the appointment even if we have taken possession of the property and, when we do so, we will be treated as having gone out of possession.... We may also ask a court to appoint a receiver.

58. In all of the above circumstances, it is in the best interests of all parties that a receiver be appointed to realize on Riverside's assets, including the Ground Lease, in a manner that is efficient, open and transparent.

59. The proposed receiver, MNP, would be required to seek court approval for the sale of the Ground Lease on notice to all interested parties, including Ottawa Hospital.

60. Accordingly, it is just and convenient in the circumstances to appoint a receiver over the undertaking, property, and assets of Riverside with the power to market and sell the Ground Lease for the benefit of Manulife and any other creditors.

61. MNP is prepared to act as receiver if so appointed. Attached as **Exhibit "CC"** is a copy of MNP's consent to act.

SWORN BEFORE ME over videoconference on this 14th day of September, 2021. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the City of Toronto, in the Province of Ontario. This affidavit was commissioned remotely as a result of the COVID-19 pandemic.



Robert Amos

A Commissioner for taking Affidavits

ALINA STOICA

Note: This affidavit was commissioned via simultaneous video-conference in accordance with the *Commissioners for taking Affidavits Act*, R.S.O. 1990, CHAPTER C.17, and the Law Society of Ontario: COVID-19 Response Statement interpretation of that Act, under which (i) the identity of the deponent was confirmed from government issued identification, (ii) the commissioner administered the oath or affirmation, (iii) the deponent affixed their electronic signature to the affidavit and transmitted the full electronic affidavit, as sworn or affirmed, including exhibits to the commissioner, (iv) the deponent confirmed their electronic signature to the commissioner, (v) the commissioner affixed their electronic signature to the affidavit including exhibits.

**This is Exhibit "A" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date	
1861266	RIVERSIDE PROFESSIONAL CENTRE INC.	2011/11/01	
		Jurisdiction	
		ONTARIO	
Corporation Type	Corporation Status	Former Jurisdiction	
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE	
Registered Office Address		Date Amalgamated	Amalgamation Ind.
100 KING STREET W C/O GOWLING WLG 1 FIRST CANADIAN PLACE Suite # 1600 TORONTO ONTARIO CANADA M5X 1G5		NOT APPLICABLE	A
		New Amal. Number	Notice Date
		NOT APPLICABLE	NOT APPLICABLE
			Letter Date
Mailing Address			NOT APPLICABLE
100 KING STREET WEST 1 FIRST CANADIAN PLACE Suite # 1600 TORONTO ONTARIO CANADA M5X 1G5		Revival Date	Continuation Date
		NOT APPLICABLE	NOT APPLICABLE
		Transferred Out Date	Cancel/Inactive Date
		NOT APPLICABLE	NOT APPLICABLE
		EP Licence Eff.Date	EP Licence Term.Date
		NOT APPLICABLE	NOT APPLICABLE
		Date Commenced in Ontario	Date Ceased in Ontario
		NOT APPLICABLE	NOT APPLICABLE
Activity Classification	Number of Directors Minimum Maximum		
NOT AVAILABLE	00001 00010	NOT APPLICABLE	NOT APPLICABLE

Request ID: 025079352
Transaction ID: 76742247
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/10/01
Time Report Produced: 10:40:03
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1861266

RIVERSIDE PROFESSIONAL CENTRE INC.

Corporate Name History

Effective Date

RIVERSIDE PROFESSIONAL CENTRE INC.

2011/11/01

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Amalgamating Corporations

Corporation Name

Corporate Number

2215739 ONTARIO LIMITED

2215739

RIVERSIDE PROFESSIONAL CENTRE INC.

1757639

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1861266	RIVERSIDE PROFESSIONAL CENTRE INC.

Administrator: Name (Individual / Corporation)	Address
LAWRENCE BONTJE	100 KING STREET WEST 1 FIRST CANADIAN PLACE Suite # 1600 TORONTO ONTARIO CANADA M5X 1G5

Date Began	First Director	
2012/10/30	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Administrator: Name (Individual / Corporation)	Address
LAWRENCE BONTJE	100 KING STREET WEST 1 FIRST CANADIAN PLACE Suite # 1600 TORONTO ONTARIO CANADA M5X 1G5

Date Began	First Director	
2012/10/30	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	VICE-PRESIDENT	

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1861266

RIVERSIDE PROFESSIONAL CENTRE INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2019

1C

2019/07/07 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

**This is Exhibit "B" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA



December 15, 2011

Via Email & Courier

Riverside Professional Centre Inc.
c/o Murray & Company
40 University Avenue, Suite 502
Toronto, ON M5J 1S3

Attention: David Forster & Scott White

Re: **Loan No. 862196:11**
1919 Riverside Drive, Ottawa, Ontario

The Manufacturers Life Insurance Company (the "Mortgagee" or "Manulife") hereby offers you a leasehold first mortgage loan (the "Loan") on the terms and conditions pursuant to this commitment letter (the "Commitment Letter").

1. Loan Amount:

\$7,500,000 (the "Loan Amount").

2. Interest Rate:

The interest rate will be the sum of 2.38% (the "Spread") and a yield calculated as an interpolation between the bid side yield on the 3 ¼% Government of Canada bond maturing June 1, 2021 and the 9% Government of Canada bond maturing June 1, 2025 (the "Interest Rate"). The interpolated yield will bear the same relationship to the yield on the above two bonds as the Maturity Date (as hereinafter defined) of the Loan bears to the maturity date of those Government of Canada bonds.

In calculating the interpolated yield for purposes of establishing the Interest Rate, the maturity date of the Loan will be February 1, 2022 (the "Maturity Date").

The Interest Rate will be fixed using the following criteria:

- a) It may be fixed only after the Mortgagor (as hereinafter defined) has returned the accepted Commitment Letter to the Mortgagee and paid the full Good Faith Deposit (as hereinafter defined).
- b) It must be fixed no earlier than thirty (30) days and no later than five (5) business days prior to the Funding Date (as hereinafter defined).
- c) In order to fix the Interest Rate, the Mortgagor must provide written notice to the Mortgagee requesting the Interest Rate fix by letter or e-mail (the "Notice"). Such Notice must be received and acknowledged by the Mortgagee prior to 1:00 p.m. Toronto time on the business day prior to the Interest Rate fix date (the "Acknowledgement").
- d) The Interest Rate will be fixed at 11:00 a.m. Toronto time on the first business day following the Acknowledgement.
- e) The Mortgagee will then provide the Mortgagor with written confirmation of the Interest Rate and payment terms.

If the Interest Rate, as established in accordance with this provision, is in excess of 6.5% then the Mortgagor shall, at closing, pay the Mortgagee an amount (the "Buy-down Amount") sufficient to effect a reduction of the Interest Rate to 6.5%. The Buy-down Amount shall be determined by the Mortgagee at the time of the Interest Rate fix using its standard method of calculating interest rate buy-downs.

Ottawa Mortgage Office
55 Metcalfe Street, Suite 1490
Ottawa, ON K1P 6L5
Tel: (613) 234-2999 Fax: (613) 563-3367

www.manulife.com

The Manufacturers Life Insurance Company
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and are used by it and its affiliates including Manulife Financial Corporation

Interest on the Loan will be calculated semi-annually, not in advance at the Interest Rate.

3. Term:

10 years (the "Term") (subject to Funding Date clause herein).

4. Amortization:

25 years (the "Amortization").

5. Monthly Payment:

The monthly payment will be calculated by the Mortgagee following the Interest Rate being fixed and will be based on the Loan Amount, the Interest Rate and the Amortization (the "Monthly Payment").

6. Repayment:

The Mortgagee will withhold from the Loan Amount the accrued interest that would otherwise be due from the Funding Date up to and including the first day of the month following the advance of the Loan (the "Interest Adjustment Date"). Thereafter, the Mortgagor shall pay the Monthly Payment, which will be due on the first (1st) day of each month until the Maturity Date. On the Maturity Date, the outstanding principal balance together with any outstanding Interest and charges will be due and payable in full.

All payments in connection with the Loan are to be made to The Manufacturers Life Insurance Company at:

(by mail)

Manulife Mortgage Administration
P.O. Box 3000, PO F
Toronto, Ontario
M4Y 1X1

(by courier)

Manulife Mortgage Administration
200 Bloor Street East, Mail Room
Toronto, Ontario
M4W 1E5

7. Prepayment Privilege:

The Mortgagor may prepay the Loan in whole, but not in part, at any time during the Term subject to the following conditions (the "Prepayment Privilege"):

- a) There is no existing and continuing event of default under the Loan.
- b) The Mortgagor shall notify the Mortgagee in writing of its intention to prepay the Loan in full and the date the Mortgagee receives the notification shall be the notice date (the "Notice Date"). The date prepayment is to be made (the "Prepayment Date") shall be a date five (5) business days following the Notice Date.
- c) The Rate (as hereinafter defined) used to calculate the present value for determining the Compensation Amount (as hereinafter defined) due to the Mortgagee will be equal to the yield, at the close of business on the third (3rd) last business day prior to the Prepayment Date (the "Calculation Date") on a Government of Canada bond (the "Bond") or Treasury Bill maturing the same date as the Maturity Date of the Loan or, if no such Bond or Treasury Bill exists, the yield on such Bond or Treasury Bill maturing closest to, but prior to, the Maturity Date (the "Rate"). In the event a Treasury Bill yield is used to calculate the present value, the yield will first be converted to a semi-annual equivalent yield. In no event will the Rate used to calculate the present value as set out in d) i. below exceed the Interest Rate on the Loan.

- d) The amount required to prepay the Loan in full will be equal to the principal amount outstanding under the Loan on the Prepayment Date, plus any accrued interest, the Mortgagee's administrative fee and any other capitalized fees and charges, plus the "Compensation Amount" which is to be the greater of three (3) months of interest and the difference between:
 - i. the present value, at the Prepayment Date, of the remaining Monthly Payments and the principal balance that would have been payable at the Maturity Date (had the prepayment being requested not occurred and assuming all remaining Monthly Payments would have been made on the due date) discounted at the Rate as defined in c) above; and
 - ii. the principal amount outstanding under the Loan as at the Prepayment Date.
- e) All legal costs associated with prepayment are to be borne by the Mortgagor.
- f) Failure to make the prepayment after the Mortgagee receives written notice will nullify the Prepayment Privilege for the remainder of the Term.

8. Property Taxes:

All property taxes are to be paid directly by the Mortgagor, or the Mortgagor's tenant(s), to the municipality on, or prior to, the due date and receipted property tax bills are to be submitted to the Mortgagee no more than thirty (30) days following the due date. The Mortgagee reserves the option to require the Mortgagor to increase the Monthly Payment such that the Monthly Payments include an additional amount sufficient to cover the property taxes. If the Mortgagee elects to exercise this option, then the Mortgagee will apply the amount collected toward payment of the property taxes on behalf of the Mortgagor.

9. Mortgagor:

The Mortgagor is Riverside Professional Centre Inc. (the "Mortgagor" or "you"). The Commitment Letter is neither assignable nor transferable by the Mortgagor. The Mortgagor represents and warrants that it is not a non-resident, as defined under the Income Tax Act (Canada).

Except as provided herein, collection of the indebtedness owing by the Mortgagor to the Mortgagee shall be enforced solely against the Security.

10. Indemnification:

In addition to all other terms, covenants, liabilities and obligations set forth in this Commitment Letter and without limitation to same, the Mortgagor, and The K Trust, By its Trustee, Donald B. Johnston must, on a joint and several basis, indemnify the Mortgagee from all claims, liabilities, obligations, demands, losses, damages, costs and expenses (the "Claims and Expenses") incurred by the Mortgagee arising from:

- i) environmental contamination of the Property (as hereinafter defined);
- ii) fraud, misrepresentation and/or the misapplication of funds by the Mortgagor or its agents;
- iii) any claims, actions, or proceedings brought forward by any third party in connection with the Property;
- iv) failure on the part of the Mortgagor, or its agents, to adequately maintain and insure the Property; and/or
- v) any claims, actions or proceeding brought forward by a third party in connection with the *Wage Earner Protection Program Act* and corresponding amendments to the Bankruptcy and

Insolvency Acts and the Companies' Creditors Arrangement Act pursuant to Bill C-55 (2005) and Bill C-12 (2007), as amended.

The foregoing indemnities shall be unlimited as to amount notwithstanding any other limitation of liability set out in the Commitment Letter (such as a limitation on a Guarantor's liability).

The indemnities set out in ii), iii), iv) and v) above shall survive repayment of the Loan and shall continue in full force and effect but only with respect to those Claims and Expenses existing at, or related to, the period of time prior to full repayment of the Loan.

If during the Term the Mortgagee has become a mortgagee in possession or been deemed an owner of the Property, the environmental indemnity set out in i) above shall survive repayment of the Loan and shall continue in full force and effect, but only for environmental contamination occurring prior to the Mortgagee becoming a mortgagee in possession or having been deemed an owner of the Property.

12. Know Our Customer Requirements:

The Mortgagor, and The K Trust (collectively, the "Interested Parties") hereby certify as correct the completed "Know Our Customer Questionnaire" attached hereto. In the event of any incomplete or new information, the Interested Parties must fully and satisfactorily complete and certify as correct a supplemental "Know Our Customer Questionnaire" and return same to Manulife as soon as possible.

13. Employee and Pension Plan Requirements:

If the Mortgagor has employees and/or participates in a prescribed pension plan, the Mortgagor shall (if not already done so in connection with the Application) complete the "Employee & Pension Plan Compliance Statement" attached hereto, confirming there are no arrears in Contributions, as defined therein. Furthermore during the Term, the Mortgagor covenants to keep Contributions current and shall annually submit an up-to-date Employee and Pension Plan Compliance Statement within one hundred and twenty (120) days after the Mortgagor's fiscal year end. Any breach of such covenant will constitute a default under the Security as hereinafter defined.

If the Mortgagor does not have employees or does not participate in a prescribed pension plan, the Mortgagor covenants that it will not hire employees nor establish a prescribed pension plan without the Mortgagee's prior written consent, and any breach of such covenant will constitute a default under the Security as hereinafter defined.

14. Security:

The Mortgagor will provide to the Mortgagee, prior to any disbursement of the Loan hereunder, the following security (the "Security"):

- a) Leasehold first charge/mortgage of land (the "Mortgage") on a 1.0 acre site located on the southeast side of Riverside Drive and Smythe Road in the City of Ottawa, municipally known as 1919 Riverside Drive, legally described as Firstly: (PIN 04201-02147 LT) That part of Lot 16, Junction Gore, City of Ottawa (formerly Township of Gloucester), designated as Parts 1 and 2 on Plan 5R-12853. Secondly: (PIN 04211-0145 LT) That part of Lots 15 and 16, Junction Gore, and a road allowance between the said Lots 15 and 16 (closed by OT-48999 and N-451929), City of Ottawa (formerly Township of Gloucester) designated as Parts 1-16, both inclusive, Plan 5R-10708 and as Part 6 on Plan 5R-3582, excepting Parts 1 and 2 on Plan 5R-12853. The site is improved with a medical office building containing approximately 40,821 square feet of usable area, and 48,581 square feet of net rentable area (the "Property"), to be registered on title in the appropriate Land Registry Office;

- b) A Ground Lease Acknowledgement Agreement as between the Ottawa Hospital, Manulife Financial and Riverside Professional Centre, as deemed appropriate by Manulife Financial and its solicitor.
- c) General assignment of all leases and rents (which may be included within the charge) that will be registered on title and registration of a Financing Statement under the Personal Property Security Act ("P.P.S.A.") for a number of years equal to the Amortization;
- d) General security agreement providing the Mortgagee with a security interest limited to all personal property located at, in, upon or used in connection with the Property for which a Financing Statement will be filed under the P.P.S.A. for a number of years equal to the Amortization; and
- e) The Mortgagor will execute, and will cause any beneficial owners (if applicable) to execute, such other collateral security documents, authorizations or agreements as the Mortgagee's solicitor may reasonably require, such other documents together with the Security shall collectively be referred to herein as the "Loan Documents".

15. Rents and Leases:

The Mortgagor hereby warrants the information on Schedule A (attached hereto) to be true and correct as of the date of acceptance of the Commitment Letter, and the Mortgagor must recertify Schedule A to be true and correct ten (10) business days prior to the Funding Date.

At least thirty (30) days prior to the Anticipated Funding Date (as hereinafter defined), the Mortgagor shall provide copies of executed leases for tenants occupying 5% or more of the net rentable area of the Property. The form and content of all leases provided to the Mortgagee must be satisfactory to the Mortgagee and its solicitor, acting reasonably, and, at the option of the Mortgagee, any or all leases may be postponed or made prior to the Mortgage. The Mortgagor hereby warrants that all rents reserved thereby have not been and shall not be demanded, collected, accepted or paid in advance of the time for payment thereof, or other than in the manner set forth therein.

The Mortgagor will make commercially reasonable efforts to obtain and provide an Estoppel Certificate (substantially in the attached form) from all tenants occupying 5% or more of the net rentable area of the Property. The Estoppel Certificate must confirm information that is consistent with Schedule A. Provided the Mortgagor makes such commercial reasonable efforts and a tenant fails to provide an Estoppel Certificate, the Mortgagee will accept a certificate executed by the Mortgagor in lieu of such Estoppel Certificate.

All documents pertaining to the above noted terms must be submitted to the Mortgagee's solicitor ten (10) business days prior to the Anticipated Funding Date.

Throughout the Term of the Loan, and any renewals thereof, the Mortgagee's approval (which will not be unreasonably withheld) is required for new leases or lease renewals with tenants occupying 20% or more of the net rentable area or paying 20% or more of the gross income of the Property. The Mortgagor will subsequently provide the Mortgagee, within thirty (30) days of completion, copies of all lease renewals or leases for new or replacement tenants occupying 20% or more of the net rentable area or paying 20% or more of the gross income of the Property, as well as an Estoppel Certificate (substantially in the attached form) and an Acknowledgement, Attornment and Non-Disturbance Agreement (substantially in the attached form) from each such tenant.

16. Survey:

The Mortgagor shall provide a survey of the Property prepared by a Ontario Land Surveyor that is satisfactory to the Mortgagee and its solicitor at least thirty (30) days prior to the Anticipated Funding Date. The survey must show the location of buildings and boundaries of the lands to be mortgaged

as well as the location of all rights of way and easements, and contain sufficient detail to ascertain whether there are any zoning or building bylaw violations.

17. Insurance:

Satisfactory evidence of insurance must be provided to the Mortgagee's solicitor at least thirty (30) days prior to the Anticipated Funding Date. All insurance documentation shall be in form and with insurers reasonably acceptable to the Mortgagee, as per the Insurance Requirements attached hereto.

The Mortgagee's solicitor will employ the services of an insurance consultant, INTECH Risk Management Inc., to review the Mortgagor's insurance evidence to determine the acceptability of the coverages, limits, insurers and the policies and to outline any changes required to meet the Mortgagee's requirements. The insurance consultant's fee, which will not exceed \$452, inclusive of HST, will be added to our solicitor's fee.

By executing this Commitment Letter and completing the Insurance Broker section of Schedule B attached hereto, the Mortgagor (i) agrees to the use of INTECH Risk Management Inc. as Manulife's insurance consultant, and (ii) authorizes its insurance broker/agent to release insurance information on a confidential basis to INTECH Risk Management Inc.

18. Environmental:

The Mortgagor represents and warrants that, to the best of its knowledge, no material or substance determined to be an environmental contaminant by any government body having jurisdiction is now in the soil, ground water or improvements, or will be used in any new construction at the Property.

The Mortgagee acknowledges receipt of a satisfactory Phase I Environmental Site Assessment ("Phase I ESA") of the Property, as completed by Pinchin Environmental and dated November 2011.

The Mortgagor warrants that it will take all commercially reasonable steps to ensure that the Property remains free from environmental contamination throughout the Term of the Loan and any extensions thereof. The Mortgagee, or its agent, may enter the Property at reasonable times, with notice to the Mortgagor and respecting at all times the rights of tenants, for the purpose of conducting environmental assessment or testing procedures deemed necessary by the Mortgagee. The presence of any contamination that exceeds Federal or Provincial environmental laws, regulations or regulatory criteria and requires remediation, and is kept uncured, will be a default under the Loan.

The Mortgagor is responsible for all costs associated with the Phase 1 ESA.

19. Property Condition:

The Mortgagor represents and warrants that, to the best of its knowledge, the Property has no currently existing material structural or mechanical deficiencies, defined as repair costs exceeding 5% of the appraised value of the Property (the "Deficiencies"). Furthermore the Mortgagor represents and warrants that, to the best of its knowledge, the Property complies with all zoning, by-laws, fire codes and all other applicable codes and standards.

The Mortgagee acknowledges receipt of a satisfactory Building (Property) Condition Assessment ("PCA") of the Property as completed by Pinchin Environmental and dated November 2011.

The Mortgagor warrants it will take all necessary steps to ensure the building components and mechanical systems of the Property are well maintained throughout the Term and any extensions thereof. The Mortgagee, or its agent, may enter the Property at reasonable times, with notice to the Mortgagor and respecting the rights of tenants, to inspect the improvements. The presence of any

material structural or mechanical deficiencies that the Mortgagor does not make reasonable commercial efforts to cure will be a default under the Loan.

The Mortgagor is responsible for all of the costs associated with the PCA.

20. Appraisal:

The Mortgagee acknowledges receipt of a satisfactory Full Narrative Appraisal of the Property as completed by Wagner Andrews Kovacs Ltd. and dated October 20, 2011 (the "Appraisal"). The Mortgagor is responsible for the cost of the Appraisal.

21. Reports - General:

For all reports referenced above, including Phase 1 ESA, PCA and Appraisal, Manulife is to be provided with a reliance letter including a certification that the report may be relied upon by "The Manufacturers Life Insurance Company, its subsidiaries and affiliates".

22. Financial Statements:

Financial statements of the Mortgagor as prepared by an independent firm of chartered accountants, as well as operating statements and a current rent roll for the Property, are to be submitted to the Mortgagee each year during the Term, within one hundred and twenty (120) days after the Mortgagor's fiscal year end.

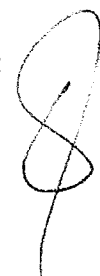
23. Sale and Further Encumbrance:

Prior to the Mortgagor directly or indirectly selling, conveying, transferring, or disposing of the Property, or any part thereof, or any interest therein (the "Sale"), or further encumbering the Property, the Mortgagor must obtain written consent of the Mortgagee (which shall not be unreasonably withheld) Should the Mortgagor fail to request the written consent of the Mortgagee or in the event that the Mortgagee does not grant its consent and the Mortgagor nevertheless does proceed to sell or encumber the Property, then at the Mortgagee's option, the Mortgagee may declare the Loan in default, and without prejudice exercise any of its rights and remedies available under the Loan Documents. In the event the Mortgagee does not exercise its option to declare the Loan in default or the Mortgagee grants its consent to the Sale or further encumbrance, the Mortgagor shall then pay the Mortgagee a fee equal to 0.25% of the principal balance then outstanding.

Prior to a Sale the proposed purchaser and other interested parties (the "Proposed Interested Parties") must satisfactorily complete a "Know Our Customer Questionnaire" and an "Employee & Pension Plan Compliance Questionnaire". The Mortgagor must provide the Mortgagee with a copy of the fully executed purchase and sale agreement and the Proposed Interested Parties must provide satisfactory evidence as to the source of the down payment. Furthermore the Mortgagor and/or the Proposed Interested Parties must provide such additional documentation as the Mortgagee or its solicitor may require, including the identification and verification of signing authorities pertaining to the Sale related documentation. All legal fees and expenses incurred in connection with the Sale shall be paid by the Mortgagor.

24. Documentation:

The Commitment Letter and all subsequent documentation shall be governed by the laws of the Province of Ontario. Time shall be of the essence in the Commitment Letter and the provisions and conditions of the Commitment Letter shall survive the execution, delivery and registration of the Loan Documents and there shall be no merger therein. Should any inconsistencies arise between the Commitment Letter and the Loan Documents, then the Loan Documents excluding the Standard Charge Terms shall prevail. Silence in either the Commitment Letter or the Loan Documents, but addressed in the other shall not be deemed an inconsistency.



The benefit of all or part of the Mortgagee's rights, or any interest in or power relating to all or part of the Mortgagee's rights, under the Commitment Letter or under any existing or future security, guarantee or other right relating to the subject matter of the Commitment Letter, may be transferred or otherwise dealt with, free of any set-off, counterclaim or other equity or claim. Any information received by the Mortgagee may be disclosed to the proposed transferee of the Mortgagee's rights. Everything to facilitate a transfer or dealing that may be requested in writing will be done at the expense of the person making the request. If a transferee of all or part of the Mortgagee's rights agrees to assume any of the Mortgagee's obligation relating to those rights, the Mortgagee will be released from liability for the obligation.

The Loan Documents, copies of which are available upon request, are to be prepared by the Mortgagee's solicitor:

Gowlings LLP, 160 Elgin Street, Suite 2600, Ottawa, ON K1P 1C3; Attention: Wayne Kerrick

All documentation shall be in a form prescribed by the Mortgagee and as approved by its solicitor. All documentation presented by the Mortgagee's solicitor for execution by the Mortgagor must be executed and returned to the Mortgagee's solicitor at least five (5) business days prior to the Funding Date.

25. Advance of Funds:

The Mortgagee will fund the Loan in a single advance when all Security documentation and legal work have been completed to the satisfaction of the Mortgagee and its solicitor, and all requirements of the Commitment Letter have been satisfied.

All liens, unpaid taxes or existing mortgages/charges registered on title will be discharged out of the proceeds of the Loan so that the Mortgage will constitute a valid first mortgage/charge.

At least ten (10) business days prior to the Funding Date, the Mortgagor shall provide satisfactory evidence of the Property's Net Cash Flow (as hereinafter defined). In the event the Net Cash Flow is less than 9.0% of the Loan Amount calculated by the Mortgagee in its sole discretion, the Mortgagee may reduce the Loan Amount such that the Net Cash Flow is equal to or greater than 9.0% of the Loan Amount.

The Net Cash Flow is defined as the current annualized gross income derived from the Property, less (a) vacancy and loss allowance, (b) management and operating expenses, and (c) tenant improvements and leasing commissions, all as determined by the Mortgagee in its sole discretion, but before the annualized Monthly Payment.

A written request for closing must be given to the Mortgagee's solicitor by the Mortgagor, or its solicitor, at least five (5) business days prior to the Funding Date, at which time all legal work must be completed and all fully executed documentation must be in the hands of the Mortgagee's solicitor.

26. Funding Date:

The Mortgagor and Mortgagee currently anticipate funding of the Loan will be on or before Wednesday, February 1, 2012 (the "Anticipated Funding Date"). It is acknowledged the Anticipated Funding Date may change during the closing process.

Once the Interest Rate has been fixed and/or if the funding is delayed for any reason, the Maturity Date will not change. If the Loan is advanced earlier than the current Anticipated Funding Date, the Mortgagee may require the Maturity Date to be adjusted to reflect the Term.



The actual date the Loan proceeds are scheduled to be disbursed will be the "Funding Date".

27. Payment of Fees:

The Mortgagor will pay to the Mortgagee a processing and inspection fee of \$21,000. This fee was received with the application and, with the issuance of the Commitment Letter, is non-refundable.

The Mortgagor shall be responsible for all fees and disbursements incurred by the Mortgagee's solicitor with respect to the Commitment Letter and Loan. The Mortgagee's solicitor's fees and disbursements will be deducted from the Loan Amount. If the Commitment Letter is cancelled, the Mortgagor will be billed separately for the Mortgagee's solicitor's fees and disbursements, and the Mortgagor hereby agrees that it will pay the same forthwith.

28. Good Faith Deposit:

A good faith deposit of \$75,000 (the "Good Faith Deposit") by certified cheque payable to "The **Manufacturers Life Insurance Company**" is required with the return of the Commitment Letter. The Mortgagor may substitute an irrevocable, unconditional and automatically renewable letter of credit (the "Letter of Credit") for the certified cheque. The Letter of Credit must have an expiry date at least thirty (30) days after the Commitment Expiry Date (as hereinafter defined) and be able to be drawn, in whole or part, on demand at a financial institution located in Toronto and acceptable to the Mortgagee. The form and content of the Letter of Credit must be satisfactory to the Mortgagee and its solicitor. The Good Faith Deposit, less the cost of any applicable environmental, building or appraisal reports, will be refunded, without allowance for interest thereon, in conjunction with advance of the Loan.

29. Compliance:

The Mortgagee may, at its option, cancel the Commitment Letter under the following circumstances:

- a) If any of the Interested Parties does not fully and satisfactorily complete the "Know Our Customer Questionnaire", or if the Mortgagee is not fully satisfied with the results of its due diligence investigations pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* and regulations thereunder;
- b) The Mortgagor or Indemnifier fail, or are unable or unwilling for any reason whatsoever, to fulfil or comply with any of the terms and conditions set forth in the Commitment Letter;
- c) The Mortgagor or Indemnifier fail or refuse to sign the Loan Documents prepared by our solicitor or refuse to accept the Loan Amount;
- d) Any information supplied by any of the Interested Parties or any representations or warranties made by any of the Interested Parties to the Mortgagee be found incorrect in any material respect; or
- e) The Mortgagor or Indemnifier and/or other person or corporation whose covenant is required becomes bankrupt or otherwise subject to any bankruptcy or insolvency proceedings.

If cancellation or expiry of the Commitment Letter occurs prior to the advance of the Loan Amount, the Mortgagee will retain the Good Faith Deposit as liquidated damages, and not as penalty or payment of costs. It is hereby agreed that the Good Faith Deposit represents a fair pre-estimate of the Mortgagee's damages.

30. Privacy:

In the course of providing you with the Commitment Letter and the resulting Loan, the Mortgagee will collect personal information about you, which may include your contact information (mailing address, e-mail address, telephone number, fax number), information relating to your financial status (bank account numbers, existing debts, personal net worth, credit history), date of birth, place of employment, your Social Insurance Number (but only when you opt to provide it), financial statements

of your company or companies, as well as annual operating statements and rent rolls for the real estate securing the Loan with the Mortgagee as required under the Mortgagee's mortgage/charge terms. The Mortgagee will collect your personal information directly from you as well as from financial institutions with whom you have had a relationship, references provided by you, and credit bureaus.

The Mortgagee will use your personal information solely for the purposes of processing and administering the Loan with the Mortgagee. To fulfil these stated purposes or as required by law, the Mortgagee may disclose your personal information to its affiliates and subsidiaries and to its internal auditors and external auditors.

Your personal information will be physically stored at the branch office of the Mortgagee from which the Commitment Letter is issued and at its head office and electronically on the Mortgagee's secure servers.

The Mortgagee will at all times handle your personal information in accordance with applicable privacy laws and its Privacy Statement for Canadian Mortgages, which is attached hereto for your information.

31. Commitment Expiry Date:


The Commitment Letter will automatically expire on Friday, February 10, 2012 (the "Commitment Expiry Date") if the Loan Amount has not been fully advanced. If the Interest Rate is fixed more than thirty (30) days prior to the Commitment Expiry Date, the Commitment Expiry Date will be revised to be thirty (30) days from the date the Interest Rate was fixed.

32. Acceptance:

Acceptance hereof shall constitute a binding contract. Please signify your acceptance of the Commitment Letter by executing where indicated below, initialling each page, and returning same, together with the required fees, to this office by no later than 3:00 p.m. Monday December 19, 2011, after which the Commitment Letter will be void and may not be accepted without the further written concurrence of the Mortgagee.

Yours truly,

THE MANUFACTURERS LIFE INSURANCE COMPANY

By: 
Sid VanderMeulen
AVP & Regional Director

(E. & O. E.)

cc: Wayne Kerrick – Gowlings LLP

ACCEPTANCE

WE ACCEPT THE ABOVE TERMS AND CONDITIONS OF THIS COMMITMENT LETTER ON THIS
16 DAY OF DECEMBER, 2011.

MORTGAGOR:

Riverside Professional Centre Inc.

By: 

Name: DONALD B. JOHNSON
Its: PRESIDENT

INDEMNIFIER:

The K Trust

By: 

Name: DONALD JOHNSON
Its: TRUSTEE

EMPLOYEE & PENSION PLAN COMPLIANCE STATEMENT

To: THE MANUFACTURERS LIFE INSURANCE COMPANY

Mortgagor: RIVERSIDE PROFESSIONAL CENTRE INC.

Property Address: 1919 RIVERSIDE DR OTTAWA

Loan No.: 862196:11

I; DONALD JOHNSTON, the PRESIDENT of the Mortgagor in such capacity, hereby certify that:

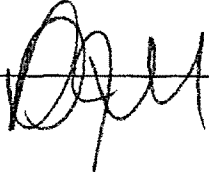
I am the duly appointed PRESIDENT of the Mortgagor and as such I am providing this statement for and on behalf of the Mortgagor.

As at DEC 16 2011 there are no arrears in employee source deductions, employer pension contributions and/or statutory remittances, including but not limited to Canada Pension Plan, Workplace Safety and Insurance Board, Employment Insurance, Employer's Health Tax, Goods and Services tax, Provincial Sales Tax and Harmonized Sales Tax (collectively, the "Contributions").

Should any arrears occur with respect to the Contributions then prompt notice of said arrears shall be provided to The Manufacturers Life Insurance Company.

Enclosed is the most recent pension plan Actuarial Report.

Dated this 16 day of DEC, 2011

By: 

ESTOPPEL CERTIFICATE

TO: THE MANUFACTURERS LIFE INSURANCE COMPANY
(the "Mortgagee")

RE: _____
(the "Property")

_____ (the "Tenant") hereby certifies that:

1. The Tenant leases premises having a rentable area of _____ square feet in the Property pursuant to a lease dated _____
(amended/extended by):

(collectively the "Lease")

made between the Tenant and _____ (the "Landlord") and there are no other agreements now in effect between the Landlord and Tenant.
2. The Lease has been duly authorized, executed and delivered by the Tenant and is in full force and effect and has not been modified.
3. The Landlord has, in all material respects, performed its obligations under the Lease and there exists no claim or right of set-off against the Landlord by the Tenant as of the date of this Estoppel Certificate.
4. The Tenant is in possession of its premises in the Property and is paying regular monthly instalments of base rent under the Lease of \$_____.
5. The Tenant has not prepaid nor will it prepay rent to the Landlord under the Lease or any extensions thereof, except as required by the Lease.
6. The Mortgagee may rely on this Estoppel Certificate in connection with its loan on the Property and all renewals thereof.

Dated: _____, _____

[Full Legal Name of Tenant]

Per: _____

Per: _____



ACKNOWLEDGEMENT OF ASSIGNMENT, ATTORNMENT AND NON-DISTURBANCE

RE: _____
(the "Property")

_____ (the "Tenant") is hereby notified that the interest of
_____ (the "Landlord") in the lease dated _____

(amended/extended by):

(collectively the "Lease")

made between the Tenant and the Landlord has been assigned to The Manufacturers Life Insurance Company (the "Mortgagee") by the Landlord as collateral security for a loan on the Property. The Mortgagee will rely on this document in connection with its loan on the Property and all renewals thereof.

For Valuable Consideration, the adequacy and receipt of which is hereby acknowledged, the Tenant hereby acknowledges the assignment, and, confirms to and agrees with the Mortgagee that:

1. The Tenant hereby acknowledges that the Landlord has legally obligated itself not to alter, modify, terminate or accept surrender of the Lease without first receiving the written consent of the Mortgagee, such consent not to be unreasonably withheld.
2. If the Mortgagee (or any purchaser from it) succeeds to the interest of the Landlord under the Lease and/or becomes owner of the leased premises, the Tenant will, upon receiving a written request from the Mortgagee, attorn to the Mortgagee (or any purchaser from it) as tenant under and pursuant to the terms of the Lease, and, the Mortgagee (or any purchaser from it) will not disturb the Tenant's right to occupy its premises in the Property and will perform the obligations of the Landlord under the Lease following the notice date, provided the Tenant fully performs all of its obligations, covenants and agreements in the Lease and this agreement. The Mortgagee will not be liable or subject to any set-off or defences of the Tenant for any act or omission of the Landlord or any other landlord under the Lease prior to the notice date.
3. The Tenant will, upon written request by the Mortgagee, enter into a new agreement, on the same terms, if there is a renewal, extension or novation of the Lease.
4. If the Mortgagee sells the Property, then the Tenant will attorn to the purchaser on the same terms as above.

Dated: _____, _____

[Full Legal Name of Tenant]

THE MANUFACTURERS LIFE INSURANCE COMPANY

Per: _____

Per: _____

Per: _____



INSURANCE REQUIREMENTS

Satisfactory evidence of insurance must be provided to the Mortgagee's solicitor at least thirty (30) days prior to the Anticipated Funding Date. The Mortgagee's solicitor will employ the services of an insurance consultant, INTECH Risk Management Inc., to review the Mortgagor's insurance evidence to determine the acceptability of the coverages, limits, insurers and the policies and to outline any changes required to meet the Mortgagee's requirements. The Mortgagor authorizes its insurance broker/agent to release insurance information on a confidential basis to INTECH Risk Management Inc.

All insurance policies must be in form and with insurers reasonably acceptable to the Mortgagee. In the event that the insurance policies are not available, the Mortgagee will accept binders or certificates of insurance, in form acceptable to the Mortgagee. Evidence of property insurance on a CSIO form ACORD Form 25s, or their equivalents, is **not** acceptable.

All policies will name the Mortgagor as a Named Insured or Additional Named Insured and will include the interests of all entities for whom the Mortgagor has contractually agreed to insure as their respective interests may appear.

All property and, where applicable, boiler and machinery policies shall show the Mortgagee as First Mortgagee and Loss Payee and contain a standard mortgage clause in favour of the Mortgagee. All liability policies must name the Mortgagee as an Additional Insured and shall include all legal liability to the extent insurable and imposed upon the Mortgagee and including all court costs, fees and expenses of legal counsel. All policies shall be permitted to contain reasonable deductibles.

All policies must not contain an exclusion for terrorism or terrorist acts, provided that such coverage is obtainable at a commercially reasonable cost, as determined by the Mortgagee. In the event such coverage is not available at a commercially reasonable cost but later becomes available, then the Mortgagor shall promptly obtain and maintain such coverage upon written notification by the Mortgagee. The Mortgagee acknowledges that terrorism coverage will not be required prior to funding the Loan, however, retains the right to require terrorism coverage during the Term of the Loan, and any extensions.

All policies of insurance, and interim evidence thereof, shall provide thirty (30) days prior notice to the Mortgagee of any adverse material change or cancellation.

If the Mortgagor fails to take out and keep in force such minimum insurance as is required hereunder, then the Mortgagee may, but shall not be obligated to, take out, for the sole benefit of the Mortgagee, and keep in force such insurance at the immediate sole cost and expense of the Mortgagor plus costs incurred, or use other means at its disposal under the terms of the Mortgage.

The insurance requirements contained herein are a minimum guide and, although they must be adhered to throughout the Term, they in no way represent an opinion as to the full scope of insurance coverage a prudent owner would arrange to adequately protect its interests and the interests of the Mortgagee and the Mortgagor must govern itself accordingly.

Specific Insurance Requirements:

- a) Property Insurance, with respect to the improvements and betterments (including foundations and footings) and all personal property relating thereto, insuring against any peril now or hereafter included with the classification "All Risks of Physical Loss or Damage" (and including the perils of earthquake, flood, sewer back-up, and collapse) to a limit representing 100% of the full replacement cost thereof. The Insurance must include:
 - a replacement cost endorsement with no restriction to repair or replace on the same or an adjacent site;

- a stated amount endorsement to waive the co-insurance provisions, or not be subject to co-insurance; and
 - a full by-laws extension, including the increased cost of construction, cost of demolition of the undamaged portion of the Property, and resultant loss of income.
- b) Broad Form Boiler and Machinery Insurance (without exclusion for explosion) written on a comprehensive repair and/or replacement cost basis covering all boilers, pipe turbines, engines and all other pressure vessels, machinery and equipment located in, on or about the Property with the same limits and by-laws extension as the "All Risks" Property Insurance described above;
- c) Business Interruption/Rental Income Insurance (written on a gross rents or gross profits basis) to cover any abatement or loss of income resulting from an insured peril with a minimum period of indemnity of twelve (12) months, or such longer period as the Mortgagee may require;
- d) Commercial General Liability Insurance with a limit of not less than \$5,000,000 on a per occurrence basis, or such higher limit as the Mortgagee may require. The policy will include coverage which a prudent owner of similar security would purchase and maintain, or cause to be purchased and maintained throughout the Term of the Loan; and
- e) Such other insurance as the Mortgagee may reasonably require, given the nature of the security and that which a prudent owner of similar security would purchase and maintain, or cause to be purchased and maintained throughout the Term of the Loan.

A handwritten mark or signature, possibly a stylized letter 'Q' or a similar symbol, located in the lower right quadrant of the page.

PRIVACY STATEMENT FOR CANADIAN MORTGAGES

The Manufacturers Life Insurance Company ("Manulife") respects the privacy rights of individuals and is committed to safeguarding all information about identifiable individuals ("personal information") that we handle. We have developed organization-wide policies and procedures to ensure that our personal information handling practices comply with applicable privacy laws. Collectively, this framework represents our commitment to the principles of responsible and lawful collection, use, and disclosure of personal information. In particular:

- We only collect, use, and process an individual's personal information with his/her consent.
- We limit our use and handling of an individual's personal information to necessary and identified purposes related to the individual's business relationship with Manulife.
- We only share, disclose or transfer an individual's personal information as necessary to carry out the purposes for which the personal information was collected; or when required by law, or pursuant to a merger and acquisition transaction involving Manulife.
- We require all third parties (including real estate appraisers, engineers, environmental consultants and assignees of this Loan) that receive personal information from us to keep such information secure and confidential and to only process such personal information in accordance with our strict instructions.
- We only allow authorized personnel to access an individual's personal information and always use appropriate technological, physical and organizational measures to protect and safeguard an individual's personal information from inappropriate use, access, disclosure, alteration, or destruction.
- We keep an individual's personal information only for as long as required by law or as necessary to fulfill the purposes for which the personal information was collected, after which time it will be destroyed, deleted or made anonymous.
- Upon request, we will allow an individual to access his/her personal information and we will inform the individual of any use, retention or disclosure of his/her personal information.
- We keep an individual's personal information as accurate as necessary in light of the purposes for which it will be used, and we encourage the individual to assist us by requesting appropriate rectification of any inaccuracies he/she discovers in his/her personal information.
- The choice to provide us with personal information is always at the discretion of the individual concerned. In loan transactions, however, an individual's decision to withhold particular information may prevent Manulife from being able to process applications and limit the services it is able to provide.
- We have also established simple and accessible procedures to effectively process and respond to any complaints that an individual may have regarding our privacy and personal information handling practices.

If you have any questions regarding Manulife's privacy practices or your personal information on file, please contact:

Ms. Vilma Iafrate, Manulife Financial, by telephone at 416-926-6389 or by email at vilma_iafrate@manulife.com.

SCHEDULE A - 1919 Riverside Drive, Ottawa

Suite No.	Tenant	Useable Area (Sq. Ft.)	% of Area	Expiry of Term	Annual Base Rent per Sq. Ft.	Current Annual Base Rent
101	CML Healthcare	1,804	4.4	12/31/2015	\$25.00	\$45,100
102	Pharmacy #	1,200	2.9	12/31/2015	61.50	73,800
103	Nandoni Gagne Café ##	763	1.9	12/31/2011	15.00	11,445
104&105	LifeLabs	4,133	10.1	11/30/2012	23.43	96,839
201	Dr. S. McFaul	792	1.9	12/31/2013	16.00	12,672
202	Dr. A. Al-Barazanchi	1,071	2.6	10/31/2013	16.00	17,136
203	Dr. J. Taylor	783	1.9	1/31/2018	16.00	12,528
204	Dr. D. Smith	1,053	2.6	10/31/2014	17.32	18,241
205	Dr. Suk, Nguyen, Milanski	1,520	3.7	1/31/2013	16.00	24,320
206&207	Ottawa Hospital Research Institute *	912	2.2	3/31/2016	21.99	20,052
208	Dr. Weatherhead *	871	2.1	6/30/2016	15.37	13,390
209	Dr. P. Agapitos	1,282	3.1	1/31/2012	16.00	20,512
210	Ottawa Health Research Institute *	858	2.1	4/30/2013	22.26	19,098
211	Forma Luma	1,058	2.6	1/2/2016	17.00	17,986
212	Sound Diagnostics	712	1.7	12/31/2013	16.00	11,392
301	Dr. P. Thurston	475	1.2	2/28/2018	16.00	7,600
302	Dr. M. Stewart ###	1,825	4.5	11/1/2013 12/31/2014	16.00	29,200
303	Dr. M. Taylor *	818	2.0	4/30/2016	18.12	14,820
304	Dr. L. Sitwell	597	1.5	1/31/2018	16.00	9,552
305	Dr. N. Kanigsberg	1,314	3.2	1/31/2018	16.00	21,024
306	Dr. M. Gagnon	620	1.5	7/31/2015	16.00	9,920
307-309	Dr. G. Antoniak	2,647	6.5	1/31/2016	16.00	42,352
310	Dr. G. Antoniak *	446	1.1	1/31/2016	19.37	8,640
311	Dr. G. Posner	1,187	2.9	1/31/2013	16.00	18,992
312	Dr. P. Thurston	1,058	2.6	1/31/2018	16.00	16,928
401	Dr. G. Rockwell *	724	1.85	1/1/2013 Mth to Mth	16.00 17.85	10,900 12,945
403A	Mgmt Office *	354	0.9	Mth to Mth	17.90	6,336
402&403	Dr. S. Labow	1,771	4.3	5/31/2014	16.00	28,336
404	Dr. V. Moonje	744	1.8	1/31/2013	16.00	11,904
405	1270285 Ontario Inc. ####	984	2.4	12/31/2011	16.00	15,744
406	Dr. R. Abunassar	860	2.1	1/31/2013	16.00	13,760
407	Dr. DS. Patel	411	1.0	4/30/2013	16.00	6,576
408	Ottawa Health Research Institute *	866	2.1	12/31/2015	21.66	18,756
409	Dr. T.R. Hollands	897	2.2	6/15/2012	16.00	14,352
410	Dr. S. Lee Aubin	630	1.5	1/31/2013	16.00	10,080
411	Dr. P. Teitelbaum	766	1.9	11/30/2014	16.00	12,256
412	Dr. R. McKendry	1,017	2.5	2/28/2013	17.67	17,970
414	Dr. S. Tadros & Dr. K. Willis	998	2.4	1/31/2013	16.00	15,968
TOTALS		40,821	100			\$776,437

- See Notes on the following page.....

#778,522

Dr Tadros will leave May 31, 2012

Notes to SCHEDULE A

- * Tenants converted to useable area measurement from rentable. All other tenant premises are currently based on useable area measurement.
- Suite 302 (Pharmacy) pays an additional \$150/mth for the term of the lease of Suite 204 (Dr. D. Smith); included above.
- ## Suite 103 (Nandoni Gagne Café) anticipated to renew for 5 years effective ~~Jan.~~ ^{FEB} 1, 2012, at base rental rate above or higher.
- ### Suite 302 (Dr. M. Stewart) anticipated to renew for 5 years effective January 1, 2011, at base rental rate above or higher.
- #### Suite 405 (1270285 Ontario Inc.) anticipated to renew for 5 years effective January 1, 2012 at base rental rate above or higher.

SCHEDULE B

Mortgagor's Solicitor Contact Information

Firm Name: AIRD + BERLIS LLP
Solicitor's Name: DEREK MCCALLUM
Address: 1800-181 BAY ST
TORONTO ON M5J 2T9
Telephone No.: 416 865 7728
Fax No.: 416 863 1515
Email Address: dmcCallum@airdberlis.com

Insurance Broker Contact Information and Release

Company Name: TO BE PROVIDED
Contact Person: _____
Mailing Address: _____

Telephone No.: _____
Fax No.: _____
Email Address: _____

I / We hereby authorize the above-noted Insurance Broker to release insurance information required for this transaction to The Manufacturers Life Insurance Company and/or its solicitor and its insurance consultant, INTECH Risk Management Inc.

MORTGAGOR:

Riverside Professional Centre Inc.

By: 

Name:
Its:

DONALD JOHNSTON
PRES.

**This is Exhibit "C" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

February 8, 2012

Riverside Professional Centre Inc.
c/o Murray & Company
40 University Avenue, Suite 502
Toronto, ON M5J 1S3

Via Email Only

Attention: David Forster & Scott White

Re: Loan No. 862196:11
1919 Riverside Drive, Ottawa, Ontario
Commitment dated December 15, 2011 (the "Commitment Letter")

Our Commitment Letter expires on February 10, 2012, as referenced in Clause 31 thereof.

This is to confirm that Manulife has agreed to extend the Commitment Expiry Date to Friday February 17, 2012 to facilitate the closing of the Loan. Accordingly, the Anticipated Funding Date is now Friday February 17, 2012. Furthermore it is understood and agreed that the Interest Rate will remain as 4.46% as per the Rate Lock Letter dated January 26, 2012.

This extension shall not be deemed to express our willingness to grant any further extensions and is granted without prejudice to any and other terms and conditions contained in our Commitment Letter. Time shall remain of the essence.

Notwithstanding the above, please also be advised of our agreement to the following changes to the terms of the Commitment Letter:

- A Ground Lease Acknowledgement Agreement as referenced in Clause 14 – Security, b), will no longer be required given receipt of an acceptable Estoppel from the Ottawa Hospital. Manulife will require a formal assignment of the Ground Lease, should our solicitor in his sole discretion deem this to be warranted.
- Clause 24 – Documentation, third sentence is hereby revised as follows: "Should any inconsistencies arise between the Commitment Letter and the Loan Documents, excluding the Standard Charge Terms, then the Commitment Letter shall prevail."

Ottawa Mortgage Office
55 Metcalfe Street, Suite 1490
Ottawa, ON K1P 6L5
Tel: (613) 234-2999 Fax: (613) 563-3367

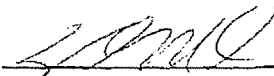
www.manulife.com

The Manufacturers Life Insurance Company
Manulife Financial and the block design are registered service marks and trademarks of The Manufacturers Life Insurance Company
and are used by it and its affiliates including Manulife Financial Corporation

Please signify your acceptance of this extension and the changes stipulated by executing this letter where indicated below and returning it to the undersigned by no later than 3:00 p.m. on Thursday February 9, 2012.

Yours truly,

THE MANUFACTURERS LIFE INSURANCE COMPANY

By: 

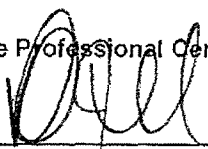
Sid VanderMeulen
AVP & Regional Director

cc: L. Dawn Elliott – Mortgage Closing Service, Manulife Financial
Derek Ellis – Manulife
Wayne Kerrick – Gowlings LLP

.....
I / WE ACCEPT THE ABOVE TERMS AND CONDITIONS THIS 8 DAY OF FEBRUARY, 2012.

MORTGAGOR:

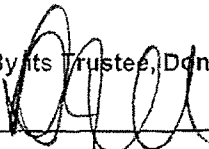
Riverside Professional Centre Inc.

By: 

Authorized Signing Officer
(Please print name below the line)

INDEMNIFIER:

The K Trust, By its Trustee, Donald B. Johnston

By: 

Authorized Signing Officer
(Please print name below the line)

**This is Exhibit "D" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

The Manufacturers Life Insurance Company, its permitted successors, affiliates and assigns

Ontario Conventional Commercial Mortgage

Land Registration Reform Act

SET OF STANDARD CHARGE TERMS

Filed by The Manufacturers Life Insurance Company, its permitted successors, affiliates and assigns.

The following set of standard charge terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

In the mortgage, you are each person by whom security is given under the mortgage (and your and yours refer to that person). We are each person to whom security is given under the mortgage (and us, our and ours refer to that person). The mortgage is the mortgage or charge in which these terms are included, and includes these terms. Other expressions have the meanings set out at the end of these terms.

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4 Leasehold property	8 Meaning of terms used

1 Preliminary matters.

1.1 **Your verifying your knowledge.** A promise by you to us in the mortgage may be limited to what you know. Where this is so, you promise that you have done what a reasonable person would do to verify the promise.

1.2 **Information you have supplied.** You promise that, as far as you know, all information that you have supplied to us for the mortgage is substantially accurate and complete.

1.3 **Your legal obligations.** You promise that you are not a party to a legal proceeding (except one that you have informed us about in writing), and are not in serious default under your legal obligations.

1.4 **Your documents.** You promise that you have given us a copy of all of the following documents relating to the property that are in your possession or control. Documents affecting the title (except those available in the land registration office). And surveys, tests and reports.

1.5 **Work on the real estate.** You promise that you are not giving the mortgage to secure the financing of work on the real estate. This statement is subject to anything as to which you have informed us in writing.

1.6 **Your obligations under the mortgage.** You promise that you are complying with all of your obligations under the mortgage when it is given.

1.7 **Condition of the property.** You promise that, as far as you know, the property has no defect that cannot be found by a reasonable inspection.

1.8 **Legal requirements.** You promise that, as far as you know, the property and its use comply substantially with every law. If we are making a loan for work on the real estate, you promise that, as far as you know, the law permits the work and its use.

1.9 **Environmental.** You promise that, as far as you know, nothing that is part of the real estate (including water) is composed of a pollutant that causes or is likely to cause harm to the life or health of a human being. This does not apply to anything about which you have fully informed us in writing.

1.10 **Specific environmental problems.** You promise that you have not done any of the following things or permitted anyone else to do them, and that, as far as you know, no one else has done them. This promise does not limit our rights under the previous section. The promise does not apply to anything about which you have fully informed us in writing. The things are as follows. Insulating a building on the real estate with urea-formaldehyde foam. Using asbestos as an insulating or building material for a building on the real estate. Placing an underground storage tank in the real estate. Burying a pollutant in the real estate. Having polychlorinated biphenyls (PCBs) on the real estate. Disposing of garbage or industrial waste on or in the real estate. Spilling a pollutant on the real estate. Allowing petroleum products to leak into the real estate. Allowing a pollutant to enter the drains of the real estate. Keeping a pollutant on the real estate other than a reasonable quantity that is to be used on the real estate in the normal course within a reasonable time. Or putting radioactive material in or on the real estate.

1.11 **Residence.** You promise that the following are resident in Canada for tax purposes: every owner (as

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defined in Part 8) of an interest that is subject to our security and, where the interest is subject to a bare trust, every beneficial owner. If any owner or beneficial owner ceases to be a resident of Canada for tax purposes, the section headed Effect of an owner ceasing to be a resident will apply.

2 Payment obligations.

2.1 What obligations the mortgage secures. The mortgage secures all obligations to pay money under its terms. It secures all obligations that are described in its terms as secured by it. Where, as a result of the mortgage, the law requires you to make a payment, it secures your obligation to make the payment. And it secures compensation that is or may become payable because of a breach of your obligations under the mortgage or under any other agreement that relates to mortgage.

2.2 Your obligations under a term loan. Where the mortgage sets out payment terms for a term loan, the terms set out below apply. The details referred to are those in the mortgage.

2.2.1 Interest to interest adjustment date. You must pay interest, on as much of the principal amount as is owing, at the interest rate, calculated for the interest calculation period. Until the interest adjustment date, you must, on the same days as those for regular payments, pay the interest for the period to the day. On the interest adjustment date you must pay the interest to that date.

2.2.2 Regular payments. You must pay the amount of each payment on the first payment date, on every payment date after that until the last payment date, and on the last payment date. We must use each payment first to pay the interest on the principal up to the payment date, and then to reduce the principal.

2.2.3 Balance on maturity. On the maturity date or balance due date, you must pay the balance of the principal amount and any unpaid interest in full.

2.2.4 No prepayment. You must make payments only as the mortgage requires. You may not make early payments unless the mortgage specifically gives you the right to do so. If the mortgage gives you a right to prepay part of the amount owing, and you do so, you must continue after that to make the regular payments.

2.2.5 Dates on which interest is calculated. Where an interest rate is calculated half-yearly not in advance, the calculation is to be made on the half-yearly dates that we usually use.

2.2.6 Your liability. You are personally liable to pay the payment obligations under this section in the way in which the mortgage requires you to pay them.

2.2.7 Future changes. Whenever we agree to change the terms of payment obligations for the term loan in any way or replace it, the mortgage secures the payment obligations as changed or replaced. This is so, for example, if we renew the loan or extend the time for payment, and even if that increases the interest rate. You agree that, when the mortgage was given, we had not agreed to give any right to renew or extend.

2.3 Taxes. You must pay when due every tax on the mortgage and on every existing or future agreement

which relates to the payment obligations or security for them. You must pay when due every additional tax in respect of amounts paid or payable under the mortgage. Additional tax is tax under the law of a jurisdiction outside Canada. It does not include a tax on our overall net income, unless it is deducted or withheld from an amount paid or payable under the mortgage. Tax is a present or future tax, charge, levy, impost, stamp tax, duty, deduction, withholding, compulsory loan, or similar amount, under the law of any jurisdiction; interest or a penalty on any of those things; and a payment for any of those things. You must indemnify us against every additional tax for which we become liable in respect of amounts paid or payable under the mortgage. You must make every payment under the mortgage free of, and without deduction for or on account of, any additional tax, except where you are compelled by law to make the payment subject to the tax. Where you are compelled by law to pay subject to the tax, you must pay the additional amount needed to ensure that we receive a net amount equal to the full amount we would have received had payment not been made subject to the tax. You must pay it in the currency in which the payment was to be made. Where we decide that additional tax on a payment does not increase our liability for tax, we must return to you the tax that you paid and as far as it does not increase our liability. A certificate of a financial officer of ours as to the amount to be returned is conclusive.

2.4 How interest is calculated. All rates of interest under the mortgage (including compound interest) apply both before and after demand, maturity, default or judgment.

2.5 Compound interest. If interest is not paid on the day that it is payable, interest must be paid on the unpaid interest. This interest must be paid at the same rate as the unpaid interest, is calculated in the same way, and must be paid on the same days. If interest on unpaid interest is not paid on the day that it is payable, interest must be paid on that interest as provided above, and so on.

2.6 Costs.

2.6.1 You agree that we are to receive payment under the payment obligations free from every cost other than the costs referred to below. You agree to pay every other cost and, specifically, every other cost relating to the property, even if it does not arise during the security. You agree to pay every cost payable under the mortgage, including these terms. We are however responsible for our costs in receiving payment in the normal course of the payment obligations. Where the mortgage refers to a specific cost, that does not limit this subsection.

2.6.2 You must pay us our costs in taking our security, whether an advance is made or not. The costs include costs for negotiating the security, searching title to the property, obtaining title insurance, and preparing or registering the security. You must pay us money payable under a commitment for the mortgage.

2.6.3 You must pay us our costs for the following. Renewing a filing or registration. Providing a statement other than a statement sent to you regularly. Giving a consent or approval under the mortgage and checking that conditions are met. Protecting our security or ourselves from claims relating to it, for example, under liens of those who

3.4 **Rights to income.** You assign and give us a security interest in the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, the rights set out below. This applies whether the right exists when the mortgage is given, or comes into existence after then. The landlord's rights under every lease. The landlord's rights to rent and other money payable under every such lease and every other right to income from the real estate. And the landlord's rights in respect of every lease, including a guarantee or indemnity, a security and a right to insurance. Lease includes a lease specifically covered by the mortgage. We are not bound to collect the income from the property, to enforce a lease or to comply with the landlord's obligations under a lease. We need only account for income we actually receive. This section and anything we do under it do not put us in possession of real estate. Nor do they authorize you to enter into a lease. Nor do they give the interest of a tenant priority over the mortgage or create a relationship of landlord and tenant between a tenant and us.

3.5 **Other rights.** You grant and assign to us, and you give us a security interest in, the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, every right of yours described below. This applies whether your right exists when the mortgage is given, or comes into existence after then. A right under an encumbrance to which your interest in the property is subject. A right to repayment of a property tax. A right to occupy, use or enjoy a benefit over adjacent or other land in connection with land described in the mortgage. This includes a licence, an encroachment agreement or a right to park. A right to require anyone to make good a defect in the property or to pay any loss you may suffer because of a defect. This includes a warranty. A right to require anyone to provide a service for maintaining or operating the property. A right to a supply of services or materials for work on the real estate or relating to work on the real estate. This includes an approval, permit or similar right. It also includes a construction contract or consultant's agreement. A right under a trust or other agreement relating to an insurance policy that covers loss of or damage to any part of the real estate. A right under an agreement to sell or dispose of an interest in the property or part of it. And any other right covered by the mortgage. You also assign to us the full benefit of all of your rights in connection with these rights, including a guarantee, indemnity, letter of credit or bond, a security and a right to insurance. We are not bound to enforce a right or comply with your obligations in respect of it. We need only account for money we actually receive. This section does not authorize you to enter into an agreement that binds us or our interest in the property. Where your giving the security under this section would be a breach of the agreement, it is effective when it can be made without a breach. You must if we ask in writing use your best efforts to make the security effective.

3.6 **Movable property and other security.** Except where your interest in property is as a tenant under a lease, you grant, mortgage, release all your claims on, and give us a security interest over the following. Your interest in all property that is needed for or relates exclusively to the real estate. Where the real estate is a residential unit, an appliance provided by the landlord to a tenant in the real estate, such as a stove or refrigerator. Where work is being done on the real estate, your interest in materials and equipment for the work. Any property covered by the mortgage. And the proceeds of an interest of yours in all or part of the property intended to be subject to security under the

mortgage. You grant, mortgage, charge, assign, bargain, sell, and release all your claims on, your interest in that interest or property, to and our heirs and successors. This applies whether the property or your interest exists when the mortgage is given, or comes into existence after then. Where the property is on the real estate, you must not, without our prior written consent, remove it from the real estate, except under the section headed **Your rights to remove and dispose of property.** The word "property" in this section has its ordinary meaning, and includes rights under agreements, intellectual property, goodwill and a claim for damages.

3.7 **When security attaches.** The time for attachment of a security interest under the mortgage has not been postponed. For property in which you have an interest when the mortgage is given, the security interest attaches then. For property in which you have an interest after then, the security interest attaches when you acquire the interest.

3.8 **Registration.** You irrevocably authorize us, and a person we authorize, to agree to, sign and register for you an electronic document needed to register the mortgage or further register it.

3.9 **Our priority.** Our security under the mortgage has priority for the payment obligations over every interest in the property created after the mortgage in favour of another person. It has priority even if we make an advance after the other person's interest was created. It has priority even if an agreement creating or changing payment obligations is entered after the mortgage was given, and even if the agreement not registered. Where the law limits our priority after we have notice of an interest in the property in favour of another person, a notice is not valid unless it is in writing, is handed personally to a senior officer of ours, clearly refers to the mortgage, and clearly states its purpose. Every person acquiring an interest in the property must be taken to agree to the terms of this section. We may have entered into an agreement with a tenant of the real estate (or any part of it) that affects our priority or other rights under the mortgage, on terms that we chose. We may do so in the future, on any terms that we choose. You agree that your interest is bound by the agreement. In particular, you agree that, if the agreement affects our priority over the tenant, it does not affect our priority over you. This section does not limit any other term of the mortgage or right of ours under it.

3.10 **Future interests of yours.** You agree that, if after the mortgage is given you acquire another interest in the property, the interest will be security for the payment obligations. This also applies if your interest increases, for example, through a joint owner's right of survivorship. Our security under this section has priority over any interest in the property in favour of anyone else created after you acquire your interest. This section does not limit any other term of the mortgage or right of ours under it.

3.11 **Other parties or interests.** Every person who is a party to the mortgage, other than you and us, and including a spouse, agrees with us as follows. If the person is a spouse, the person consents to the mortgage where it affects the interest of the person's spouse, and postpones every claim as spouse to the mortgage. Where the person has an interest in the property or its proceeds, and the interest is not being mortgaged under other terms of the mortgage, the person gives us security over the interest in the same way as if the

person was you, or agrees to do so. This applies whether the interest exists when the mortgage is given, or comes into existence after then. As to the interest, the person grants, mortgages, charges, bargains, sells, releases all claims on, assigns, gives a security interest in, transfers, and subleases, the property to us and our heirs and successors in the ways set out in the mortgage. As to the interest, the person agrees to be subject to all of the terms of the mortgage, and gives us all of the powers under the mortgage, as if the person was you. Where the person has a claim on money that leads to payment obligations, the person releases us from any liability for the claim.

3.12 Your enjoyment of the property. Until we can enforce the security, you may remain in possession of your interest in the real estate and continue to use movable property that is subject to the mortgage. Until we can enforce the security, we authorize you to collect the rent currently due under a lease. This authorization does not detract from the legal effect of an assignment in the mortgage. You may not do anything beyond these things, and we are not bound by anything beyond them that you do.

3.13 Your rights to remove and dispose of property. You may remove property from the real estate and dispose of it provided all of the following conditions are met. When you remove the property, we must not be entitled to enforce the security. The property must be movable or be machinery or equipment in a building. The property must be obsolete, be worn out, be such that it cannot be repaired or not be needed for the operation of the real estate. And, if the property needs to be replaced, it must be replaced immediately, the replacement of it must be at least as good as the property replaced and you must own the replacement free from encumbrances.

3.14 Your title obligations.

3.14.1 Nature of your title. Where you give us security over property, you will be taken to give security over the absolute ownership of or absolute right to the property. Where this section refers to your interest in property, it refers to that ownership or right. For real estate, this is an estate in fee simple. For all property it is the absolute ownership or absolute right, both legally and beneficially. However, where the mortgage specifically says that you have another interest, this section refers to the interest described in the mortgage.

3.14.2 Your obligations.

3.14.2.1 You promise that you have a good title to your interest in the property, free from encumbrances or defects. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you give us the following promises as to your interest and every interest on which your interest depends. The interest conforms to every description in the mortgage and has not been changed. The person that created the interest had a good title to the interest required to create a valid interest, free from encumbrances. The interest is valid and in force. The interest has not been terminated or surrendered, and is not voidable. And there is no outstanding default in complying with obligations relating to the interest. Where the property is a right, such as a right to income or an insurance policy, you promise that the right is valid.

3.14.2.2 You promise that you have the right, power and authority (including any required approval or consent) to mortgage, charge, bargain and sell, assign or deal with your interest in the property in the manner set out in the mortgage, free from encumbrances. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you promise that the person that created every interest on which your interest depends had the right, power and authority (including any required approval or consent) to create the interest, free from encumbrances.

3.14.2.3 You promise that you have not done, omitted or permitted anything by which your interest in the property is or may be affected or made subject to an encumbrance. You agree that, while we are entitled under the terms of the mortgage to possess or enjoy your interest in the property, we will have quiet possession or enjoyment of your interest in the property free from encumbrances. You must at our request do anything that we think is necessary or advisable to confirm any of our rights under the mortgage and pay our costs for that. You must defend your title to the property. You must not create or attempt to create an encumbrance that is prior to the mortgage or has the same priority as the mortgage. You must give us a copy of all of the documents relating to the property that are in your possession or control affecting the title (except those available in the land registration office), including surveys.

3.14.2.4 You promise that the real estate conforms to every description or plan given to us, and that it includes all buildings and improvements in every description. If your interest in the property is subject to an encumbrance, you promise that the encumbrance conforms to every description given to us.

3.14.3 Rights included. Where you give us security over property, our security covers every claim of yours on the property, interest of yours in it, or right of yours over it. For example, if you are a co-owner, partner or trustee, it includes your rights as co-owner, partner or trustee.

3.15 Permitted encumbrances. You are not liable for a breach of your obligations under the section headed **Your title obligations** merely because of the encumbrances described below. You promise that you have given us full details of all of those encumbrances that exist when the mortgage is signed.

3.15.1 The encumbrances include a lien for a property tax that is not yet due or can only be estimated because the assessment has not yet been made.

3.15.2 The encumbrances include a construction lien for an improvement that is being made in accordance with the terms of the mortgage, as long as it is not yet payable and no step has been taken to preserve, perfect or enforce it.

3.15.3 The encumbrances include an exception or reservation in favour of the Crown for mines or minerals, a right of way, any other easement, a licence similar to an easement, a restrictive covenant or a municipal bylaw provided that, in every case, it does not prevent the real estate from being used in a way that it is being used or that you have led us to expect that it will or could be used. We must

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postpone the mortgage to a right of way, other easement, licence or restrictive covenant that you reasonably wish to give, provided that it does not prevent the real estate from being used in that way. We need to do this only if you meet all of the following conditions. You must ask us in writing. When we are to give the postponement, we must not be entitled to enforce the security. And you must show us that the encumbrance is one described above and pay our costs.

3.15.4 The encumbrances include a title defect which is minor and which, with any other defects, has no material effect on our security.

3.15.5 The encumbrances include a lease a true copy of which you have given to us or our lawyer before the mortgage was signed. And they include a tenancy agreement for a residential unit which is in favour of a person who occupies the unit as a home, which is for a term ending no more than one year after this mortgage was signed and which conforms to the last rent roll that you delivered to us before the mortgage was signed.

3.16 Discharge. When the payment obligations have been paid on the dates they were due and in accordance with their terms, and you ask us in writing to do so, we must give a discharge of the mortgage and a reassignment to you any rights that you have assigned to us in the mortgage. Or, if you are entitled to and do require us to assign the mortgage and rights to someone else, we must do so. You must give us a reasonable time after payment to verify our records and complete the discharge or assignment. You must pay our costs for doing what this section requires. You are responsible for registering the discharge or assignment.

4 Leasehold property.

4.1 Leasehold property. The following terms apply where we would have received security under part 3 if your interest in the property had not been as a tenant under a lease. They also apply where you give us security over property in which your interest is as a tenant under a lease.

4.1.1 Lease. We refer in this section to the lease to you as the lease. In this section lease does not include the other agreements referred to in the definition of lease in part 8. We refer to the property leased by the lease as the leased property. We refer to your interest in the leased property as a tenant under the lease as your leasehold interest.

4.1.2 How the mortgage applies to a leasehold interest. You do not grant, mortgage, charge, assign, bargain sell, or release all your claims on, the leased property or lease to us under part 3; instead you give us the security provided for below. No assignment of rights in part 3 applies to your leasehold interest or the lease. All other terms of the mortgage apply to the leased property. However, if the lease gives you both a leasehold interest and some other interest in the leased property, this section applies to the leasehold interest and part 3 applies to the other interest.

4.1.3 Our security. You grant us the following security over the leased property. Except as set out in the next sentence, you mortgage or charge the leasehold interest to us. But, where the effect of the previous sentence, or any other term of the mortgage, would be to assign your leasehold interest to us, the

sentence or term does not apply. You sublease the leased property to us for the rest of the term of the lease, except the last day of the term. Because you have not assigned the lease to us, your giving us the security does not put us under an obligation to your landlord to comply with your obligations under the lease. Although you have not assigned the lease to us, you must hold your remaining leasehold interest in trust for us. You must, when we can enforce the security, dispose of or deal with your interest under the lease, as we require. We may at any time after we can enforce the security appoint anyone as a new trustee in place of you or any other trustee, and we may use every power given by law to a person who appoints a new trustee to transfer the leasehold interest to the new trustee.

4.1.4 Landlord's interest. You agree that, even if you acquire the landlord's interest under the lease, the lease will continue to exist. If you have a right when the mortgage is given or after then to acquire the interest of any landlord in the leased property, you must give us security over the interest.

4.1.5 Renewal. If you have an option to renew or extend the lease, you must exercise the option and do everything needed to obtain the new lease or extension. If you have a right when the mortgage is given or after then to obtain a new lease of the leased property or to extend the lease, you must give us security over the new lease or extension.

4.1.6 Power of attorney to us. You irrevocably appoint us your attorney to do for you everything that this section requires you to do. We may authorize anyone to exercise this power for us.

5 Your other responsibilities.

5.1 Insurance.

5.1.1 Kinds of insurance required. You must insure your interest in every building and other improvement on the real estate against loss or damage by fire, extended perils and other risks normally covered by a fire insurance policy. If there is a boiler or machinery on the real estate, you must insure your interest against losses usually covered by a boiler and machinery policy. Where the real estate is leased, your insurance must cover your loss of rents and payments by tenants towards costs for at least a year. Where you use the real estate for a business purpose, the insurance must cover your loss of income for at least a year. You must also insure against general public liability. Where work is being done on the real estate, your insurance must cover builder's risks. In addition, you must carry that insurance for all of the property that a careful owner would usually carry when insuring a similar property and using it in a similar way and in a similar locality. You must also carry any insurance that any other agreement between you and us requires you to carry. If we ask in writing, you must carry any kind of insurance relating to the property that we reasonably require you to carry.

5.1.2 Insurance against damage. Your insurance against loss of or damage to a building or other property must be for the cost in Canadian dollars of replacing all of the building or property with a similar building or property. The policy must provide that the proceeds of any loss are payable to us and the insurer must, if we ask in writing, consent to the transfer of the benefit of the policy to us. Any

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comply with all laws. That during the restoration all expenses will be paid and we will receive payment of the payment obligations as agreed. (We may require you to do that by depositing cash with us or giving us other security acceptable to us to cover the expenses). And that no material lease of any part of the real estate is terminated or can be terminated because of the loss and, when the restoration is completed, all material leases of the real estate will continue. We must within 90 days after the loss have given our written approval to the plans and specifications for the restoration (and we may not withhold approval unreasonably). And you must have started the restoration promptly after the loss and, in any event, within 120 days after the loss.

5.2.4.2 Conditions for each payment. The following conditions must be met when we instruct the third party to make each payment to you. You must have complied with your obligations under the mortgage particularly those as to work on the real estate. Nothing must have happened which gives us the right to enforce the security. You must have satisfied us that the proceeds retained in the cash collateral account after the payment are sufficient to pay all unpaid costs for the restoration and provide a reasonable reserve for contingencies. You must have given us a certificate signed by a professional architect or professional engineer who has been approved by us and has supervised the restoration. The certificate must state that all the requirements of the mortgage relating to the restoration have been fulfilled. It must also set out in reasonable detail the costs of the restoration to date and the estimated costs to complete. You must have satisfied us that you have a right to the payment. You must have satisfied us that the payment will be used to pay the cost of restoring the real estate. We must have received an opinion from our lawyer that there is no encumbrance on the real estate that has priority over the mortgage (except a permitted encumbrance). And not more than two years must have passed since the loss occurred.

5.2.5 Effect of enforcement. When we can enforce the security, we may give you written notice that we require proceeds of insurance to be used to reduce or pay payment obligations. When we do so, your rights under this section come to an end as to proceeds that are then held in the cash collateral account or that we receive after then for the same loss.

5.2.6 Holding proceeds. If the investment proceeds are held in a cash collateral account, we need not instruct the third party to pay or credit you with interest on insurance proceeds while they are held in the cash collateral account. However, the third party must invest proceeds for you, at your risk and expense, in any investment that you ask the third party in writing to make, provided that it is an investment that the law allows a trustee to make. Any proceeds of investment will be added to the proceeds.

5.3 Taxes and other charges.

5.3.1 Payment by you. You must pay all property taxes when they are due. You must pay all other charges on the property when they are due. The charges include amounts under an encumbrance on the property. Every year, within two weeks after the last payment of realty taxes was due, you must give

us a receipt or other proof that you have paid all of the realty taxes for the year. If we ask in writing you must give us a receipt or other proof that you have paid every property tax and other charge. This subsection is subject to the section headed **Your rights to contest taxes or other payments.**

5.3.2 Payment by us. Whenever we ask in writing, you must allow us to pay the property taxes on the real estate. You must then promptly forward to us all bills for property taxes that you receive. We may decide to pay property taxes once or twice a year in advance, even if they can be paid more frequently. We may require you to pay instalments to us to enable us to pay property taxes. We may estimate the amount needed to pay any property taxes and decide when to pay them. We may choose the period over which we wish to collect instalments. We may then require you to pay us the estimated property taxes by instalments at any intervals that we choose. If the period started before we began collecting the instalments, we may require you to pay a lump sum to cover previous instalments. We must use the instalments to pay the property taxes. However, if any of the payment obligations has not been complied with, we may use the instalments to reduce the payment obligations. If we have not collected enough to pay the property taxes, you must pay the shortfall when we ask in writing for it. We need not credit you with interest on the instalments except in accordance with our general administrative practice at the time for the same kind of mortgage.

5.4 Your rights to contest taxes or other payments.

Where the mortgage requires you to pay a property tax and you wish in good faith to contest the tax, you need not pay it as long as all of the following conditions are met. The total that you are contesting must not be more than 2% of the total payment obligations owing. You must be proceeding in good faith and in the best possible manner to contest the tax. You must have deposited with us cash or given us other security acceptable to us for the full amount that we think you might have to pay if your contest does not succeed. It must not be possible for your interest in the property to be forfeited, sold or affected in any other way while you are contesting the tax. We must not then have the right to enforce the security. And you must keep us fully informed of the proceedings.

5.5 Maintenance and replacement of property. You must put and keep the property in good repair. You must restore or replace property that cannot be repaired.

5.6 Alterations or additions.

5.6.1 Restrictions. Except as set out in the subsection headed **Permissions** below, you must not, without our prior written approval do any of the following things, even if the work was proposed or in progress when the mortgage was given. Make or permit a structural alteration, structural addition or major change to the real estate. Remove any machinery or equipment that serves a building on the real estate. Demolish a building on the real estate. Or do or permit anyone else to do anything that lowers the value of the real estate. We may make our approval subject to conditions.

5.6.2 Permissions. You need not obtain our approval for an alteration or addition to a building where all of the following requirements are met. The purpose of the alteration or addition must be to make

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the building suitable for a tenant or occupant or to replace equipment that has become obsolete. The alteration or addition must be made in the ordinary course of business and must not interfere with the rights of a tenant or occupant. The alteration or addition must not weaken the structure of the building. The cost of all alterations and additions in progress at any time must not be more than 5% of the total payment obligations then owing. And we must not then have the right to enforce the security.

5.7 Work on real estate. Where you do work on the real estate, you must comply with the following obligations. You must do the work in a good and workmanlike manner, using good materials. You must conform to any contracts, plans, specifications or other description that we may have approved, and you must comply with any conditions to which our approval is subject. You must do the work with reasonable speed and without interruption until it is completed, and you must not abandon it.

5.8 Liens.

5.8.1 You must comply with all your legal obligations as to payment for any work on the real estate and you must comply with laws relating to encumbrances of those who do the work. If a claim is made for an encumbrance against your interest in the real estate, you must if we ask in writing immediately have it removed, by court order if necessary. If you fail to do so, we may have the encumbrance removed and provide any security needed for the purpose. Anything we pay under this section is a cost that you must pay.

5.8.2 If we reasonably conclude that our security may be subject to a construction lien, we may do any of the following things. We may require you to ensure that a certificate or declaration of substantial performance for the work is published in accordance with the law. When enforcing the security, we may provide anyone dealing with us with a financial guarantee bond or other security to cover a risk of there being a construction lien on the real estate.

5.9 Obligations affecting property. You must comply with every covenant, condition and other obligation that affects your interest in the property. If your interest in the property is subject to an encumbrance, they include those under the encumbrance. If property is leased to you, they include those under the lease. You agree that nothing will be done or omitted under them that might impair your interest in the property. This includes anything that could accelerate an amount owing under an encumbrance.

5.10 Preferred claims. This section applies to a preferred claim. This is an amount to which any of our rights under the mortgage is or may become subject, which takes or may take away any of those rights or which impairs or may impair those rights. It includes an amount that does or may do so in any of the following ways, for example. It causes a lien, implied lien, charge, trust, deemed trust or other claim on the property, or on the income or any other benefit from the property. It prevents us from receiving, or a receiver, manager from giving us, the full benefit of our security. It runs with the property or imposes an obligation on anyone who acquires an interest in the property from us. Or it may allow a person supplying an important service for the property to cut off the service. You must pay every preferred claim when it is

due. If the claim became due before the mortgage was given and is unpaid, you must pay it immediately. Where anything that you do may create a preferred claim in the future, you must set and keep money aside to pay the claim.

5.11 Legal requirements and environmental. You must ensure that the property and its use comply with every law. You must not put or allow anyone else to put a pollutant in or on any part of the real estate (including water) that causes or is likely to cause harm to the life or health of a human being. You must not, without our prior written approval, use the real estate or allow it to be used, in a way that creates or increases a risk of a breach of this section, even if the use was proposed or in progress when the mortgage was given. We may make our approval subject to conditions, including security for clean-up costs, and you must comply with those conditions. You must give us prompt written notice of any material fact of which you become aware and which relates to the status of the real estate under any law or to any pollutant on or in the real estate, and a copy of any report that you prepare or receive on that. You agree to pay to the persons described below all loss that they suffer and that is caused by any of the causes listed below, and the persons are not liable to you for any loss so caused. The loss includes loss from a liability or from a cost relating to the liability. The causes are a breach of any law relating to the real estate or its use, or a pollutant in or on the real estate (including water), even if the breach occurred, or the pollutant was in or on the real estate, when the mortgage was given. The persons are as follows. Us, a person for whom we hold the payment obligations, a person for whose benefit we or the person hold any of the payment obligations, and a receiver or receiver and manager appointed under the mortgage. A shareholder, director, officer, employee and agent of us, the person or the receiver or receiver and manager. And an heir, legal representative, successor or assignee of anyone listed in the previous two sentences. This section does not limit a right of us or a person who benefits under this section under any other term of the mortgage.

5.12 Specific environmental problems. You have given us a promise about things in a list in section 1.10. You agree not to do or allow anyone else to do any of the things. This does not limit our rights under the previous section. It does not apply to anything for which you have obtained our prior written approval under the previous section.

5.13 Leases.

5.13.1 Our approval required for some leases. Before entering into any of the following leases, you must obtain our written approval to the lease. A lease of more than 20% of all rentable areas on the real estate. A lease (or series of related leases) at a net rent of more than 20% of the total net rent from the real estate. (The total net rent is the actual net rent for premises then leased, the proposed net rent for the premises then being leased and the projected net rent for all other unleased premises.) A lease of premises which were previously leased, if the net rent under the lease is at a rate for the rentable area of less than 85% the highest yearly rate under the previous lease. And a lease to a tenant not dealing at arm's length with you. In calculating net rent under this subsection, we may reduce the rent to take into account your expenses, such as for inducements. You will be bound by a calculation of the percentages under this subsection that we make in good faith. We

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will not withhold our approval to a lease unreasonably, except to a lease to a tenant not dealing at arm's length with you. Our approving a lease does not mean that our interest is bound by it.

5.13.2 Your general obligations as to leases. You must not enter into a lease unless the lease satisfies the following conditions. The lease is to a tenant, at a rent and on terms, that are reasonable to the landlord, and you have taken the steps in entering into the lease that would be taken by a prudent landlord. The lease restricts the tenant's use of the premises to a use that is appropriate for the real estate. The lease does not require the tenant to pay rent more in advance than monthly or make any other kind of advance payment to you for the benefit of the lease (except for any security deposit of not more than one month's rent). The lease prevents the tenant from setting-off against or deducting from the rent or from other payments due to the landlord under the lease any amount that the tenant may claim from the landlord.

5.13.3 Your dealings with tenants. You must not accept rent under a lease more than one month in advance (except for a security deposit of not more than one month's rent). We are not bound by it if you do. We are not bound by any of the things listed below unless we give our prior written approval to them. We may not withhold our approval unreasonably. The things are the following. A surrender or termination of a lease or an agreement to surrender or terminate a lease. A material amendment of a lease. A release or waiver by you of a material obligation under a lease. Or a release by you of any of your remedies for a serious breach of an obligation under a lease. If a tenant of the real estate becomes insolvent, you must give us written notice of that, and you must if we ask in writing give us the opportunity to take part in any proceeding.

5.13.4 Rent control and standards. You must comply with every law as to the rents that may be charged to tenants of the real estate and as to the standards to which the real estate must conform.

5.13.5 Your obligation to obtain agreements between tenants and us.

5.13.5.1 If we ask in writing, you must exercise your rights and use your best efforts to have the tenant under every lease that exists when the mortgage is signed enter into an agreement with us. If we ask in writing, you must have the tenant under every other lease enter into an agreement with us.

5.13.5.2 In the agreement, the tenant must postpone the lease to the mortgage. The tenant must also agree, if we ask in writing, to permit us (including a purchaser from us) to enforce the lease. The agreement must contain such terms as we reasonably require.

5.13.5.3 In the agreement referred to in this section, we must agree not to enforce our rights under the mortgage to disturb the tenant's possession or use of the real estate as tenant under the lease, as long as the tenant pays all rent and other money under the lease without set-off or deduction and is complying with all the tenant's other obligations under the lease. However we need enter into this agreement only if all of the following conditions are met. The tenant is at arm's length to the landlord. The lease conforms to all of the requirements of the mortgage. We have given our written approval to

the lease (and we may not withhold our approval unreasonably). The tenant has executed all documents that the tenant is obliged to execute. The landlord and the tenant have substantially completed all work required by the lease to make the premises ready for use. The landlord has done substantially everything else that the lease requires of the landlord at or around the beginning of the lease, for example, taking over other premises of the tenant or paying an inducement or improvement allowance. The tenant has taken possession of all of the leased premises, has started to carry on business in them and has started to pay rent. And we do not then have the right to enforce the security.

5.14 Proceedings affecting the property. You must immediately notify us in writing if you or anyone else takes or threatens any action under any law or encumbrance relating to the property. This includes anyone taking a step to enforce a claim for work on the real estate, a court action, a proceeding before an administrative body (such as a zoning hearing or environmental assessment), an official action (such as an expropriation or order to comply with a bylaw), or a notice of default under an encumbrance.

5.15 Our rights to inspect and get reports, including environmental. We may at any time, before or after we can enforce the security, inspect the real estate, make appraisals of it, make tests of it, take samples from it, conduct environmental testing of it, or monitor any activity on it. We may have another person do these things for us. Where a person has done any of the things for you, you consent to the person doing them for us or giving us any information. You must permit us and anyone we authorize to enter the real estate at reasonable times, before or after default and for any purpose we think is necessary. You must pay us our reasonable costs for exercising our powers under this section when we ask in writing for them. Exercising the powers in this section does not put us or our agent in possession, management or control of the real estate. Nor does it give you any rights against us or a person we have to do the things for us. This section does not limit any other right of ours under the mortgage.

5.16 Your giving us proof. Where the mortgage requires you to make a payment to anyone other than us, or comply with another obligation, you must if we ask give us proof that you have made the payment or complied. You must do so within a reasonable time, and in any event within 30 days.

5.17 Your giving us information. You must give us and anyone we authorize any financial, tax or other information that you have or can reasonably obtain and that we ask for in writing, about the following. About you, everyone who is responsible for payment obligations, every guarantor and, where property is held by a trustee, every beneficial owner. About the property. Or about how you are complying with your obligations. You authorize anyone else to give us that information. You must permit us and anyone we authorize to inspect the information at reasonable times and make a copy of it. You must if we ask in writing give us a budget for the real estate containing information we reasonably require.

5.18 Your keeping accounts and giving us statements and rent rolls. You must at all times keep records and accounts for the property in accordance with sound accounting practice. Within 120 days after

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the end of each financial year, you must give us a copy of the financial statements for you, everyone who is responsible for payment obligations, every guarantor and, where property is held by a trustee, every beneficial owner. A chartered accountant must prepare the statements in accordance with generally accepted accounting principles. If we reasonably ask in writing, an independent firm of chartered accountants must audit them. Within 120 days after the end of each financial year, you must also give us a separate operating statement for the real estate. It must at least show, by category, the income and operating expenses for the real estate, and the net income. Within 120 days after the end of each financial year, you must also give us a rent roll for the real estate as at the end of the year. It must at least show every tenant, and for each the rentable area in square feet; the annual, monthly and per square foot rent; the commencement and expiry dates of the lease; details of future rent increases; and whether rents are net or gross.

5.19 Your conduct of business. You must use, manage and operate the property in a reasonably prudent manner, in doing so you must comply with every law, and you must pay all expenses for doing so. If you are a corporation, you must maintain your corporate existence.

5.20 Your using professional management. If we decide that you have not complied with the previous section, we may give you a written notice requiring you to comply. If 30 days after the notice we decide that have still not complied, we may give you a notice requiring you to use a manager chosen by us. You must then employ and use that manager to manage the real estate. You must pay the manager's remuneration and expenses.

5.21 Use of income. Until you have paid all current expenses directly attributable to the ownership and operation of the real estate, including all payment obligations, that have become payable, you must not use any rent and other money payable under a lease, or any other income from the real estate, for any other purpose.

5.22 No change in use of real estate. You must not, without our prior written approval, make a major change in the use of the real estate. You must not abandon the real estate or leave a building on it vacant.

5.23 Indemnity and release. You agree to pay to the persons described below all loss that they suffer and that is caused by any of the causes listed below, and the persons are not liable to you for any loss so caused. The loss includes loss from a liability or from a cost relating to the liability. The causes are injury to or death of a person or loss of or damage to property on or about the real estate; a use, non-use or condition on or about the real estate; and a breach of any law relating to the real estate or its use. The persons are as follows. Us, a person for whom we hold the payment obligations, a person for whose benefit we or the person hold any of the payment obligations, and a receiver or receiver and manager appointed under the mortgage. A shareholder, director, officer, employee and agent of us, the person or the receiver or receiver and manager. And an heir, legal representative, successor or assignee of anyone listed in the previous two sentences. You agree to pay the loss to us, and we are not liable for the loss, even where it was caused by our negligence, but this sentence does not cover a loss while we were in possession of the real estate on or about which the loss was caused. This section does not

limit a right of us or a person who benefits under this section under any other term of the mortgage.

5.24 Other agreements. You must comply with your obligations to us under any other agreement that relates to payment obligations.

6 Enforcing security.

6.1 When we can enforce the security. We can enforce the security after any of the events listed below has occurred. We can do so even if the cause of the event is outside anyone's control. We can do so without presentment, protest, demand or notice, all of which you waive. If you are more than one person, an event for each person is an event of default for both or all of you. The events are:

6.1.1 A payment, or part of a payment, under any of the payment obligations is not made when it is due. This applies whether the amount is due on demand or a fixed date and by acceleration or otherwise.

6.1.2 Any other obligation to us under the mortgage is not complied with. Or where you are to do or not to do something, on or to the property, or as to its use, another person does the thing. This subsection is subject to the section headed Notice of default below.

6.1.3 Any of the promises made, or information given, to us under or in connection with the mortgage is materially incorrect or incomplete. A promise or information may have been limited to what the person who made or gave it knew. However, we can enforce the security if we find that the matters in the promise or information are materially incorrect, even though the person making the promise or giving the information did not know that it was incorrect, or had done what was reasonable to verify it.

6.1.4 Any obligation to us under any other agreement that relates to payment obligations is not complied with, or an event of default occurs under such an agreement.

6.1.5 At any time during the mortgage the property or its use does not comply substantially with every law. Or a part of the real estate (including water) is composed of a pollutant that causes or is likely to cause harm to the life or health of a human being.

6.1.6 You become insolvent (or, if you are more than one person, any of you does). Or anyone who is responsible for all or part of the payment obligations becomes insolvent, including a guarantor or indemnifier. A person becomes insolvent when any of the following happens. The person becomes a bankrupt or an insolvent, or is found in a legal process to be bankrupt or insolvent. The person makes an assignment for the benefit of creditors. Anyone enforces a judgment, distress or similar process against an asset of the person. A liquidator, receiver, trustee or similar officer is appointed for all or part of the person's assets or income. The person or anyone else starts a bankruptcy, arrangement or readjustment of debt, dissolution, liquidation or similar proceeding relating to the person under any law, including a proposal. And the person admits in writing the person's inability to pay the person's debts as they become due. Where anyone other than the person enforces the process or starts the proceeding,

the person becomes insolvent only if the process or proceeding has not been dismissed, discharged or bonded within 60 days after it was enforced or started.

6.1.7 You fail to restore the real estate as required under the sections headed Proceeds under \$100,000 or Proceeds of \$100,000 or more and conditions met or you fail to make us an offer to prepay your payment obligations as required under the sections headed Proceeds over \$100,000 and conditions met or Proceeds of \$100,000 or more and conditions not met.

6.1.8 You fail to elect to pay tax on rents received (including municipal taxes paid by tenants directly to the taxing authority) for the real estate as a resident of Canada for tax purposes or you fail to file the appropriate income tax returns as required under the section headed Effect of an owner ceasing to be a resident.

6.1.9 There is a Transfer that we have not previously approved in writing. In this section, Transfer includes a transfer by law and, for a non-public corporation, a change of control (direct or indirect) or amalgamation of the corporation that results in a change of control (direct or indirect). This section applies to a transfer if it meets all of the following tests. It must be of an interest in all or a substantial part of the real estate. It must be of an interest of an owner (as defined in Part 8) that is subject to our security or, where the interest is subject to a bare trust, the interest of a beneficial owner. Where the interest is held by more than one person, it must be of 50% or more of the interests of both or all of the persons. And, for a partnership, it must be by the partnership or, for a transfer of interests in the partnership, it must be of 50% or more of the interests of the partners in a general partnership, or of the general partners in a limited partnership. If a transfer is part of a series of transfers, both or all are treated as one.

6.1.9.1 This section does not apply where we give our prior written approval to the transfer. We may not withhold approval to a transfer under this subsection unreasonably. We do not withhold approval unreasonably where we are not satisfied that a transferee is creditworthy or has the expertise needed to manage the real estate. We do not withhold approval unreasonably where we require a transferee to agree with us to comply with the mortgage or a major shareholder of a non-public corporate transferee to give us a guarantee or indemnity. We do not withhold approval unreasonably if we do so while we can enforce the security. Our approving a transfer does not impair or waive our right under this section on a future transfer. This subsection does not impair any other right that we may have to approve or consent to a transfer.

6.1.9.2 You must give us written notice of a transfer at least 30 days before it occurs, together with all information we might reasonably require to decide whether to approve the transfer. This must include a copy of every agreement for the transfer, a copy of the last financial statements for a business of every transferee, a net worth statement for every individual transferee and major shareholder of a non-public corporate transferee, a current operating statement and rent roll conforming to the requirements under the heading Your keeping

accounts and giving us statements and rent rolls, and a description of every business of every transferee.

6.1.10 A mortgage or charge is given on the interest in all or part of the real estate without our prior written approval. We may not withhold approval unreasonably. We do not withhold approval unreasonably if the mortgage or charge would rank prior to or *pari passu* with our mortgage. We do not withhold approval unreasonably if we do so while we can enforce the security. Our approving a mortgage or charge does not impair or waive our right under this section on a future mortgage or charge. You must give us written notice of a mortgage or charge at least 30 days before it occurs, together with all information we might reasonably require to decide whether to approve the mortgage or charge. This must include a copy of every agreement for the mortgage or charge; the amount, rate and terms of repayment of the obligations secured; details of the purpose for which the obligations are incurred; and the name, address and description of the intended holder of the mortgage or charge.

6.1.11 Any other event occurs after which the mortgage says we can enforce the security.

6.2 Notice of default. We cannot enforce the security under section 6.1.2 (that is, merely for a failure to comply with any obligation other than an obligation to pay money), unless we give you written notice of the failure and it is not cured 30 days after we give the notice. However, if you can cure the failure but it cannot be cured within 30 days, we cannot enforce the security for the failure if you start curing it within 7 business days after we give the notice, you proceed continuously with the cure as quickly as possible and you complete the cure within 60 days after we gave the notice. Despite the above, we may without notice use our powers to carry out any obligation with which you have failed to comply where we think an earlier remedy is necessary to protect the value of our security. And, wherever a term of the mortgage outside this part headed Enforcing security refers to our becoming entitled to enforce the security, it must be read as if the words like "or we would have become entitled to enforce the security had we not been required to give notice" had been added to it.

6.3 We may require obligations to be paid immediately. When we can enforce the security, we may require immediate payment of all payment obligations (including obligations that have not become payable). The obligation to make the payment is however subject to any provision of a law which applies despite what you and we have agreed to in this section and which gives you a right to avoid the consequences of this requirement.

6.4 We may take action. We may take legal action to collect the payment obligations.

6.5 We may take the monies in the cash collateral account. We may instruct the third party to pay any amounts remaining in the cash collateral account to us.

6.6 We may take possession. When we can enforce the security, we may take possession of the property.

6.7 We may collect income. When we can enforce the security, we may collect income from the property.

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6.8 **We may sell.** When we can enforce the security, we may sell or dispose of the interest in the property covered by our security, without going to court. We may also ask a court to order a sale of that interest.

6.9 **We may divide property.** When we are in a position to sell the interest in the property covered by our security, we may, if any other person also has an interest in the property, agree with that person to divide the property between persons who have interests in it or to acquire an interest of the person. We may pay or receive money for the purpose and money we pay is a cost that you must pay.

6.10 **We may exercise the powers of an owner.** When we take possession of or collect income from the property we may exercise all the powers of an owner of the interest in the property covered by our security and you are bound by our actions. These powers include the following. We may manage and operate the property and carry on a business relating to the property. We may make or continue a repair, alteration or addition to the property. We may take legal proceedings relating to the property. We may borrow money or advance money for the purpose of exercising our powers. We may enter into contracts for the purpose of exercising our powers.

6.11 **We may appoint a receiver (or receiver and manager).**

6.11.1 **Appointment and removal.** When we can enforce the security, we may in writing appoint anyone to be a receiver or a receiver and manager as to the property, on any terms, including remuneration, that we think are reasonable. References in the mortgage to a receiver include a receiver and manager. We need not obtain security from the receiver and are not limited by any law in our choice of the receiver. We may make the appointment even if we have taken possession of property and, when we do so, we will be treated as having gone out of possession. We may also in writing remove a receiver appointed by us. When we remove a receiver, we may appoint a new receiver. We may also ask a court to appoint a receiver.

6.11.2 **Effect of appointment.** A receiver appointed by us is considered to be your agent and not ours; the receiver's acts and defaults are considered your acts and defaults and not ours; and you alone are responsible for the receiver's acts and defaults. Neither the appointment nor anything done by the receiver puts us in possession of property or makes us accountable for money except money we actually receive. You release every receiver appointed by us from all claims against the receiver as receiver, unless they are caused by the receiver's dishonesty or gross neglect. You agree to pay every receiver all losses suffered by the receiver under liabilities the receiver incurs as receiver, except as far as they are caused by the receiver's dishonesty or gross neglect.

6.11.3 **Receiver's powers.** A receiver appointed by us has the following powers. The receiver may exercise any right or power that we can exercise, except where the appointment restricts the receiver from exercising a right or power. The receiver may use any legal right or remedy of yours or ours, in your name or ours, to collect income from the property. The receiver may borrow money on the security of the interest in the property covered by our security in priority to the mortgage for the purpose of

exercising the receiver's powers. We may require the receiver to pay money received to us, or we may direct the receiver to use it as follows. To pay the receiver's remuneration and expenses. To pay rents, property taxes, insurance premiums, costs of repair and other expenses relating to the property. To pay money owing under an encumbrance having priority over the mortgage. To pay or reduce any of the payment obligations. To pay any of the money that remains to the person who, if the receiver had not been appointed, would have been entitled to it.

6.12 **We may lease.** When we can enforce the security, we may do the following things. We may grant a lease. We may terminate a lease, accept a surrender of a lease or agree to amend a lease.

6.13 **We may become the owner.** When we can enforce the security, we may take proceedings to foreclose your right to redeem the real estate, and ourselves become the owner of the interest in the property covered by our security.

6.14 **We may ourselves carry out an obligation of yours.** When we can enforce the security, we may carry out any obligation with which you have failed to comply. We or anyone we authorize may enter the real estate for the purpose. We may pay an amount under an encumbrance on the property, if we decide it has priority over the mortgage, or a property tax. We may prepay the encumbrance and compensate its holder. We may settle with the holder the amount to be paid and any compensation. Nothing we do under this section puts us in possession of the interest in the property covered by our security. Anything we pay under this section is a cost that you must pay.

6.15 **We may distrain.** When we can enforce the security, we may distrain for arrears of payment obligations, as if they were rent and the real estate was leased to you. The arrears include, not only interest, but also principal, taxes and costs. The right to distrain is a right to take and dispose of goods. Our power is subject to any law that applies despite what you and we have agreed to, for example, where the real estate is a home. You waive any exemption from our right to distrain and any limit on it. Distraint does not put us in possession of the real estate and we need account only for money we actually receive. The right can be exercised by anyone who, after the mortgage is given, becomes the holder of the mortgage.

6.16 **We may consolidate another mortgage.** Where a principle of equity would give us a right to refuse a discharge of the mortgage, until another mortgage is paid (that is, to consolidate mortgages), you agree that we have the right despite any statute.

6.17 **We may recover costs.** You must pay us all our expenses and costs in collecting under the payment obligations and exercising our rights under the mortgage, and even if we do not completely do so.

6.18 **How we may exercise our powers.** When we exercise any of our powers under the mortgage, the following terms apply.

6.18.1 **We may exercise the power as to all or part of the property or as to any interest in all or part of the property.** We may exercise the power without obtaining any consent or cooperation from you. We may exercise the power in your name or ours. We may exercise the power even if we have not taken possession of the property. We may exercise the

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power to enter into a sale, lease or other transaction in any way and on any terms that we think are reasonable. For example, we may do so by private contract as well as by public auction or tender, and we may sell on credit as well as for cash. If we sell on credit, we need not account for the proceeds until we receive them.

6.18.2 We may do everything that we think proper relating to a sale, lease or other transaction. For example, we may enter into an agreement to enter into the transaction, bring an agreement to an end, enter into a new agreement or amend an agreement. At an auction we may set a reserve price or buy in to prevent a sale that we think is inappropriate. We may give all documents that we think are necessary for the above purposes.

6.18.3 We may transfer or deal in any other way with every interest in the property that you had the power to dispose of or deal with. You must at our request do everything that we think is necessary or advisable to transfer your interest in the property or deal in any other way with it and you must pay our costs for that. You irrevocably appoint us as your attorney to do at any time anything we decide is needed or desirable to exercise a right under the mortgage. Wherever you appoint us as your attorney, you also appoint anyone we authorize or substitute, as your attorney for the same purpose.

6.18.4 Where your interest in property is a right, or is affected by an obligation, we may decide or settle a question as to the right or obligation.

6.18.5 Where a receiver exercises a right or power, this section applies as if all references to us were to the receiver.

6.19 Other terms relating to our rights.

6.19.1 Legal powers. Where a power that the mortgage gives to us goes beyond what is permitted by a law that applies despite what you and we have agreed to, we have the power as far as that law permits.

6.19.2 Legal requirements apply. Our rights in the mortgage are subject to our giving any notice or taking any other step that is required by a law that applies despite what you and we have agreed to. Subject to this and to the other terms of the mortgage, we can enforce our security without giving any notice or taking any other step, except where the mortgage expressly gives you a right to notice.

6.19.3 Other rights. The rights set out in the mortgage are not exhaustive; we may exercise any other right given to us by the mortgage, any other agreement, or the law. We may exercise more than one of the rights given to us by the mortgage, any other agreement, or the law, at the same time, at different times and in any order we choose.

6.19.4 Use of proceeds. We may use money that we receive from enforcing the security to reduce or pay any of the payment obligations in whatever way we decide.

6.19.5 Shortfall. If money we receive from enforcing the security falls short of the total payment obligations owing, we retain the right to recover the shortfall.

6.20 Things left on the real estate. If, when we enforce the security over real estate, there is anything on it over which we do not have security, you must pay a reasonable charge for storing the thing. You must also pay any costs we incur for it. We may remove it from the real estate. We may sell it. We are not liable for loss of it or damage to it, however caused, even if intentionally or by gross negligence.

6.21 Protection of persons who deal with us or a receiver.

6.21.1 When we sell, grant a lease, collect income or enter into any other kind of transaction authorized by the mortgage with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered and that the transaction is of a kind that we have the power to enter. When a receiver appointed by us enters into any kind of transaction with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered, that we have entered a document purporting to appoint the receiver, that the transaction is of a kind that we have the power to enter and that the transaction is not of a kind that the document entered by us restricts the receiver from entering. A statutory declaration by us or an officer of ours as to any fact set out in this subsection is conclusive evidence in favour of every person referred to above. Every such person may assume without inquiry that we can enforce the security, that we are using our powers properly and that the receiver is using the receiver's powers properly. The person is not affected by the fact that a transaction is improper, even if the person actually knows of the fact. In particular, the person may do the following things. The person may assume that there are outstanding payment obligations under the mortgage. The person may assume that an event has occurred which gives us the right to enforce the security, that we have given any required notice and that any required time has passed. Where we or the receiver can enforce the security on terms that we or the receiver think are reasonable, the person may assume that the terms on which we or the receiver enforce the security are reasonable. The person may pay money to us or the receiver without being concerned about what we or the receiver do with it.

6.21.2 Any transaction that conforms to the previous subsection binds you. You must not make any claim against the person who deals with us or the receiver or that person's successors on the ground that the transaction does not conform to other terms of the mortgage. If you do have a claim for anything done by us, it is restricted to a claim for compensation against us, and is subject to all terms limiting our liability.

6.22 Our protection. We are not responsible for any loss arising in the course of our enforcing the security or exercising a right under any other term of the mortgage, even if it was caused by negligence, unless it results from our dishonesty or our gross neglect.

7 Other terms.

7.1 Effect of an owner ceasing to be a resident. If any of the following ceases to be resident in Canada for tax purposes: an owner (as defined in Part 8) of an interest that is subject to our security or, where the interest is subject to a bare trust, a beneficial owner,

that owner must elect to pay tax on rents received (including municipal taxes paid by tenants directly to the taxing authority) for the real estate as a resident of Canada for tax purposes and file appropriate income tax returns.

7.2 Effect of your selling or dealing with the property. If you sell or deal in any other way with your interest in the property or part of it, you continue to be liable for your obligations under the mortgage, and our rights against you or anyone else are not affected. Nothing that we do in connection with a sale or dealing (including our approving a transfer or having a person agree to assume a liability or give us a guarantee or indemnity) impairs those rights.

7.3 Your obligation to notify us after a transfer. After a transfer of the interest in the real estate or any part of it of an owner or beneficial owner, you must promptly notify us in writing of the date of the transfer. Except where we have already received the details, the notice must include the price or consideration, the full name and address of every transferee and where the transferee is a trustee, the same information for a beneficial owner.

7.4 Additional terms as to our obligation to lend (including terms as to liens). Our taking the mortgage, or our advancing money under it, does not put us under an obligation to lend money or to extend credit. Nor does it add to any such obligation that we may have. Despite any agreement, we need not lend money or extend credit while we can enforce the security. Or while we would have had the right to enforce the security if we had not been required to give notice or allow time to pass. Despite any agreement, we may reduce an amount we must lend, or for which we must extend credit, by what we think is needed to remove a prior encumbrance. We may do this only where our security is to have priority over the encumbrance and we think it may not, for example, where you are constructing a building and we think a lien may have priority.

7.5 Effect of law or other transactions, including any commitment. The mortgage adds to our rights. Nothing in the mortgage takes away or reduces our rights under any law or other transaction. Nothing in any other transaction between you and us takes away or reduces our rights under the mortgage. If there is a conflict between the mortgage and a law or another transaction, it must be resolved to give us the rights under both or, where there is a conflict, the better rights. Subject to the above, the terms of a commitment or other agreement for the mortgage continue in force (and do not merge into the mortgage).

7.6 Effect of subdivision of the real estate. If any of the real estate is divided into a lot, condominium unit or other part, every part of the property secures the total payment obligations. This section applies whether the division exists when the mortgage is given, or takes place after then. The obligations must not be apportioned to parts of the real estate. You cannot require us to discharge a part of the real estate for part of the payment obligations. You waive any right given to you by law that is inconsistent with this section.

7.7 Effect of our giving releases or discharges. If we release anyone from an obligation or if we release any security, our rights against anyone else or under any other security are not affected. This applies when we agree to extend the time for payment of any of the payment obligations or to change their terms in any

other way. It also applies when we discharge part of the property from the mortgage; if we do, the property not discharged secures the total payment obligations that remain owing. This section applies whatever are the terms on which we give the release or discharge and even if we receive nothing in return. We are not liable to you for the release or discharge, except to account to you for money that we both actually receive and accept to reduce the payment obligations.

7.8 Effect of our delaying enforcing the security or waiving rights. If we delay enforcing a right under the mortgage or any other agreement, or do not exercise the right, or do not exercise a right against anyone, we do not lose or impair the right or any other right. If we waive a breach of any obligation under the mortgage or any other agreement, we do not lose a right of ours in respect of any other breach of the obligation. If we waive a right, we do not lose or impair any other right of ours. We are not bound by an agreement that contains a waiver unless it is in writing and is signed by us.

7.9 Effect of our dealings with future owners. After the mortgage is given, a person may become an owner of the property and we may enter into an agreement with that person extending the time for payment of the payment obligations or changing the payment obligations in some other way. If so, we do not lose or impair our rights against anyone who had agreed to pay or had guaranteed the payment obligations or given an indemnity. The same applies if we deal in any other way with a new owner or deal in any way with any other person who has an interest in the property or part of it.

7.10 Effect of our obtaining a judgment. If we obtain a court judgment for a failure to pay any of the payment obligations or to perform any other obligation, the judgment does not supersede the obligation, or impair the obligation or our right to enforce our security. We continue to be entitled to interest under the payment obligations, calculated and payable as agreed, and the judgment may so provide.

7.11 Effect of our paying security. If we pay an amount under an encumbrance on the property, we not only have the rights given to us by the mortgage, but we are also entitled to the rights of the person paid. If a person paid gives a discharge, we may hold it, without registering it, for longer than any period during which any law might otherwise require us to register it.

7.12 Your liability. Where more than one of you are liable for an obligation under the mortgage, both or all of you are jointly and severally liable for the obligation.

7.13 Your spouse. While any existing or future law gives your spouse any right if we enforce the security, you must keep us informed in writing of the full name and address of the spouse. Spouse includes anyone whom the law treats like a spouse for the purpose of the security.

7.14 Effect of expropriation.

7.14.1 This section applies where all or part of your interest in all or part of the real estate is expropriated, that is, taken without your consent by a government or anyone else in the exercise of a statutory power. It also applies where there is "injurious affection" to all or part of your interest in all or part of the real estate,

8.1.5 Lease means a lease of all or part of the real estate, an agreement to give a lease of all or part of the real estate and an agreement giving anyone a right to occupy or use all or part of the real estate (except a right of way or other easement). If there has been an agreement changing the terms of such a lease or agreement, it means the lease or agreement as so changed. Where lease refers to an agreement giving anyone a right to occupy or use all or part of the real estate, landlord means the person whose interest is subject to the right and tenant means the person who has the right. In all cases lease includes a sublease.

8.1.6 Owner of an interest in a property that is subject to our security means a person who would ordinarily be regarded as an owner or holder of the interest. Where there is a mortgage on the interest subsequent to ours, it excludes the holder of the mortgage, and means a person whose interest is subject to the mortgage (or last mortgage), or who holds the equity of redemption under that mortgage (or last mortgage). Where the interest is subject to a lease, it excludes the tenant. Where a person holds the interest in trust, it means the trustee, and excludes a beneficiary. When an owner or holder of an interest dies, it means the person who controls or represents the estate, and excludes a beneficiary, while the person does so. Where more than one person is an owner, it includes both or all (or either or any) of them.

8.1.7 Payment obligations are the obligations to pay money that are intended to be secured by the mortgage. Where the amount secured by the mortgage is limited, payment obligations are the obligations without regard to the limit.

8.1.8 Person includes corporation

Dated March 4th, 2004.

8.1.9 Pollutant means a substance that can cause or probably could cause harm to the life or health of a human being. It may be a solid, liquid, gas, odour or radiation.

8.1.10 Property means any property an interest in which is intended to be subject to security under the mortgage. It includes real estate.

8.1.11 Property tax means every kind of tax, rate, duty, levy, charge, imposition, assessment and fee, general or special, on the property or any part of it or in respect of the property or any part of it, whether it is in favour of a federal, provincial or other government, a municipality, a church authority, or any other governmental body, and whether it is of a kind that exists when the mortgage is given or comes into existence after then. It does not include a tax on us in respect of our overall net income or gains or a tax in respect of a transfer by us of our interest in the mortgage or of the payment obligations.

8.1.12 Real estate means the land which, or an interest in which, is intended to be subject to security under the mortgage.

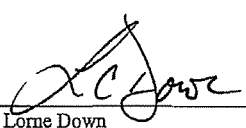
8.1.13 Work on real estate includes constructing anything that becomes part of the real estate, altering the real estate, adding to the real estate, repairing the real estate and demolishing a part of the real estate.

8.2 Interpretation generally. Where under the mortgage you or we promise, you or we must be taken to represent and warrant. Where under the mortgage you or we must do or not do anything, you or we agree and covenant to do or not do the thing. Your liability under your obligations in the mortgage continues after the payment obligations have been paid or the mortgage has been discharged.

The Manufacturers Life Insurance Company,
its permitted successors, affiliates and assigns

By:

Corporate
Seal


Name: Lorne Down
Title: Vice President, Canadian Mortgage

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE
Filing No. 200410 Cota

Properties

PIN 04201 - 0147 LT
Description PT LT 16, CON JG , PTS 1 & 2, 5R12853 ; OTTAWA ; SUBJECT TO AN EASEMENT IN FAVOUR OF ROGERS OTTAWA LIMITED/LIMITEE AS IN OC166375
Address 1919 RIVERSIDE DRIVE
 OTTAWA

Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
N530327	1990 04 12	Notice Of Lease

Chargor(s)

Name RIVERSIDE PROFESSIONAL CENTRE INC.
Address for Service 181 Bay Street
 Suite #1800
 Toronto, Ontario
 M5J 2T9

I, Donald B. Johnston, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name THE MANUFACTURERS LIFE INSURANCE COMPANY
Address for Service 200 Bloor Street East
 Toronto, Ontario
 M4W 1E5
 Attention: Mortgage Administration
 Mortgage #862196:11

Statements

Schedule: See Schedules

This document relates to registration no.(s)N550799, LT1349206, OC547909, OC547910

Provisions

<i>Principal</i>	\$ 7,500,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	semi-annually, not in advance		
<i>Balance Due Date</i>	2022/02/01		
<i>Interest Rate</i>	4.46%		
<i>Payments</i>	\$ 41,343.86		
<i>Interest Adjustment Date</i>	2012 03 01		
<i>Payment Date</i>	1st day of each and every month		
<i>First Payment Date</i>	2012 04 01		
<i>Last Payment Date</i>	2022 02 01		
<i>Standard Charge Terms</i>	200410		
<i>Insurance Amount</i>	full insurable value		
<i>Guarantor</i>			

Signed By

Janie Andrea Blyth 160 Elgin Street, Suite 2600 acting for Signed 2012 02 16
Ottawa
K1P 1C3 Chargor(s)

Tel 6132331781
Fax 6135639869

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

GLH LIMITED PARTNERSHIP (A.K.A. GOWLINGS) 160 Elgin Street, Suite 2600 2012 02 16
Ottawa
K1P 1C3

Tel 6132331781
Fax 6135639869

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargee Client File Number : 01381449

SCHEDULE "A"

Additional Provisions

Our Security.

1. **Electronic Registration.** Where the mortgage is in electronic format, we may also hold a written mortgage. If so, the mortgage in electronic format registers the written mortgage in electronic format, as far as the mortgage in electronic format contains the particulars of the written mortgage. Despite a mortgage being in another format, or any term of the mortgage, or any law, the mortgage in each format continues in force.
2. **Encumbrances.** The land is subject to the encumbrances listed below. You are not liable for a breach of your obligations under the section headed Your title obligations of the standard charge terms merely because of these encumbrances. The encumbrances are as follows:
 - a) Instrument No. OT64346 registered March 2, 1965 is a Transfer between National Capital Commission to The Corporation of the City of Ottawa.
 - b) Instrument No. N516236 registered December 13, 1989 is a site plan agreement between the Board of Trustees of the Riverside Hospital of Ottawa and The Corporation of the City of Ottawa.
 - c) Instrument No. N530327 registered April 12, 1990 is a notice of lease between the Corporation of the City of Ottawa and Health Development Services, in Trust. The lease expires on August 31, 2038 with a right to renew or purchase.
 - d) Instrument No. N540417 registered June 29, 1990 is a site plan control agreement between the Board of Trustees of the Riverside Hospital of Ottawa and the Corporation of the City of Ottawa which amends Instrument No. N516236.
 - e) Instrument No. N550799 registered September 24, 1990 is a notice of assignment of lease between the Health Development Services Inc. and Riverside Professional Centre Inc. regarding the lease registered as Instrument No. N530327.
 - f) Instrument No. LT1349206 registered December 18, 2000 is an application to change the name on Instrument Nos. LT1349154 and N530327 from the name of Health Development Services Inc. to Spinnaker Development Corporation.
 - g) Instrument No. OC164034 registered on January 28, 2003 is an application to change name owner from The Corporation of the City of Ottawa to the City of Ottawa.
 - h) Instrument No. OC166375 registered February 3, 2003 is a transfer easement between the City of Ottawa and Rogers Ottawa Limited/Limitee.
 - i) Instrument No. OC547483 registered December 20, 2005 is an application to annex restrictive covenants that should the lands cease to be used for health care purposes or any purposes directly or indirectly related to health care purposes or some other not-for-profit owner, the owner shall grant and reconvey the lands to the City of Ottawa.
 - j) Instrument No. OC547903 registered December 21, 2005 is a Transfer between the City of Ottawa and the Ottawa Hospital/L'Hopital D'Ottawa.
 - k) Instrument No. OC547905 registered December 21, 2005 is a transfer easement between The Ottawa Hospital/L'Hopital D'Ottawa and the City of Ottawa.
 - l) Instrument No. OC547909 registered December 21, 2005 is a notice of assignment of lessor interest in lease from the City of Ottawa to The Ottawa Hospital with respect to Instrument No. N530327.
 - m) Instrument No. OC547910 registered December 21, 2005 is a notice of a ground lease acknowledgement agreement between the Ottawa Hospital and the City of Ottawa.

- n) Instrument No. OC570430 is a Land Registrar's Order which amends the owner's field by replacing the name City of Ottawa to the Ottawa Hospital/L'Hopital D'Ottawa as per Instrument No. OC547903.
 - o) Instrument No. OC685750 registered February 5, 2007 is a notice of site plan agreement between the Ottawa Hospital/L'Hopital D'Ottawa and the City of Ottawa.
3. **Indemnification.** You indemnify and save us harmless from all claims, liabilities, obligations, demands, losses, damages, costs and expense (collectively the "Claims and Expenses") incurred by us arising from:
- a) environmental contamination of the land;
 - b) fraud, misrepresentation, and/or the misapplication of funds by you or your agents;
 - c) any claims, actions, or proceedings brought forward by any third party in connection with the land; and/or
 - d) failure on the part of the you, or your agents, to properly and adequately maintain the land, its structure or mechanical systems.

The foregoing indemnities shall be unlimited as to amount notwithstanding any other limitation of liability set out in this mortgage. The indemnity set out in a) above shall survive the repayment of this mortgage and shall continue in full force and effect so long as the possibility of any environmental Claims and Expenses exists unless the we have not taken possession of the land or been deemed to have been a mortgagee in possession. Subject to the foregoing, the indemnities contained herein shall survive the repayment of this mortgage and shall continue in full force and effect only with respect to all Claims and Expenses existing at the time of repayment of this mortgage.

4. **Prepayment Privileges:** Subparagraph 2.2.4 "No Prepayment" in Standard Charge Terms No. 200410 ("SCT") is hereby deleted and the following substituted therefor:
- a) You may prepay the within mortgage in full, but not in part, at any time during the term subject to the following conditions:
 - (i) There is no existing and continuing event of default under the loan.
 - (ii) You will provide written notice to us five (5) business days prior to the intended prepayment date (the "Notice Date"). The date prepayment is to be made (the "Prepayment Date") shall be a date five (5) business days following the Notice Date.
 - (iii) The Rate (as hereinafter defined) used to calculate the present value for determining the prepayment amount due to us will be equal to the yield, at the close of business on the third (3rd) last business day prior to the Prepayment Date (the "Calculation Date") on a Government of Canada bond (the "Bond") or Treasury Bill maturing the same date as the Maturity Date or, if no such Bond or Treasury Bill exists, the yield on such Bond or Treasury Bill maturing closest to, but prior to, the Maturity Date (the "Rate"). In the event a Treasury Bill yield is used to calculate the present value, the yield will first be converted to a semi-annual equivalent yield. In no event will the Rate used to calculate the present value as set out in iv) a. below exceed the Interest Rate on the mortgage.
 - (iv) The amount required to prepay the mortgage in full will be equal to the principal amount outstanding under the mortgage on the Prepayment Date, plus any accrued interest, our administrative fee and any other capitalized fees and charges, plus the prepayment amount which is to be the greater of three months of interest and the difference between:
 - a) the present value, at the Prepayment Date, of the remaining Monthly Payments and the principal balance that would have been payable at the Maturity Date (had the prepayment being requested not occurred and assuming all remaining Monthly Payments would have been

made on the due date) discounted at the Rate as defined in (iii) above;
and

b) the principal amount outstanding under the mortgage as at the Prepayment Date.

- (v) All legal costs associated with prepayment are to be borne by you.
- (vi) If you fail to make the prepayment after written notice is received by us this will nullify the Prepayment Privilege for the remainder of the term of the mortgage.
- (vii) This right to prepayment may be exercised by you in the event the landlord under the Ground Lease terminates the Ground Lease.

5. **Leasehold Property:** In addition to the provisions of Section 4 of the SCT, the following additional provisions are added:

4.1.7 Termination and Amendment: You will not amend or terminate the lease without our prior written consent provided that for any amendment, our consent shall not be unreasonably withheld.

6. **Leases:** The following shall be added to Subsection 5.13.1 of the SCT

"You will provide to us within thirty (30) days of the complete execution of such a lease, copies of all lease renewals or leases for new or replacement tenants occupying 20% or more of all rentable areas on the real estate or a lease (or series of related leases) producing a net rent of more than 20% of the total net rent from the real estate, as well as an estoppel certificate and acknowledgement attornment and non-disturbance agreement, all substantially in the form required by us, from each such tenant."

7. **Maintenance and Repair:** Subsection 5.5 of the SCT is amended to add the following:

"You covenant and agree that you will take all necessary steps to ensure the building components and mechanical systems of the property are well maintained throughout the Term and any extensions thereof. We or our agent may enter the property at reasonable times with notice to you while respecting the rights of tenants, to inspect the improvements. In the event that you do not make reasonable commercial efforts to cure any material, structural or mechanical deficiencies, this will be an event of default under the mortgage."

8. **Financial Statements:** There shall be added as Subsection 5.18 of the SCT the following:

"You will also provide us with financial statements, prepared by an independent firm of chartered accountants, of the Mortgagor within one hundred and twenty (120) days after the Mortgagor's fiscal year end."

9. **Transfer:** Subsection 6.1.9 of the SCT is deleted and the following substituted therefor:

"6.1.9 There is a Transfer that we have not previously approved in writing (such approval not to be unreasonably withheld). In this section, "Transfer" means the direct or indirect sale, conveyance, transfer or disposition of the property or any part thereof or any interest therein and it shall include a transfer by law."

There shall be added to Subsections 6.1.9.2. the following:

"In the event that a Transfer is proposed, the proposed parties to whom an interest is to be transferred must satisfactorily complete a "Know Our Customer Questionnaire" and an "Employee & Pension Plan Compliance Questionnaire", must provide us with a copy of the fully executed purchase and sale agreement and satisfactory evidence as to the source of the down payment. If the proposed interested parties do not complete the Questionnaires referred to above to our satisfaction, acting reasonably, or if we are not fully satisfied, acting reasonably, with the results of our due diligence with respect to such proposed interested parties including, but not limited to, the Proceeds of Crime (Money Laundering and Terrorist Financing Act (Canada)) and the regulations thereunder, then such Transfer will not be approved. In the event that such Transfer is not approved, you may offer alternative security and should we, in our absolute and sole

discretion, find the alternative security acceptable, then this loan may be transferred to the alternative security. You or the proposed interest parties will be responsible in any such event for:

- 6.1.9.2.1 any and all costs including all legal fees associated with the transfer of the loan; and
- 6.1.9.2.2 payment to us of a fee equal to 0.25% of the principal balance then outstanding and such amount shall be payable whether or not you have applied to us for consent to such Transfer or a Transfer has occurred without our consent but we do not exercise our option to declare this a default under the mortgage and to require payment of the principal balance then outstanding.

**This is Exhibit "E" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

PROPERTY DESCRIPTION: PT LT 16, CON JG , PTS 1 & 2, 5R12953 ; OTTAWA ; SUBJECT TO AN EASEMENT IN FAVOUR OF ROGERS OTTAWA LIMITED/LIMITEE AS IN OC166375

PROPERTY REMARKS:

ESTATE QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK JG6

PIN CREATION DATE:

1996/11/18

OWNERS' NAMES

THE OTTAWA HOSPITAL/L'ROPITAL D'OTTAWA

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/11/18 ON THIS PIN**</p> <p>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1996/11/18**</p> <p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1996/11/15 **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 49(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES</p> <p>** AND ESCHENTS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF</p> <p>** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY</p> <p>** CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 1996/11/18 **</p>						
0F64346	1965-03-02	TRANSFER	\$1		THE CORPORATION OF THE CITY OF OTTAWA	C
REMARKS: PLAN ATTACHED						
5R10708	1987-03-19	PLAN REFERENCE				C
N476353	1989-02-17	TRANSFER EASEMENT		*** COMPLETELY DELETED ***	THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON	
5R12953	1989-07-11	PLAN REFERENCE				C
N516236	1989-12-13	AGREEMENT			THE CITY OF OTTAWA	C
N530327	1990/04/12	NOTICE OF LEASE		THE CORPORATION OF THE CITY OF OTTAWA	HEALTH DEVELOPMENT SERVICES INC.	C
N530327ERR	1990/04/12	NOTICE		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: N530327 - ERROR ENTRY, CANCELLED BY GAIL BOONSALL ON 2005/09/01						
N540417	1990/06/29	AGREEMENT			THE CITY OF OTTAWA	C
N550799	1990/09/24	NOTICE				C
N591206	1991/09/18	CHARGE		*** COMPLETELY DELETED ***	FIRST TREASURY FINANCIAL INC.	
N591207	1991/09/18	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***		
REMARKS: N591206						
N606988	1992/02/03	NOTICE		*** COMPLETELY DELETED ***		
N606151	1992/02/17	NOTICE		*** DELETED AGAINST THIS PROPERTY ***		
LT1061159	1997/07/24	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** FIRST TREASURY FINANCIAL INC.	CONFEDERATION LIFE INSURANCE COMPANY	
REMARKS: N591206.						
LT1061160	1997/07/24	NOTICE		*** COMPLETELY DELETED *** FIRST TREASURY FINANCIAL INC.	CONFEDERATION LIFE INSURANCE COMPANY	
REMARKS: N591207.						
LT1126128	1998/06/10	NOTICE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	CONFEDERATION LIFE INSURANCE COMPANY	
REMARKS: CHARGE OF LEASE N591206						
LT1349206	2000/12/18	APL CH NAME INST		HEALTH DEVELOPMENT SERVICES INC.	SPINNAKER DEVELOPMENT CORPORATION	C
REMARKS: LT1349154 AND N530327						
LT1350922	2000/12/22	NO CHARGE LEASE		*** DELETED AGAINST THIS PROPERTY *** RIVERSIDE PROFESSIONAL CENTRE INC.	MONTREAL TRUST COMPANY OF CANADA	
REMARKS: RE: N530327, N550799, LT1349154 & LT1349207						
LT1350923	2000/12/22	NOTICE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	MONTREAL TRUST COMPANY OF CANADA	
REMARKS: RE: LT1350922						
LT1350924	2000/12/22	NOTICE		*** DELETED AGAINST THIS PROPERTY ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				MONTREAL TRUST COMPANY OF CANADA	THE CORPORATION OF THE CITY OF OTTAWA RIVERSIDE PROFESSIONAL CENTRE INC.	
				REMARKS: RE: N530327, N550799, LT1349154 & LT1349207		
LT1352061	2001/01/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** CONFEDERATION LIFE INSURANCE COMPANY		
				REMARKS: RE: N591306		
OC164034	2003/01/29	AFL CH NAME OWNER		THE CORPORATION OF THE CITY OF OTTAWA	CITY OF OTTAWA	C
OC166375	2003/02/03	TRANSFER EASEMENT	\$1	CITY OF OTTAWA	ROGERS OTTAWA LIMITED, LIMITEE	C
OC212010	2003/06/25	APL (GENERAL)		*** DELETED AGAINST THIS PROPERTY *** THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON	CITY OF OTTAWA	
OC212011	2003/06/25	TRANSFER REL&ABAND		*** COMPLETELY DELETED *** CITY OF OTTAWA	CITY OF OTTAWA	
				REMARKS: N476352		
4R19213	2004.02.10	PLAN REFERENCE				C
OC542103	2005/12/06	AFL (GENERAL)		*** DELETED AGAINST THIS PROPERTY *** MONTREAL TRUST COMPANY OF CANADA	COMPUTERSHARE TRUST COMPANY OF CANADA	
				REMARKS: LT1350922, LT1350923, N530327, LT1349154, LT1350922, LT1350923		
OC547493	2005/12/20	APL ANNEX REST COV		CITY OF OTTAWA		C
				REMARKS: NO EXPIRY		
OC547903	2005/12/21	TRANSFER	\$2	CITY OF OTTAWA	THE OTTAWA HOSPITAL/L'HOPITAL D'OTTAWA	C
OC547905	2005/12/21	TRANSFER EASEMENT	\$1	THE OTTAWA HOSPITAL/L'HOPITAL D'OTTAWA	CITY OF OTTAWA	C
OC547909	2005.12.21	NO ASSG LESSOR INT		CITY OF OTTAWA	THE OTTAWA HOSPITAL	C
				REMARKS: N530327		
OC547910	2005/12/21	NOTICE		THE OTTAWA HOSPITAL	CITY OF OTTAWA	C
OC569401	2006/03/06	LR'S ORDER		*** COMPLETELY DELETED *** LAND REGISTRAR		
				REMARKS: DELETING LT1061160, LT1126125 AND OC212010		
OC570430	2006/03/09	LR'S ORDER		LAND REGISTRAR		C
				REMARKS: AMENDING OWNER'S FIELD DELETED BY BULLETIN 89004, JAN 25,12, LM THIS DOCUMENT WAS RE-INSTATED ON 2012/01/27 AT 10:14 BY MCGURK, LEEANM.		

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OC649760	2006/10/12	AFL (GENERAL)		*** COMPLETELY DELETED *** OTTAWA HOSPITAL		
		REMARKS: DELETING N606886				
OC649761	2006/10/12	AFL (GENERAL)		*** COMPLETELY DELETED *** THE OTTAWA HOSPITAL		
		REMARKS: DELETING N605151				
OC685750	2007/02/05	NOTICE	31	CITY OF OTTAWA	THE OTTAWA HOSPITAL, L'HOPITAL D'OTTAWA	C
OC686891	2007/02/06	POSTPONEMENT		*** COMPLETELY DELETED *** COMPUTERSHARE TRUST COMPANY OF CANADA	THE CITY OF OTTAWA	
		REMARKS: OC542703 TO OC685750				
OC725080	2007/05/31	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** BARBER GLASS INDUSTRIES INC.		
OC748577	2007/07/24	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED ***	BARBER GLASS INDUSTRIES INC.	
		REMARKS: RE: OC725080				
OC816270	2008/01/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** COMPUTERSHARE TRUST COMPANY OF CANADA		
		REMARKS: RE: LT1350922				
OC816417	2008/01/16	NO CHARGE LEASE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	BUSINESS DEVELOPMENT BANK OF CANADA	
		REMARKS: N530327, N550799, OC547909, OC547910, OC570430 AND OC685750.				
OC816418	2008/01/16	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	BUSINESS DEVELOPMENT BANK OF CANADA	
		REMARKS: OC816417 - RENTS DELETED BY OC1370602 2013/11/20 PC.				
OC816489	2008/01/17	NO CHARGE LEASE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	SHIRLEY MARSHALL HOLDINGS INC.	
		REMARKS: N530327				
OC816491	2008/01/17	NO CHARGE LEASE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	KINGSMILL, ROBIN KINGSMILL, RUTH	
		REMARKS: N530327				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
OC827451	2008/02/26	LR'S ORDER		*** COMPLETELY DELETED *** LAND REGISTRAR		
		REMARKS: DELETING N530327ERR AND OC686891.				
OC859398	2008/06/05	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	SHIRLEY MARSHALL HOLDINGS INC.	
		REMARKS: OC816489				
OC859400	2008/06/05	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	KINGSMILL, ROBIN KINGSMILL, RUTH	
		REMARKS: OC816491				
OC1030419	2009/09/17	NO CHARGE LEASE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	SHIRLEY MARSHALL HOLDINGS INC.	
		REMARKS: N530327.				
OC1238449	2011/05/26	NO CHARGE LEASE		*** COMPLETELY DELETED *** RIVERSIDE PROFESSIONAL CENTRE INC.	SHIRLEY MARSHALL HOLDINGS INC.	
		REMARKS: N530327.				
OC1328226	2012/01/26	LR'S ORDER		LAND REGISTRAR		C
		REMARKS: OC570430				
OC1334365	2012/02/16	NO CHARGE LEASE	\$7,500,000	RIVERSIDE PROFESSIONAL CENTRE INC.	THE MANUFACTURERS LIFE INSURANCE COMPANY	C
		REMARKS: N530327. THIS DOCUMENT WAS RE-INSTATED ON 2012/07/11 AT 12:58 BY IACOVITTI, SUZANNE.				
OC1334392	2012/02/16	NO ASSGN RENT GEN		RIVERSIDE PROFESSIONAL CENTRE INC.	THE MANUFACTURERS LIFE INSURANCE COMPANY	C
		REMARKS: OC1334365				
OC1334405	2012/02/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** SHIRLEY MARSHALL HOLDINGS INC.		
		REMARKS: OC816489.				
OC1334407	2012/02/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** SHIRLEY MARSHALL HOLDINGS INC.		
		REMARKS: OC1030419.				
OC1334410	2012/02/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** SHIRLEY MARSHALL HOLDINGS INC.		
		REMARKS: OC1238449.				
OC1334411	2012/02/16	DISCH OF CHARGE		*** COMPLETELY DELETED ***		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				KINGSMILL, ROBIN KINGSMILL, RUTH		
		REMARKS: OC816491.				
OC1370802	2012/06/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** BUSINESS DEVELOPMENT BANK OF CANADA		
		REMARKS: OC816417.				
OC1644481	2014/12/09	NOTICE OF SUBLEASE		RIVERSIDE PROFESSIONAL CENTRE INC.	OTTAWA PHARMACYGROUP INC	C
		REMARKS: N530937. N550799				
OC1701990	2015.07.17	LR'S ORDER		LAND REGISTRAR, OTTAWA-CARLETON LAND REGISTRY OFFICE		C
		REMARKS: RE-INSTAPE OC1334365				
OC1732572	2015/11/04	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 1436937 ONTARIO INC.		
OC1739351	2015/11/10	CERTIFICATE		*** COMPLETELY DELETED *** 1436937 ONTARIO INC.		
		REMARKS: CERTIFICATE OF ACTION OC1732572				
OC1743964	2015/11/25	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** 1436937 ONTARIO INC.		
		REMARKS: OC1732572. OC1739351				

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**This is Exhibit "F" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

GENERAL SECURITY AGREEMENT

1. SECURITY INTEREST

- (a) For value received, **RIVERSIDE PROFESSIONAL CENTRE INC.** (the "Debtor"), hereby grants to **THE MANUFACTURERS LIFE INSURANCE COMPANY** (the "Creditor"), by way of mortgage, charge, assignment and transfer, a security interest (the "Security Interest") in all of the personal property and undertaking of Debtor and in all goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), chattel paper, documents of title (whether negotiable or not), instruments, intangibles and securities now owned or hereafter owned or acquired by or on behalf of Debtor or in which Debtor has any interest whatsoever (including such as may be returned to or repossessed by either Debtor) relating only to or used only in connection with the real property as described in Schedule "A" attached hereto (the "Property") and in all proceeds and renewals thereof, accretions thereto and substitutions therefor (collectively, the "Collateral"), including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of Debtor:
- (i) all inventory of whatever kind and wherever situate ("Inventory");
 - (ii) all equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature or kind;
 - (iii) all accounts and book debts and generally all debts, dues, claims, causes in action and demands of every nature and kind howsoever arising or secured including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by Debtor (the "Debts");
 - (iv) all deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, chattel paper or documents of title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable;
 - (v) all contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights, business names, logos and styles, and other industrial property;
 - (vi) all moneys other than trust moneys lawfully belonging to others; and
 - (vii) all personal property of Debtor situate at the locations set out in Schedule "A" and all property described in any schedule now or hereafter annexed hereto.
- (b) The Security Interest granted hereby shall not extend or apply to and Collateral shall not include the last day of the term of any lease or agreement therefor but upon the enforcement of the Security Interest, Debtor shall stand possessed of such last day in trust to assign the same to any person acquiring such term.
- (c) The terms "account", "goods", "chattel paper", "document of title", "equipment", "goods", "money", "personal property", "instruments", "intangibles", "security", "proceeds", "inventory" and "accessions" and their respective plural forms whenever used herein shall be interpreted pursuant to their respective meanings as

defined in the *Personal Property Security Act*, R.S.O. 1990, as amended from time to time, which Act, including amendments thereto and any Act substituted therefor and amendments thereto is herein referred to as the "P.P.S.A.". Provided always that the term "goods" when used herein shall not include "consumer goods" of Debtor as that term is defined in the P.P.S.A. Any reference herein to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof."

2. INDEBTEDNESS SECURED

The Security Interest granted hereby secures payment, performance and satisfaction of any and all obligations, indebtedness and liability of Debtor to Creditor (including interest thereon) present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether Debtor be bound separately or with another or others and whether as principal or surety (collectively called the "Indebtedness") arising out of or relating to the Property.

3. REPRESENTATIONS AND WARRANTIES OF DEBTOR

Debtor represents, warrants and covenants to and with Creditor and so long as this Security Agreement remains in effect Debtor shall be deemed to continuously represent, warrant and covenant to and with Creditor that:

- (a) the Collateral is genuine and owned by Debtor free of all security interests, mortgages, liens, claims, charges or other encumbrances (collectively called "Encumbrances") save and except for any existing security interests, mortgages, liens, claims and charges in favour of Creditor;
- (b) each Debt, chattel paper and instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by Debtor to Creditor from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, and no Account Debtor will have any defense, set off, claim or counterclaim against Debtor which can be asserted against Creditor, whether in any proceeding are to enforce Collateral or otherwise; and
- (c) the locations specified in Schedule "A" are accurate and complete and are the only locations of Debtor's business operations relating to the Property, records and goods (including Inventory) constituting Collateral save for goods in transit to such locations, and all fixtures or goods about to become fixtures will be situate at one of such locations.

4. COVENANTS OF THE DEBTOR

So long as this Security Agreement remains in effect Debtor covenants and agrees with Creditor:

- (a) to defend the Collateral against the claims and demands of all other parties claiming the same or an interest therein; to keep the Collateral free from all Encumbrances; and not to sell, exchange, transfer, assign, lease, or otherwise dispose of Collateral or any interest therein without the prior written consent of Creditor; provided always, that, until default, Debtor may, in the ordinary course of Debtor's business, sell or lease Inventory and, subject to Clause 7 hereof, use moneys available to Debtor;
- (b) to notify Creditor promptly of:

- (i) any change in the information contained herein or in the schedules hereto relating to Debtor, Debtor's business or Collateral;
 - (ii) the details of any material acquisition of Collateral;
 - (iii) the details of any material claims or litigation affecting Debtor or Collateral;
 - (iv) any material loss of or damage to Collateral;
 - (v) any material default by any Account Debtor in payment or other performance of his obligations with respect to Collateral; and
 - (vi) the return to or repossession by Debtor of Collateral;
- (c) to keep the Collateral in good order, condition and repair and not to use Collateral in violation of the provisions of this Security Agreement or any other agreement now or hereafter in effect between Debtor and Creditor or any agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (d) to do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by Creditor of or with respect to Collateral in order to give effect to the intention of this Security Agreement;
- (e) to pay when due: (i) all taxes, rates, levies, assessments and other charges of every nature which may be lawfully levied, assessed or imposed against or in respect of Debtor or Collateral as and when the same become due and payable and (ii) all amounts secured by any security interests, charges, encumbrances, liens and claims which rank or could rank in priority to or *pari passu* with the Security Interest;
- (f) to insure the Collateral for such periods, in such amounts, on such terms and against loss or damage by fire and such other risks as Creditor shall reasonably direct with loss payable to Creditor and Debtor, as insureds, as their respective interests may appear, and to pay all premiums therefor;
- (g) to prevent Collateral, save Inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Security Agreement;
- (h) to carry on and conduct the business of Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for Debtor's business as well as accurate and complete records concerning Collateral, and mark any and all such records and Collateral at Creditor's request so as to indicate the Security Interest;
- (i) to deliver to Creditor from time to time promptly upon request or provide access to:
- (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral;
 - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to Collateral for the purpose of inspecting, auditing or copying the same;

- (iii) all financial statements prepared by or for Debtor regarding Debtor's business relating to the Property;
 - (iv) all policies and certificates of insurance relating to Collateral; and
 - (v) such information concerning Collateral, the Debtor and Debtor's business and affairs as Creditor may reasonably request;
- (j) to forthwith pay all reasonable costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Creditor in:
- (i) inspecting the Collateral;
 - (ii) negotiating, preparing, perfecting and registering this Security Agreement and other documents, whether or not relating to this Security Agreement; and
 - (iii) investigating title to the Collateral; and
- (k) to forthwith pay all reasonable costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Creditor in:
- (i) taking, recovering and keeping possession of the Collateral; and
 - (ii) all other actions and proceedings taken in connection with the preservation of the Collateral and the enforcement of this Security Agreement and of any other security interest held by the Creditor as security for the Obligations.

5. USE AND VERIFICATION OF COLLATERAL

Subject to compliance with Debtor's covenants contained herein and Clause 7 hereof, Debtor may, until default, possess, operate, collect, use and enjoy and deal with Collateral in the ordinary course of Debtor's business in any manner not inconsistent with the provisions hereof; provided always that Creditor shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner Creditor may consider appropriate upon reasonable notice and during business hours and Debtor agrees to furnish all assistance and information and to perform all such acts as Creditor may reasonably request in connection therewith and for such purpose to grant to Creditor or its agents access to all places where Collateral may be located and to all premises occupied by Debtor.

6. SECURITIES

If Collateral at any time includes securities, Debtor authorizes Creditor to transfer the same or any part thereof into its own name or that of its nominee(s) so that Creditor or its nominee(s) may appear of record as the sole owner thereof; provided that, until default, Creditor shall deliver promptly to Debtor all notices or other communications received by Creditor or its nominee(s) as such registered owner and, upon demand and receipt of payment of any necessary expenses thereof, Creditor shall issue to Debtor or its order a proxy to vote and take all action with respect to such Securities; provided that, after default, Debtor waives all right to receive any notices or communications received by Creditor or its nominee(s) as such registered owner and agrees that no proxy issued by Creditor to Debtor or its order as aforesaid shall thereafter be effective.

7. COLLECTION OF DEBTS

After the occurrence of an Event of Default, Creditor may notify all or any Account Debtors of the Security Interest and may also direct such Account Debtors to make all payments on

Collateral to Creditor. Debtor acknowledges that any payments on or other proceeds of Collateral received by Debtor from Account Debtors, after the occurrence of an Event of Default shall be received and held by Debtor in trust for Creditor and shall be turned over to Creditor upon request.

8. INCOME FROM AND INTEREST ON COLLATERAL

- (a) Until the occurrence of an Event of Default, Debtor reserves the right to receive any moneys constituting income from or interest on Collateral and if Creditor receives any such moneys prior to default, Creditor shall either credit the same to the account of Debtor or pay the same promptly to Debtor.
- (b) After the occurrence of an Event of Default, Debtor will not request or receive any moneys constituting income from or interest on Collateral and if Debtor receives any such moneys, without any request by Creditor, Debtor will pay the same promptly to Creditor.

9. INCREASES, PROFITS, PAYMENTS OR DISTRIBUTIONS

- (a) Whether or not an Event of Default has occurred, Debtor authorizes Creditor:
 - (i) to receive any increase in or profits on Collateral (other than money) and to hold the same as part of Collateral. Money so received shall be treated as income for the purposes of Clause 8 hereof and dealt with accordingly; and
 - (ii) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of Collateral; to surrender such Collateral in exchange therefor; and to hold any such payment or distribution as part of Collateral.
- (b) If Debtor receives any such increase or profits (other than money) or payments or distributions, Debtor will deliver the same promptly to Creditor to be held by Creditor as herein provided.

10. DISPOSITION OF MONEYS

Subject to any applicable requirements of the P.P.S.A., all moneys collected or received by Creditor pursuant to or in exercise of any right it possesses with respect to Collateral shall be applied on account of Indebtedness in such manner as Creditor in its sole discretion deems best or, at the option of Creditor, may be held unappropriated in a collateral account or released to Debtor, all without prejudice to the liability of Debtor to Creditor or the rights of Creditor hereunder, and any surplus shall be accounted for as required by law.

11. EVENTS OF DEFAULT

The occurrence of an event of default under the "mortgage" or any of the following events or conditions shall constitute default hereunder which is herein referred to as "Event of Default" (it being understood that the Events of Default set out below shall not result in an abridgement or reduction of any notice required or cure period available to the Debtor under the mortgage):

- (a) the non-payment when due, whether by acceleration or otherwise, of any principal or interest forming part of Indebtedness or the failure of Debtor to observe, satisfy or perform any obligation, covenant, term, provision or condition contained in this Security Agreement or any other agreement now or hereafter in effect between Debtor and Creditor;
- (b) the bankruptcy or insolvency of Debtor; the filing against Debtor of a petition in bankruptcy; the making of a proposal or an authorized assignment for the benefit

of creditors by Debtor; the appointment of a receiver, receiver and manager or trustee for Debtor or for any assets of Debtor; or the institution by or against Debtor of any other type of insolvency proceeding under the Bankruptcy Act (Canada) or otherwise;

- (c) the institution by or against Debtor of any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Debtor;
- (d) if any Encumbrance affecting Collateral becomes enforceable against Collateral;
- (e) if Debtor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets without complying with applicable law or commits or threatens to commit an act of bankruptcy;
- (f) if any execution, sequestration, extant or other process of any court becomes enforceable against Debtor or if a distress or analogous process is levied upon the assets of Debtor or any part thereof; or
- (g) if any certificate, statement, representation, warranty, covenant or report heretofore or hereafter furnished by or on behalf of Debtor pursuant to or in connection with this Security Agreement or otherwise (including, without limitation, the representations, warranties and covenants contained herein) or as an inducement to Creditor to extend any credit to or to enter into this or any other agreement with Debtor, proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial contingent or unliquidated liability or claim against Debtor; or if upon the date of execution of this Security Agreement, there shall have been any material adverse change in any of the facts disclosed by any such certificate, statement, representation, warranty, covenant or report, which change shall not have been disclosed to Creditor at or prior to the time of such execution.

12. ACCELERATION

Creditor, in its sole discretion, may declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable, without demand or notice of any kind, upon the occurrence and during the continuation of an Event of Default. The provisions of this clause are not intended in any way to affect any right of Creditor with respect to Indebtedness which may now or hereafter be payable on demand.

13. REMEDIES

- (a) Upon default, Creditor may appoint or re-appoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of Creditor or not, to be a receiver or receivers (called a "Receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his stead. Any such Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of Debtor and not Creditor, and Creditor shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, his servants, agents or employees. Subject to the provisions of the instrument appointing him, any such Receiver shall have power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all or any part of the business of Debtor and to sell, lease or otherwise dispose of or concur in selling, leasing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including Debtor, enter upon, use and occupy all premises owned or occupied by Debtor wherein Collateral may be situate, maintain Collateral upon such premises, borrow money

on a secured or unsecured basis and use Collateral directly in carrying on Debtor's business or as security for loans or advances to enable him to carry on Debtor's business or otherwise, as such Receiver shall, in his sole discretion, determine. Except as may be otherwise directed by Creditor, all moneys received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to Creditor. Every such Receiver may, in the discretion of Creditor, be vested with all or any of the rights and powers of Creditor.

- (b) Upon default, Creditor may, either directly or through its agents or nominees, exercise all the powers and rights given to a Receiver by virtue of the foregoing sub-clause (a) hereof.
- (c) Creditor may take possession of, collect, demand, sue on, enforce, recover and receive Collateral and give valid and binding receipts and discharges therefor and in respect thereof and, upon default, Creditor may sell, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to Creditor may seem reasonable.
- (d) In addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and Creditor and in addition to any other rights Creditor may have at law or in equity, Creditor shall have, both before and after default, all rights and remedies of a secured party under the P.P.S.A. Provided always, that Creditor shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, Creditor shall have no obligation to take any steps to preserve rights against prior parties to any instrument or chattel paper, whether Collateral or proceeds and whether or not in Creditor's possession and shall not be liable or accountable for failure to do so.
- (e) Debtor acknowledges that Creditor or any Receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law, and Debtor agrees upon request from Creditor or any such Receiver to assemble and deliver possession of Collateral at such place or places as directed.
- (f) Debtor agrees to pay all costs, charges and expenses reasonably incurred by Creditor or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors and auditors costs and other legal expenses and Receiver remuneration), in operating Debtor's accounts, in preparing or enforcing this Security Agreement, taking custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting Indebtedness and all such costs, charges and expenses together with any moneys owing as a result of any borrowing by Creditor or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.
- (g) Unless the Collateral in question is perishable or unless Creditor believes on reasonable grounds that the Collateral in question will decline speedily in value, Creditor will give Debtor such notice of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made, as may be required by the P.P.S.A.

14. MISCELLANEOUS

- (a) Debtor hereby authorizes Creditor to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying Collateral or identifying the locations at which Debtor's business is carried on and Collateral and records relating thereto are

situate) as Creditor may deem appropriate to perfect and continue the Security Interest, to protect and preserve Collateral and to realize upon the Security Interest, and Debtor hereby irrevocably constitutes and appoints any officer from time to time of the Creditor the true and lawful attorney of Debtor, with full power of substitution, to do any of the foregoing in the name of Debtor whenever and wherever the Creditor may deem it necessary or expedient to do so.

- (b) Without limiting any other right of Creditor, whenever Indebtedness is immediately due and payable or Creditor has the right to declare Indebtedness to be immediately due and payable (whether or not it has so declared), Creditor may, in its sole discretion, set off against Indebtedness any and all moneys then owed to Debtor by Creditor in any capacity, whether or not due, and Creditor shall be deemed to have exercised such right of set off immediately at the time of making its decision to do so even though any charge therefor is made or entered on Creditor's records subsequent thereto.
- (c) Upon Debtor's failure to perform any of its duties hereunder, Creditor may, but shall not be obligated to, perform any or all of such duties, and Debtor shall pay to Creditor, forthwith upon written demand therefor, an amount equal to the expense incurred by Creditor in so doing plus interest thereon from the date such expense is incurred until it is paid at the rate set out and in the manner calculated in the Charge (as defined below).
- (d) Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with Debtor, debtors of Debtor, sureties and others and with Collateral and other security as Creditor may see fit without prejudice to the liability of Debtor or Creditor's right to hold and realize the Security Interest. Furthermore, Creditor may demand, collect and sue on Collateral in either Debtor's or Creditor's name, at Creditor's option, and may endorse Debtor's name on any and all cheques, commercial paper, and any other instruments pertaining to or constituting Collateral.
- (e) No delay or omission by Creditor in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, Creditor may remedy any default by Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Debtor. All rights and remedies of Creditor granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (f) This Security Agreement shall enure to the benefit of Creditor and its successors and assigns and shall be binding upon Debtor and its successors and assigns. In any action brought by an assignee of this Security Agreement and the Security Interest or any part thereof to enforce any rights hereunder, Debtor shall not assert against the assignee any claim or defence which Debtor now has or hereafter may have against Creditor.
- (g) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Security Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.
- (h) This Security Agreement and the transaction evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may from time to time be in effect, including, where applicable, the P.P.S.A.

- (i) Whenever either party hereto is required or entitled to notify or direct the other or to make a demand or request upon the other, such notice, direction, demand or request shall be in writing and shall be sufficiently given if delivered to the party for whom it is intended at the last known address of such party or if sent by prepaid registered mail addressed to the party for whom it is intended at the last known address of such party. Either party may notify the other pursuant hereto of any change in such party's address to be used for the purposes hereof.
- (j) This Security Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by Creditor and is, and is intended to be a continuing Security Agreement and shall remain in full force and effect until all Indebtedness contracted for or created, and any extensions or renewals thereof, together with interest accruing thereon shall be paid in full and this Security Agreement is discharged.
- (k) The headings used in this Security Agreement are for convenience only and are not to be considered a part of this Security Agreement and do not in any way limit or amplify the terms and provisions of this Security Agreement.
- (l) In this Security Agreement when the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependant upon the person referred to being a male, female, firm or corporation.
- (m) In the event any provisions of this Security Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect.
- (n) Nothing herein contained shall in any way obligate Creditor to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Indebtedness.
- (o) The Debtor acknowledges that the Security Interest created hereby is intended to attach when this Security Agreement is signed by Debtor (or in the case of after acquired property, upon the date of acquisition), that value has been given, that the Debtor has rights in the Collateral and the parties have not agreed to postpone the time for attachment.

15. CHARGE

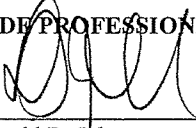
This Security Agreement is given as additional security for a mortgage loan made between the Creditor and the Debtor pursuant to which Debtor gave a leasehold mortgage and charge dated the 16 day of FEB, 2012 (the "Charge") of the Property to Creditor under the Charge. Any breach by the Debtor of any term of the Charge or any Event of Default arising thereunder shall, at the option of the Creditor (being the "Chargee" pursuant to the Charge), be deemed to be a default under the terms of this Security Agreement.

16. COPY OF AGREEMENT

Debtor hereby acknowledges receipt of a copy of this Security Agreement.

IN WITNESS WHEREOF Debtor has executed this Security Agreement this 16 day of FEB, 2012.

RIVERSIDE PROFESSIONAL CENTRE INC.

Per: 
Name: Donald B. Johnston
Title: President

I have the authority to bind the Corporation.

Address of Debtor:

1919 Riverside Drive, Ottawa, Ontario K1H 1A2

SCHEDULE "A"

BUSINESS LOCATION OF DEBTOR

PIN 04201-0147 (LT)

Part of Lot 16, Concession JG, Parts 1 and 2 on Plan 5R-12853; Ottawa; subject to an easement in favour of Rogers Ottawa Limited/Limitee as in OC166375

Municipally known as 1919 Riverside Drive, Ottawa

11881570.1

**This is Exhibit "G" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to read 'Alina Stoica', is positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

Properties

PIN 04201 - 0147 LT
 Description PT LT 16, CON JG , PTS 1 & 2, 5R12853 ; OTTAWA ; SUBJECT TO AN EASEMENT IN FAVOUR OF ROGERS OTTAWA LIMITED/LIMITEE AS IN OC166375
 Address 1919 RIVERSIDE DRIVE
 OTTAWA

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name RIVERSIDE PROFESSIONAL CENTRE INC.
 Address for Service 181 Bay Street
 Suite #1800
 Toronto, Ontario
 M5J 2T9

I, Donald B. Johnston, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name THE MANUFACTURERS LIFE INSURANCE COMPANY
 Address for Service 200 Bloor Street East
 Toronto, Ontario
 M4W 1E5
 Attention: Mortgage Administration
 Mortgage #862196:11

Statements

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, OC1334365 registered on 2012/02/16 to which this notice relates is deleted

Schedule: See Schedules

Signed By

Janie Andrea Blyth 160 Elgin Street, Suite 2600 acting for Signed 2012 02 16
 Ottawa Applicant(s)
 K1P 1C3

Tel 6132331781

Fax 6135639869

I have the authority to sign and register the document on behalf of the Applicant(s).

Janie Andrea Blyth 160 Elgin Street, Suite 2600 acting for Party To Signed 2012 02 16
 Ottawa (s)
 K1P 1C3

Tel 6132331781

Fax 6135639869

I have the authority to sign and register the document on behalf of the Party To(s).

Submitted By

GLH LIMITED PARTNERSHIP (A.K.A. GOWLINGS) 160 Elgin Street, Suite 2600 2012 02 16
 Ottawa
 K1P 1C3

Tel 6132331781

Fax 6135639869

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Fees/Taxes/Payment

Total Paid \$60.00

File Number

Party To Client File Number : 01381449

GENERAL ASSIGNMENT OF RENTS

THIS ASSIGNMENT made as of the 16th day of February, 2012.

BETWEEN:

RIVERSIDE PROFESSIONAL CENTRE INC.

(hereinafter called the "Assignor")

- and -

THE MANUFACTURERS LIFE INSURANCE COMPANY

(hereinafter called the "Assignee")

WHEREAS:

- A. The Assignor is the registered owner of the leasehold lands and premises situate, lying and being in the Ottawa more particularly described in "Description" on page 1 herein and municipally known as 1919 Riverside Drive, Ottawa, Ontario (the "Property");
- B. The Assignor has charged and mortgaged the Property to the Assignee to secure the repayment of the principal sum of \$7,500,000.00 and interest thereon at the interest rate therein expressed (the "Loan") secured by a Charge of Lease in that principal amount issued by the Assignor to the Assignee (the "Mortgage") registered in the Land Titles Division of Ottawa (No. 4) as Instrument No. OC1334365;
- C. Portions of the Property are or will be leased to various Tenants (as defined herein); and
- D. The Assignor has agreed to execute and deliver this Assignment for the purpose of collaterally securing the performance and observance of the Assignor's promise to pay and other obligations under the Loan and Mortgage.

1. **NOW THEREFORE** this Assignment witnesses that in consideration of the premises and other good and valuable consideration paid by the Assignee to the Assignor (the receipt and sufficiency whereof is hereby acknowledged) the Assignor assigns, transfers and sets over to the Assignee:

- (a) all present and future Rents (as defined herein) reserved or payable under the Leases; and
- (b) the Leases (as defined herein) and all benefits and advantages to be derived by the Assignor from the Leases to the Assignee as security for the payment of the principal sum, interest and other monies payable by the Assignor to the Assignee pursuant to the Mortgage.

The within assignment and grant includes all the Assignor's right to demand, sue for, collect and receive all Rent (as herein defined), and otherwise to enforce (either in the name of the Assignor or the Assignee) the Assignor's rights under a Lease consequent on any default by the Tenant thereunder whether such rights arise under the Lease or by statute or at law or in equity, including without limitation the Assignor's right to distrain.

2. **THE ASSIGNOR** acknowledges that this Assignment is being executed and delivered as a continuing and additional security for the performance and observance of the Assignor's promise to pay and other obligations pursuant to the Loan and neither the execution and delivery of this Assignment nor anything done pursuant hereto shall in any way impair or diminish the obligations of the Assignor as Landlord (as herein defined) of the Leases.

3. **NO PROVISION** contained in this Assignment shall be deemed to have the effect of making the Assignee responsible for the collection of any Rent, or any part thereof or for the performance or observance of any of the covenants, terms, conditions or other obligations imposed upon either party to a Lease.

4. **THE ASSIGNEE** shall not by virtue of this Assignment be deemed to be a trustee or mortgagee in possession of the Property and upon the payment of the principal sum, interest and other monies secured by the Mortgage, this Assignment shall terminate and the Assignee shall execute and deliver at the expense of the Assignor a reassignment of the Leases to the Assignor. It is further agreed that a full and complete discharge (but not a partial discharge) of the Mortgage from title to the Property shall operate as a full and complete release of the Assignee's interest and rights hereunder.

5. **IT IS UNDERSTOOD** and agreed that the Assignee shall be liable to account for only such monies as may actually come into its hands by virtue of this Assignment less proper collection and management charges.

6. **ALTHOUGH IT IS** the intention of the parties that this Assignment shall be a present assignment, effective immediately upon execution, it is expressly understood and agreed that the Assignee shall not exercise any of the rights or powers herein conferred upon it until an event of default shall occur under the terms and provisions of the Mortgage. Upon such event of default occurring and during the time that such event of default remains uncured (i) the Assignee shall be entitled, upon notice to the Tenants, to collect and receive all Rent under the Leases and (ii) this Assignment shall constitute an irrevocable direction and authorization of the Assignor to the Tenants to pay such amounts to the Assignee or as the Assignee shall direct otherwise in writing without proof of any event of default by the Assignor until such time as the Assignee shall direct the Tenants in writing to the contrary. Without limiting the generality of the foregoing, the Tenants are hereby irrevocably authorized and directed to rely upon and comply with, and to be fully protected in so doing, any notice or demand by the Assignee for the payment to the Assignee of any Rent or for the performance of any other obligation of the Tenants under the Leases and the Tenants shall not be required to or be under any duty to inquire as to whether any event of default under the Mortgage has actually occurred or is then existing.

7. **THE ASSIGNOR** represents and warrants to the Assignee that as of the date hereof:

- (a) each Lease is a valid and subsisting lease constituting the entire and only agreement between the Landlord and Tenant thereto pertaining to the premises demised;
- (b) the Tenants are occupying the premises described in each Lease and paying the full Rent stipulated therein;
- (c) no notice has been received from any Tenant indicating an intention to assign or sublet or indicating an intention to surrender the term or otherwise part with possession of the premises demised to it other than as specifically provided for herein;
- (d) no notice has been received by the Assignor from any Tenant alleging default by the Assignor in the performance of its obligations as Landlord pursuant to any Lease which notice has not been complied with by the Assignor to the Tenant's satisfaction; and
- (e) all copies of the Leases which have been delivered to the Assignee are true and correct copies.

8. **THE ASSIGNOR** covenants and agrees that:

- (a) there is no outstanding encumbrance or assignment of the Leases or the Rents payable or receivable thereunder except as may be permitted under this Assignment or as may be disclosed by the registered title to the Property;
- (b) it shall at all times perform and observe all of the Landlord's obligations contained in the Leases or imposed by law;
- (c) it now has full power and absolute authority to assign its interest in the Leases and all benefits and advantages to be derived from the Leases to the Assignee according to the intention of this Assignment;

- (d) it shall forthwith on demand enter into, execute and deliver to the Assignee, at the Assignor's expense, such further assignments and assurances of the Leases as the Assignee shall reasonably require; and
- (e) it shall give prompt notice to the Assignee of any notice of default on the part of the Assignor with respect to the Leases which is received from any Tenant and shall provide the Assignee with complete copies of such notices.

9. **THE ASSIGNOR** further covenants and agrees that it will not without the prior written consent of the Assignee, which consent the Assignee shall not unreasonably withhold or delay:

- (a) lease or renew any leases or tenancies for any Tenant occupying twenty percent (20%) or more of the net rentable area in the building located on the Property or paying twenty percent (20%) or more of the gross rental income of the Property;
- (b) collect or attempt to collect or permit either the payment or the prepayment of Rent for a period greater than one (1) month or in any manner and at any time other than that stipulated in the Leases; or
- (c) execute any other assignments of the Leases or any interest in or Rents under the Leases.

10. **THE ASSIGNOR** agrees that any and all rights of the Assignee pursuant to this Assignment may be exercised by any trustee or receiver appointed at the instance of or for the benefit of the Assignee. The Assignor further agrees that the Assignee is authorized (but is not obligated) in the name of the Assignor to take at any time any proceeding which in the opinion of the Assignee or its solicitors may be expedient or necessary for the purpose of enforcing any of the rights of the Assignor under the Leases and further to compromise or submit to arbitration any dispute which has arisen or may arise in respect of any Lease and any settlement arrived at shall be binding upon the Assignor. The Assignee is further authorized (but is not obligated) in the name and for the account of the Assignor to perform and observe any of the Landlord's obligations under the Leases, and without limiting the generality of the foregoing, any amount paid by the Assignee in respect thereof as well as any other expense incurred by the Assignee shall be added to the monies secured by the Mortgage and bear interest at the interest rate stipulated therein.

11. **THE TERM "Leases"** shall extend to and include (i) all present and future leases, agreements to lease, licences or other agreements in respect of each and every present and future tenancy, right of use or occupation of or license granted by the Assignor in respect of all or any part of the Property as they may be extended or renewed or replaced (ii) any amending agreement whether written or oral and (iii) any present and future guarantee of or indemnity with respect to a Tenant's Lease obligations whether included in a Lease or contained in a separate instrument.

12. **THE TERM "Tenants"** means and includes (i) the person, firm or corporation named as tenant or lessee in a Lease and (ii) any person, firm or corporation who has guaranteed (whether as a primary debtor, surety or otherwise) the performance and observance of a Tenant's covenants and other obligations pursuant to a Lease.

13. **THE TERM "Landlord"** means the Assignor, its successors and assigns and includes the person, firm or corporation named as landlord or lessor in a Lease.

14. **THE TERM "Rent"** shall extend to and include all monies that the Landlord is entitled to receive under the terms of the Leases, including without limitation, insurance proceeds, arbitration awards and the proceeds arising from any guarantee or other security held by the Assignor.

15. **THE RIGHTS**, remedies and security given to the Assignee hereunder are cumulative and are not in substitution for any rights, remedies or security to which the Assignee may be entitled, either under the Mortgage or under any other security or at law.

16. **THE ASSIGNOR** acknowledges receiving a true copy of this Assignment.

17. **THIS ASSIGNMENT** shall be binding upon and enure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and all words and

phrases shall be taken to include the singular or plural or masculine, feminine or neuter gender as the circumstances shall require.

**This is Exhibit "H" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

ASSIGNMENT OF LEASE

AGREEMENT made as of the *13th* day of *December*, 2005.

BETWEEN:

CITY OF OTTAWA
(hereinafter called the "Assignor")

OF THE FIRST PART,

-and-

THE OTTAWA HOSPITAL/L'HÔPITAL D'OTTAWA
(hereinafter called the "Assignee")

OF THE SECOND PART.

WHEREAS:

- A. The Assignor is the Lessor under a lease dated September 1, 1989 among the Assignor, as Lessor, Health Development Services Inc., In Trust, as Lessee, the Board of Trustees of the Riverside Hospital of Ottawa and the Riverside Hospital of Ottawa Foundation whereby the land legally described as Part Lot 16, JG, City of Ottawa designated as Parts 1 and 2 on Plan 5R-12853 and being therein and herein described as the "Demised Premises" was leased to the said Lessee, notice of which lease is registered as Instrument N530327 (PIN 04201-0147) and as Instrument LT1349154 (PIN 04201-0145) (the "Lease"), a true copy of which is attached hereto as Schedule "A";
- B. Health Development Services Inc., changed its name to Spinnaker Development Corporation and an Application to Amend Register indicating the change in corporate name was registered on December 18, 2000 as Instrument LT1349206;
- C. Spinnaker Development Corporation assigned its interest in the Lease to Riverside Professional Centre Inc. by an Assignment of Lease registered December 18, 2000 as Instrument LT1349207;
- D. The Riverside Hospital of Ottawa was amalgamated with the Ottawa Civic Hospital and the Hopital General d'Ottawa – Ottawa General Hospital to form The Ottawa Hospital, the Assignee herein, by Letters of Amalgamation dated April 1, 1998.
- E. The Riverside Hospital of Ottawa Foundation was dissolved on July 20, 1998.
- F. The Assignor is the Ground Landlord in a Ground Lease Acknowledgement Agreement dated November 10, 2000 among the Assignor, as Ground Landlord, Montreal Trust Company of Canada, as Lender and Riverside Professional Centre Inc. as

Ground Tenant, which Ground Lease Acknowledgement Agreement is registered as Instrument LT1350924, a true copy of which is attached hereto as Schedule "B".

G. The Assignor has agreed to assign and convey all of its interest in the Lease and in the Ground Lease Acknowledgement Agreement to the Assignee as of the date hereof;

H. The Lease provides in Section 13.01 that there is no restriction on the Assignor for the assignment of its reversionary interest in the Demised Premises and there is no restriction in the Lease on the Assignor to effect this assignment of the Lease;

I. The Ground Lease Acknowledgement Agreement expressly contemplates the Assignee acquiring the right, title and interest of the Assignor in the Demised Premises and expressly provides that in compliance with section 13 of the Ground Lease Acknowledgement Agreement the Assignee assumes the obligations of the Assignor pursuant to the Ground Lease Acknowledgement Agreement effective from and after the Assignee's acquisition of the Assignor's right, title and interest in the Demised Premises.

NOW AND THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of these premises, the Demised Premises, the terms and conditions hereinafter set forth, other good and valuable consideration and the sum of Two Dollars (\$2.00) now paid by each party to the other (the receipt whereof is hereby acknowledged), the parties do hereby respectively covenant and agree each with the other as follows:

1. The Assignor does hereby grant and assign unto the Assignee the Assignor's interest in the Lease and in the Demised Premises, together with the unexpired residue of the term of the Lease and every renewal thereof (if any) and all benefits and advantages to be derived therefrom, to have and to hold the same unto the Assignee, its successors and assigns.
2. The Assignor does hereby grant and assign unto the Assignee the Assignor's interest in the Ground Lease Acknowledgement Agreement and all benefits and advantages to be derived therefrom, to have and to hold the same unto the Assignee, its successors and assigns.
3. The Assignor hereby covenants with the Assignee that:
 - (a) the Assignor has done no act that would breach or invalidate the Lease;
 - (b) the Assignor has good right, full power and absolute authority to assign the Lease and the Ground Lease Acknowledgement Agreement in manner aforesaid;

(c) the Assignor shall and will from time to time and at all times hereafter at the request and cost of the Assignee, execute such further assurances in respect hereof as the Assignee shall reasonably require.

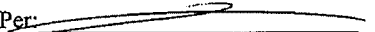
4. The Assignee hereby covenants with the Assignor that the Assignee shall and will during all of the residue of the term granted by the Lease, and every renewal thereof (if any), perform the covenants, conditions and agreements on the part of the Lessor therein contained, and indemnify and save harmless the Assignor therefrom and from all actions, suits, costs, losses, charges, damages and expenses for and in respect thereof.

5. The Assignee hereby covenants with the Assignor that the Assignee shall perform the covenants, conditions and agreements on the part of the Assignor contained in the Ground Lease Acknowledgement Agreement and indemnify and save harmless the Assignor therefrom and from all actions, suits, costs, losses, charges, damages and expenses for and in respect thereof.

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and the successors and assigns of them.

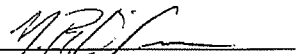
IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF OTTAWA

Per: 
Robert Chiarelli, Mayor

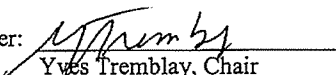
APPROVED FOR EXECUTION

CITY SOLICITOR

Per: 
M. Rick O'Connor, Deputy City
Clerk

**THE OTTAWA HOSPITAL/
L'HÔPITAL D'OTTAWA**

Per: 
Dr. Jack Kitts
President & Chief Executive Officer

Per: 
Yves Tremblay, Chair
Board of Governors

SCHEDULE "A"

ASSIGNMENT OF LEASE

THIS INDENTURE made this *1st* day of *September*, 1989.

BETWEEN:

THE CORPORATION OF THE CITY OF OTTAWA,
herein called the "Lessor"

OF THE FIRST PART

- and -

HEALTH DEVELOPMENT SERVICES INC., IN TRUST,
a corporation incorporated pursuant to the
laws of Canada, herein called the "Lessee"

OF THE SECOND PART

- and -

THE BOARD OF TRUSTEES OF THE RIVERSIDE
HOSPITAL OF OTTAWA, herein referred to
as the "Hospital"

OF THE THIRD PART

- and -

THE RIVERSIDE HOSPITAL OF OTTAWA FOUNDATION,
herein referred to as the "Foundation"

OF THE FOURTH PART.

RECITALS

WHEREAS the Lessor is the registered owner of the lands and premises in the City of Ottawa, Province of Ontario, being Parts 1 and 2 on Reference Plan No. 5R-12853;

AND WHEREAS the Hospital has the custody and control of all of the property and premises described as Parts 1 to 16 inclusive on Reference Plan No. 5R-10708;

AND WHEREAS the Lessee is desirous of constructing the Building on Parts 1 and 2 on Reference Plan No. 5R-12853, hereinafter called "the Demised Premises";

AND WHEREAS the Hospital has agreed to consent to the within lease;

AND WHEREAS the consideration for the said lease is to be paid to the Foundation;

ARTICLE I

DEMISE AND TERM

Section 1.01 - Premises

NOW WITNESSETH that in consideration of the rent, covenants and agreements hereinafter respectively reserved and contained, the Lessor doth hereby demise and lease unto the Lessee the Demised Premises, and the Hospital concurs with the said demise and lease. The Demised Premises consist of the land only.

Handwritten signatures and initials:
SAD
B...
1989

Section 1.02 - Term

TO HAVE AND TO HOLD the Demised Premises, for and during the term of Forty-nine (49) years to be computed from and inclusive of the ^{1st} day of September, 1989 subject to the option to renew as set out in paragraph 16.09 hereof.

ARTICLE II
DEFINITIONS

The parties hereto agree that in this Lease the following words or phrases shall, unless there is something in the context inconsistent therewith, have the meaning hereinafter set out:

Section 2.01 - Building

"Building" shall mean a medical-dental office building of approximately 50,000 square feet to be built upon the Demised Premises at the Lessee's sole cost and which shall be owned by the Lessee during the currency of the term and any renewal thereof.

Section 2.02 - Covered Link

"Covered Link" shall mean an enclosed connection for the purpose of pedestrian traffic between the Building and the planned future expansion of the Hospital.

Section 2.03 - Hospital

"Hospital" shall mean the Hospital operated by the Hospital on certain lands adjacent to the Demised Premises.

Section 2.04 - Municipal Taxes

"Municipal Taxes" shall mean the aggregate of all property, utility, business taxes, local improvement charges or similar charges, duties, rates and assessments charged or levied against the Demised Premises and the Building or any part thereof, by any lawful authority having jurisdiction over the same.

Section 2.05 - Parking Lot

"Parking Lot" shall mean a parking lot accommodating approximately three hundred (300) cars within the area east and north of the Building on the Lessor's and Hospital's lands adjacent to the Demised Premises.

Section 2.06 - Rent

"Rent" shall mean all payments due to the Foundation under this Lease, and all payments made by the Lessor or the Hospital in discharge of any default by the Lessee under the provisions of this Lease. "Rent" shall

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inter alia include:

- (a) "Basic Rent" which shall mean the minimum rent specified in Section 3.01 hereof; and
- (b) "Additional Rent" which shall include taxes and all other payments required to be made by the Lessee or the Hospital hereunder.

Section 2.07 - Lessee's Plans and Specifications

"Lessee's Plans and Specifications" shall mean the plans and specifications referred to in Paragraph 4.01 which have been provided to the Lessor and the Hospital by the Lessee.

Section 2.08 - Trade Fixtures

"Trade Fixtures" shall mean only those fixtures installed for the use of Tenants of the Lessee not usual to the premises except for the individual requirements of the tenant.

ARTICLE III

RENT

Section 3.01 - Rent

The Lessee hereby covenants to pay to the Foundation upon the commencement of the term hereof without prior demand or any deduction or setoff whatsoever pre-paid Basic Rent for the entire forty-nine (49) years of the term in the sum of Three Hundred Thousand (\$300,000.00) Dollars.

ARTICLE IV

CONSTRUCTION OF LESSEE'S BUILDING

Section 4.01 - Construction of Building

The Lessee shall construct on the Demised Premises the Building and improvements and additions thereto to its own specifications including elevations, all in a good and workmanlike manner and in accordance with the plans and specifications to be provided by the Lessee to the Lessor and the Hospital which plans and specifications shall be subject to the approval of all governing authorities.

Section 4.02 - Services

The Lessee shall make lateral connections at its sole expense between its building and the existing sewers and services, without interference with the Hospital's sewers and services.

ARTICLE V

LESSEE'S COVENANTS

Section 5.01 - Rent

The Lessee covenants with the Lessor and the Hospital and the Foundation to pay Rent.

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Section 5.02 - Taxes

(a) The Lessee will, as Additional Rent, in each and every year during the said term, pay and discharge all taxes, including Municipal Taxes, local improvement rates, impost charges or levies, rates, duties and assessments whether general or special that may be levied, rated, charged or assessed against the Demised Premises or any part thereof and any taxes payable to the Lessor or the Hospital which are imposed in lieu of or as a substitute for real property taxes and all taxes, rates, duties and assessments and other charges that may be levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Lessee on or in the premises and every tax and license fee in respect of the use or occupancy thereof by the Lessee. Provided that the Lessee shall not be responsible for paying the Lessor's, Hospital's or Foundation's income, capital or corporation taxes, or debt service.

(b) The Lessor and the Hospital agree to provide the Lessee with copies of all assessment notices and tax bills forthwith after receipt.

(c) The Lessee shall have the right to contest by appropriate legal proceedings the validity of any tax rate, including local improvement rates, assessment or other charges referred to in Section 5.02 hereof and if the payment of any such tax, rate, local improvement rates, assessment or other changes may legally be held in abeyance without subjecting the Lessor or Hospital or Lessee to any liability of whatsoever nature for failure to so pay, the Lessee may postpone such payment until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.

Section 5.03 - Utilities

The Lessee shall pay, as the same become due, all charges for public and private utilities, including without limitation, water, gas, sewers, electrical power or energy, steam for hot water used on or in respect of the Demised Premises and for connections, fittings, machines, apparatus, meters or other things leased in respect thereof and for all work or services performed by any corporation or commission in connection with such public or private utilities.

Section 5.04 - Public Orders

The Lessee shall, at its own expense observe and promptly comply with all statutes, orders-in-council, by-laws, rules, regulations and requirements of all Federal, Provincial and Municipal Governments and appropriate departments thereof, and the orders, rules and regulations of The Canadian Fire Underwriters' Association and any other body thereafter constituted exercising similar functions which may be applicable to the Demised Premises and/or the use or manner of use of the Demised Premises.

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Section 5.05 - Nuisance

The Lessee will not do or omit or permit to be done upon the Demised Premises anything which shall result in a nuisance to the Lessor, Hospital or owners or occupiers of neighbouring premises provided that the normal use of the premises for the purposes hereunder contemplated shall not be deemed to be a nuisance.

Section 5.06 - Use

The Lessee covenants that it will use the Demised Premises only for lawful purposes permitted by by-law.

Section 5.07 - Assignment

The Lessee shall not assign or sub-let the Demised Premises without the prior written consent of the Lessor and the Hospital which shall not be unreasonably withheld. Provided that no consent of the Lessor will be required for the purpose of financing the Building by way of leasehold mortgage or otherwise and that no consent shall be required to an assignment or subletting by Health Development Services Inc. to a corporation to be formed and owned by medical or dental tenants. No consent shall be required from the Lessor or the Hospital in respect of any Lease to a tenant of space contained in the Building constructed on the Demised Premises.

ARTICLE VI

MAINTENANCE AND REPAIRS

Section 6.01 - Lessee's Repairs

The Lessee, at its own expense, shall at all times maintain and keep the Demised Premises and the Building, improvements and the appurtenances to be erected thereon, in good order and condition and promptly make all needed repairs and replacements of any kind, including structural repairs. This covenant shall apply to the Covered Link upon completion of construction.

Section 6.02 - Outside Areas

The Lessee shall keep the grounds and the outside areas in the vicinity of the Demised Premises clean and orderly and free of debris generated from the operation of the tenant's business.

Section 6.03 - Surrender on Termination

The Lessee will, at the expiration or sooner determination of the said term, peaceably surrender and yield up to the Lessor and the Hospital the Demised Premises with the appurtenances, together with the Building and improvements which at any time during the said term shall be made therein or thereon in good and substantial repair and condition, reasonable wear and tear excepted. The Lessee shall repair any damage occasioned to the premises resulting from the removal of trade fixtures.

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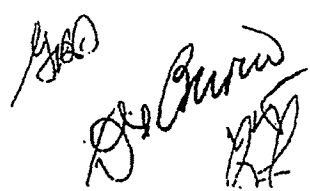
ARTICLE VII
INSURANCE

Section 7.01 - All Risk Insurance

The Lessee covenants and agrees at all times during the term and any renewals hereof, at its own expense, to insure and keep insured the Building or buildings and improvements from time to time erected on the Demised Premises for their full replacement value, against destruction or damage by fire and those additional perils contained in the Extended Perils and All Risk Endorsement Insurance Policy with responsible insurance companies licensed in the Province of Ontario and will furnish certificates of all such insurance policies and renewals thereof from time to time during the term and any renewal term to the Lessor and the Hospital forthwith upon request. Such policy of insurance shall be issued in the name of the Lessee, the Lessor and the Hospital and the holder of any mortgages referred to in Section 14.01 as their respective interests may appear.

Section 7.02 - Public Liability Insurance

- (a) The Lessee shall provide and maintain during the term of the lease Comprehensive General Liability insurance acceptable to the Lessor and the Hospital and subject to limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The Comprehensive General Liability insurance shall include insurance for:
- (i) premises and operations liability;
 - (ii) cross liability;
 - (iii) personal injury liability arising out of false arrest, detention or imprisonment or malicious prosecution, libel, slander or defamation of character, invasion of privacy.
- (b) (i) All Comprehensive General Liability insurance policies shall be in the joint names of the Lessee, the Lessor and the Hospital.
- (ii) All liability insurance policies shall contain an endorsement to provide all named insured with prior notice of changes and cancellations. Such endorsement shall be in the following form:
"It is understood and agreed that the coverage provided in this policy will not be changed or amended in any way nor cancelled until thirty (30) days after written notice of such change or cancellation shall have been given to all Named Insureds".
 - (iii) The insurance shall preclude subrogation claims by the Insurer against anyone insured thereunder.
 - (iv) If the Comprehensive General Liability insurance is placed in layers, the first layer of coverage shall be not less than \$2,000,000.00.



ARTICLE VIII
LESSOR'S AND HOSPITAL'S COVENANTS

Section 8.01 - Quiet Enjoyment

The Lessor and the Hospital covenant with the Lessee that, provided the Lessee pays the Rent hereby reserved and performs the covenants in this Lease contained and on its part to be reserved and performed the Lessee shall and may peaceably enjoy the Demised Premises for the term hereby granted without interruption or disturbance from the Lessor, or the Hospital, or any person or persons lawfully claiming by, from or under it.

Section 8.02 - Parking

The Lessor and the Hospital covenant and agree that the Lessee shall be entitled to utilize up to two hundred and fifty (250) parking spaces on the parking lot for the purpose of meeting the City of Ottawa bylaw requirements for the Building.

Notwithstanding anything hereinbefore contained, the Lessee shall have the exclusive right to the use of forty (40) parking spaces which shall be reserved and designated as being for the exclusive use of tenants of the Building and for which no parking fee shall be paid. The forty (40) spaces shall be a part of the two hundred and fifty (250) spaces referred to in this Section.

ARTICLE IX
ALTERATIONS, ADDITIONS AND FIXTURES

Section 9.01 - Alterations and Additions

The Lessee shall be entitled to make alterations, additions, and/or improvements upon the Demised Premises without the prior written approval of the Lessor provided that all such alterations, improvements and/or additions are made pursuant to the relevant bylaws and governmental regulations.

Section 9.02 - Trade Fixtures, Machinery and Equipment

The Lessor agrees that all trade fixtures, furniture and other personal property on the Demised Premises may be removed by the Lessee in its discretion, at any time and from time to time during the entire term of this Lease and any renewals.

Section 9.03 - Signs

The Lessee shall have, subject to all relevant municipal and governmental laws, bylaws or rules and regulations, the right to erect signs on the Demised Premises for identification or advertising purposes at its expense.

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ARTICLE X
DAMAGE AND DESTRUCTION

Section 10.01 - Damage and Destruction

Provided and it is expressly agreed that if and whenever during the term hereby demised and any renewal thereof, the building or buildings and improvements (herein collectively referred to as the "Lessee's Building") erected on the Demised Premises shall be all or partly destroyed or damaged by fire or other perils insured against hereunder, then the term of this Lease shall continue and the Rent and all other payments herein required to be paid shall not abate during any period of rebuilding or repairing, the Lessee hereby covenanting that it shall forthwith rebuild and repair the Lessee's Building in accordance with plans and specifications therefor provided by the Lessee, to the Lessor and the Hospital for its information only, which need not be the same as those supplied by the Lessee at the commencement of the Lease term.

ARTICLE XI
DEFAULT OF LESSEE - REMEDIES OF LESSOR

Section 11.01 - Bankruptcy or Insolvency of Lessee

If during the term of this Lease the Lessee, its successor or assign shall make an assignment for the benefit of creditors, or assign in bankruptcy or take the advantage in respect of its own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Lessee, or if the Lessee is adjudged bankrupt or insolvent, or if a liquidator or receiver of any property of the Lessee is appointed by reason of any actual or alleged insolvency or any default of the Lessee under any mortgage or obligation, or if the interest of the Lessee in the Demised Premises of the building thereon shall become liable to be taken under any writ of execution or other like process which shall remain undischarged for Thirty (30) days, then the occurrence of any such contingency shall be deemed to be a breach of this Lease, at the option of the Lessor the term shall become forfeited and void, and the Lessor may without notice or any form of legal process whatever, forthwith re-enter the Demised Premises and repossess and enjoy the same as of its former estate, anything contained in the statute or law to the contrary notwithstanding; provided that such forfeiture shall be wholly without prejudice to the right of the Lessor to recover damages for any antecedent breach of the Lessee's covenants, obligations or agreements under this Lease. No such re-entry or taking possession of the Demised Premises by the Lessor shall be construed as an election on the part of the Lessor to terminate this Lease unless, at the time or subsequent to such re-entry or taking of possession, such termination is declared by the Lessor or is decreed by a court of competent jurisdiction.

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Section 11.02 - Re-entry on Certain Defaults by Lessor

If:

- (a) The Lessee shall default in the payment of any sums required to be paid to the Lessor or the Hospital by any provision of this Lease and such default shall continue for Fifteen (15) days after notice thereof given by the Lessor or the Hospital to the Lessee; or
- (b) The Lessee shall default in performing or observing any of its other covenants or obligations under this Lease or any contingency shall occur which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor or the Hospital shall have given to the Lessee notice of such default or the happening of such contingency, and at the expiration of Fifteen (15) days after the giving of such notice the default or contingency shall continue to exist;

the Lessor or the Lessor's agents or employees authorized by it may immediately or at any time thereafter re-enter the Demised Premises and the Building, or buildings thereon, may remove all persons and their property therefrom either by summary eviction proceedings or by any other suitable action or proceedings at law, equity or otherwise without being liable to any prosecution or damages therefor, and be repossessed and enjoy the Demised Premises, the Building or buildings and all fixtures and improvements upon the Demised Premises without such entry and repossession working a forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

Section 11.03 - Lessor's Right to Cure Defaults

The Lessor or the Hospital without limiting any other remedy which it may have, shall have the right at all times to enter the Demised Premises and the Building thereof for the purpose of curing any default or to work a forfeiture or termination of this Lease, and the Lessee shall permit such entry. The Lessor or the Hospital shall give not less than Seven (7) days' notice to the Lessee of its intention to enter for such purpose but may enter upon a shorter period of notice or without notice where in the Lessor's or Hospital's reasonable judgment there is real or apprehended emergency or danger to persons or property, or where any delay in remedying such default would or might materially prejudice the Lessor or the Hospital. The Lessee shall reimburse the Lessor and the Hospital upon demand for all expenses incurred by the Lessor or the Hospital in remedying any default together with interest thereon at the prime rate charged by the Canadian Imperial Bank of Commerce to its best customers plus 5% from the date incurred until paid. The Lessor or the Hospital shall be under no obligation to remedy any default of the Lessee, and shall not incur any liability to the Lessee for any action or omission in the course of their remedy or attempting to remedy any such default unless such act amounts to intentional misconduct or gross negligence of the Lessor or the Hospital.

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Section 11.04 - Remedies Cumulative

The remedies of the Landlord and the Hospital specified in this Lease are cumulative and are in addition to any remedies at law or equity. New remedies shall be deemed to be exclusive, and the Lessor and the Hospital may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease the Lessor or the Hospital shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants hereof.

Section 11.05 - Effective Waiver by Lessor or Hospital

The failure of the Lessor or the Hospital to insist upon the strict performance of any covenant of this Lease shall not waive such covenant, and the waiver of any breach of any covenant of this Lease shall not waive such covenant in respect of any future or other breach. The receipt and acceptance of Rent or other monies due hereunder with knowledge of any breach of any covenant by the Lessee shall not waive such breach. No waiver by the Lessor or the Hospital shall be effective unless made in writing.

ARTICLE XII

LIABILITY AND INDEMNITY OF LESSOR AND HOSPITAL

Section 12.01 - Exemption of Lessor and Hospital from Liability

The Lessor and the Hospital shall not be liable or responsible for personal or consequential injury of any kind whatsoever that may be suffered or sustained by the Lessee or any tenant, employee, agent or invitee of the Lessee or of any tenant or any other persons who may be upon the Demised Premises, or for any loss, theft, damage or injury to any property upon the Demised Premises however caused.

Section 12.02 - Indemnity of Lessor and Hospital by Lessee

The Lessee shall indemnify the Lessor and the Hospital against all claims by any person from the construction and/or operation of the building upon the Demised Premises or in respect thereof for any default or want of repair therein or any want of maintenance thereof or anything done or omitted on or in the vicinity of the Demised Premises or any other thing whatsoever, whether arising from any breach or default or from any negligence by the Lessee, its tenants, agents, contractors, employees, invitees or licensee, or from any accident, injury or damage or any other cause whatsoever; and such indemnity shall extend to all costs, legal fees, expenses and liabilities which the Lessor and the Hospital may incur with respect to any such claim.

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ARTICLE XIII
ASSIGNMENT AND OTHER DEALINGS BY LESSOR AND HOSPITAL

Section 13.01 - Right of Lessor and Hospital to Assign or Encumber

Nothing contained in this Lease prohibits or restricts the Lessor or Hospital, or implies any such prohibition or restriction, from assigning, syndicating, mortgaging, encumbering or otherwise dealing with their reversionary interest in the Demised Premises Lease, but subject always to this Lease and all the rights of the Lessee hereunder including any leasehold mortgages or financing arrangements respecting the Building.

Section 13.02 - Certificate by Lessee

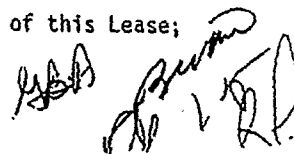
The Lessee shall promptly, whenever from time to time requested by the Lessor or the Hospital, execute an acknowledgement or certificate in favour of any actual or prospective purchaser, mortgagee or encumbrancer of the Lessor's or Hospital's interest, acknowledging or certifying as to the status of this Lease, as to any modifications thereof, as to any breaches of covenant known to the Lessee and as to the state of the Rent account, with the intent that any such acknowledgment or certificate may be relied upon by any person to whom it is addressed.

ARTICLE XIV
MORTGAGING OF LEASEHOLD ESTATE

Section 14.01 - Mortgaging of Leasehold Estate

In the event that the Lessee shall mortgage its leasehold estate and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed shall notify the Lessor and the Hospital in the manner hereinafter provided for the giving of notice of the execution of such mortgage or trust deed and the name and place for service of notice upon such mortgagee or holder of indebtedness, then in such event, the Lessor and the Hospital hereby agree for the benefit of such mortgagees or holders of indebtedness from time to time:

- (a) That the Lessor and the Hospital will give to any such mortgagee or holder of indebtedness simultaneously with service on the Lessee a duplicate of any and all notices or demands given by the Lessor or the Hospital to the Lessee from time to time. Such notices shall be given in the manner and subject to the provisions of Section 16.13 of this Lease;
- (b) Such mortgagee or holder of indebtedness shall have the privilege of performing any of the Lessee's covenants hereunder or of curing any default by the Lessee within the time specified hereunder or of exercising any election, option or privilege conferred upon the Lessee by the terms of this Lease;

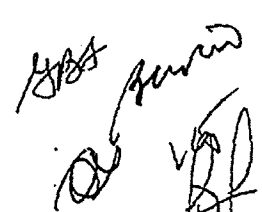


- (c) The Lessor or the Hospital shall not terminate this Lease or the Lessee's right of possession for any default of the Lessee if within a period of Thirty (30) days after the expiration of the period of time within which the Lessee might cure said default, said default is cured or caused to be cured by such mortgagee or holder of indebtedness, or if within a period of Thirty (30) days after the expiration of the period of time within which the Lessee might commence to eliminate the cause of such default such mortgagee or holder of indebtedness commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch;
- (d) That, no right, privilege or option to cancel or terminate this Lease available to the Lessee shall be deemed to have been exercised effectively unless joined by any such mortgagee or holder of the indebtedness; and
- (e) No liability for the payment of rent or the agreements hereunder shall attach to or be imposed upon any mortgagee, trustee under any trust deed, or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, all such liability being hereby expressly waived by the Lessor and the Hospital unless the mortgagee becomes a mortgagee in possession. In the event that any mortgagee or holder of indebtedness shall enter into possession, or attorn any rents payable by tenants to the Lessee such mortgagee or holder of indebtedness shall be liable for all obligations of the Lessee under this Lease, as though named as Lessee herein.
- (f) That in the event Section 11.01 is applicable, the said mortgagee or holder of indebtedness shall be entitled, in the event the default is not remedied by the Lessee, as provided for herein, to assume all obligations and rights of the Lessee under this Lease.

ARTICLE XV
COVERED LINK

Section 15.01 - Covered Link

The Lessee shall construct the Covered Link at the time of construction of the Building. In the event that the Covered Link cannot be constructed coincident with the construction of the Building as a result of the postponement of the Hospital's expansion, then the Lessee shall construct the Covered Link in accordance with the terms and conditions of the collateral agreement between the parties.



ARTICLE XVI
MISCELLANEOUS

Section 16.01 - Covenant for Title

The Lessor and the Hospital covenant that they have good and marketable title to the Demised Premises and to the Parking Lot.

Section 16.02 - Injury to Lands

The Lessee covenants and agrees that it shall not perform any acts or carry on any practice which may injure the Demised Premises or the lands and buildings or facilities and common areas of the Lessor and the Hospital.

Section 16.03 - Easements

The Lessor and the Hospital do hereby grant to the Lessee, for the term of this Lease or any renewal thereof, easements for water, sewer, electricity and telephones at such locations and over such land not the subject of this Lease, reasonably accessible without interfering with existing installations of the Hospital. The Lessee shall upon completion of construction of the Building, re-instate the lands and premises of the Lessor and the Hospital disturbed in any way by the installation of the Lessee's utilities, to the original state existing immediately before commencement of construction.

The Lessor and the Hospital do further hereby grant to the Lessee, for the term of this Lease and any renewal thereof right of ingress and egress for pedestrians and vehicles over such parts of the lands of the Lessor and Hospital designated as Parts 1 to 16 inclusive on Reference Plan No. 5R-10708, as may be established by the Hospital from time to time for the use of pedestrians and vehicles and in common with the Lessor and the Hospital. The said right of ingress and egress shall be for the benefit of the Lessee, its tenants, and their invitees, employees or agents.

Section 16.04 - No Liens

The Lessee covenants that it will not permit or cause anything to be done on the Demised Premises or with respect to the Demised Premises which may result in any liens, construction liens, Certificates of Pending Litigation or judgments being imposed upon either the Demised Premises or the Building.

Section 16.05 - Time of the Essence.

Time shall be of the essence of this Lease.

Section 16.06 - Ownership of Improvements

During the term and any renewals thereof, the Lessee shall own the Building and have the right to take the capital cost allowance deductions under the tax laws for the Building or any buildings and improvements hereafter erected on the Demised Premises and upon surrender

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or other termination of this Lease all such buildings and improvements shall belong absolutely to the Lessor and the Hospital.

Section 16.07 - Net Land Lease

It is expressly agreed that the Lease of the Demised Premises hereunder is a land lease only and shall be net and carefree to the Lessor and the Hospital and all costs, charges and expenditures whatsoever arising from or relating to the Demised Premises in the construction thereon of the Building or buildings, additions and improvements thereto and the occupancy and use thereof by the Lessee shall be the responsibility of the Lessee save and except only the costs and expenses of the Lessor or the Hospital as set forth in this Lease.

Section 16.08 - Severability

If any covenant, obligation or agreement in this Lease or the applicable thereof to any person or circumstances shall, to any extent be invalid or unenforceable, the remainder of this Lease or the application of such covenant, obligation or agreement to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement in this Lease shall be separately valid and enforceable to the fullest extent permitted.

Section 16.09 - Option to Renew

The Lessee shall have the right when not in default to renew this Lease for one further term of Forty-nine (49) years upon the same terms and conditions, save as to further renewal and save as to rent. The rental for the renewal period shall be payable either as a prepaid lump sum or by monthly or annual payments as the Lessor may elect provided that the amount of such lump sum, monthly or annual payments shall be determined by agreement between the parties and failing agreement by arbitration as set out in paragraph 16.10 hereof. Notice of the intention of the Lessee to exercise this right of renewal shall be given to the Lessor and the Hospital not less than one (1) year before the expiration of the term of this Lease.

Section 16.10 - Arbitration

If a dispute arises that is required under the terms of this Lease to be determined by arbitration, the dispute will be submitted to a board of three arbitrators, one of whom is to be nominated by the Lessor and the Hospital, one by the Lessee and the third by the two arbitrators so chosen, if they can agree, within ten (10) days and otherwise by a judge of the Supreme Court of Ontario. The constitution and proceedings of the board of arbitration will be governed by the Arbitrations Act of Ontario in effect at that time. The decision of the arbitrators will be final and binding on the parties and neither the Lessor and the Hospital nor the Lessee will have any right of appeal except as provided in the applicable Arbitrations Act. If an arbitrator refuses to act or is incapable of

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Bentley
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acting or dies, a substitute for that arbitrator will be appointed in the manner provided above. All costs and expenses of any arbitration will be borne by the parties equally, unless the board of arbitrators directs otherwise. During the continuation of the period of any arbitration, the Lessor and the Hospital and the Lessee will continue to be responsible for the full performance of the terms of this Lease.

Section 16.11 - First Right of Refusal

- (a) During the currency of the term or any renewal thereof, the Lessee shall have the first right of refusal to meet the terms of any bona fide third party offer which the Lessor or the Hospital are prepared to accept for the Demised Premises. The Lessee shall be given not less than five (5) business days' written notice of any offer which the Lessor or the Hospital are prepared to accept and within the said five (5) day period, the Lessee may elect in writing to meet the terms and conditions of said third party offer and the closing of the transaction shall take place as set out in the third party offer. In the event that the Lessee elects not to meet the terms and conditions of the third party offer and the Lessor or the Hospital does not accept same, this right of first refusal shall continue.
- (b) During the currency of the term or any renewal thereof, the Lessor and the Hospital shall have the right of first refusal to meet the terms of any bona fide third party offer which the Lessee is prepared to accept for the Building. The Lessor and the Hospital shall be given not less than thirty (30) business days written notice of any offer which the Lessee is prepared to accept and within the said thirty (30) day period, the Lessor or the Hospital may elect in writing to meet the terms and conditions of the said third party offer and the closing of this transaction shall take place as set out in the third party offer. In the event that the Lessor or the Hospital elects not to meet the terms and conditions of the third party offer and the Lessee does not accept same, this right of first refusal shall continue.

Section 16.12 - The Planning Act

This Lease is entered into subject to compliance with the Planning Act of Ontario.

Section 16.13 - Notices

Any notice, demand, request, consent or objection required or contemplated to be given or made by any provisions of this Lease shall be given or made in writing and either delivered personally or sent by registered mail, postage prepaid, addressed to the Lessor at:

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1997

The Corporation of the City of Ottawa,
111 Sussex Drive,
Ottawa, Ontario
K1N 5A1.

Attention:

and to the Lessee at:

Health Development Services Inc., In Trust
212 King Street West,
Suite 201
Toronto, Ontario
M5H 1K5

and to the Hospital at:

The Board of Trustees of the Riverside Hospital of Ottawa
1967 Riverside Drive
Ottawa, Ontario
K1H 7W9

Attention: Executive Director

and to the Foundation at:

The Riverside Hospital of Ottawa Foundation
1967 Riverside Drive
Ottawa, Ontario
K1H 7W9

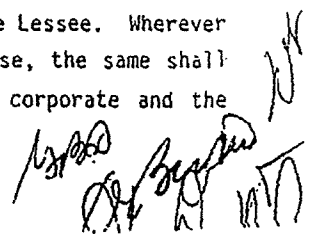
and shall be deemed to have been given, if delivered personally, upon delivery and if mailed, Seventy-two (72) hours after the mailing thereof in a Post Office in Canada.

Section 16.14 - Captions

The captions appearing in the margin of this Lease, the headings of Articles and other like notes have been inserted as a matter of convenience and for reference only, and in no way define, limit or enlarge the scope or meaning of this Lease or any provisions thereof.

Section 16.15 - Interpretation

This Lease shall enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Lessor and the Hospital, and the successors and permitted assigns of the Lessee. Wherever the singular or masculine or neuter is used in this Lease, the same shall be deemed to include the plural or the body politic or corporate and the



respective successors and permitted assigns of the parties hereto, and each of them where the context or the parties so require.

Section 16.16 - Entire Agreement

No prior stipulation, agreement or undertaking, verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Lease or made in writing and signed by both parties.

Section 16.17 - Registration

The Lessor and the Hospital covenant that they will join in and execute in a proper registerable form any Notice of Lease or other document which may be required by the Lessee for registration purposes in accordance with the provisions of the laws of the Province of Ontario.

Section 16.18 - Tenants of Lessee

The Lessee shall require any tenant occupying any part of the building erected upon the Demised Premises to be bound by the terms of this lease to the extent that any term may be applicable to the circumstances.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be affixed hereto duly attested by the hands of their proper signing officers in that behalf.

THE CORPORATION OF THE CITY OF OTTAWA

Per: [Signature] JAMES A. DUNN
Mayor

Per: [Signature] ROGER E. PERRON
City Clerk

HEALTH DEVELOPMENT SERVICES INC.,
IN TRUST

Per: [Signature]

Per: [Signature]

THE BOARD OF TRUSTEES OF THE RIVERSIDE
HOSPITAL OF OTTAWA

Per: [Signature] Vice-Chairman

Per: [Signature] Secretary

THE RIVERSIDE HOSPITAL OF OTTAWA
FOUNDATION

Per: [Signature] President

Per: [Signature] Secretary

[Handwritten signatures and initials]

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Mayor

Per: [Signature] ROGER F. DEBES
City Clerk
HEALTH DEVELOPMENT SERVICES INC.,
IN TRUST

Per: [Signature]

Per: [Signature]

THE BOARD OF TRUSTEES OF THE RIVERSIDE HOSPITAL OF OTTAWA

Per: [Signature] Vice-Chairman

Per: [Signature] Secretary

THE RIVERSIDE HOSPITAL OF OTTAWA FOUNDATION

Per: [Signature] President

Per: [Signature] Secretary

[Handwritten initials and signatures]

1500

THE CORPORATION OF THE CITY OF OTTAWA

- and -

HEALTH DEVELOPMENT SERVICES INC.,
IN TRUST

- and -

THE BOARD OF TRUSTEES OF THE
RIVERSIDE HOSPITAL OF OTTAWA

- and -

THE RIVERSIDE HOSPITAL OF OTTAWA
FOUNDATION

LEASE

HEWITT, HEWITT, NESBITT, REID
75 Albert Street
Ottawa, Ontario

Burton

SCHEDULE "B"

GROUND LEASE ACKNOWLEDGEMENT

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">FOR OFFICE USE ONLY</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">1 3 5 0 9 2 4</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">CERTIFICATE OF RECEIPT CERTIFICAT DE RECEPISSE OTTAWA-CARLETON (4)</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">12 36</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">00 DEC 22</p>	(1) Registry <input type="checkbox"/> Land Titles <input checked="" type="checkbox"/>		(2) Page 1 of 12 pages	
	(3) Property Identifier(s)		Block 04201 04201	Property 0147 (LT) -- Firstly 0145 (LT) -- Secondly
	Additional: See Schedule <input type="checkbox"/>			
	(4) Nature of Document Application to Register Notice of an Unregistered Estate, Right, Interest or Equity (Section 71 of the Land Titles Act)			
	(5) Consideration Dollars \$			
	(6) Description			
	<p><u>Firstly:</u> That part of Lot 16, Junction Gore, City of Ottawa (formerly Township of Gloucester) designated as Parts 1 and 2 on Plan 5R-12853.</p> <p><u>Secondly:</u> That part of Lots 15 and 16, Junction Gore, and of the road allowance between the said Lots 15 and 16 (closed by OT-48999 and N-451929), City of Ottawa (formerly Township of Gloucester) designated as Parts 1-16, both inclusive, Plan 5R-10708 and as Part 6 on Plan 5R-3582, excepting Parts 1 and 2 on Plan 5R-12853.</p>			
New Property Identifiers		Additional: See Schedule <input type="checkbox"/>		
Executions		Additional: See Schedule <input type="checkbox"/>		
(7) This Document Contains:		(a) Redescription New Easement Plan/Sketch <input type="checkbox"/>	(b) Schedule for: Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/>	

(8) This Document provides as follows:

To: The Land Registrar for the Land Titles Division of Ottawa-Carleton (No. 4)

I, Robin J. McGillis, am the solicitor for Montreal Trust Company of Canada (the "Applicant"). I confirm that the Applicant is a mortgagee of interests in the land described in Box (6) above, and I confirm that this document affects an interest in that land.

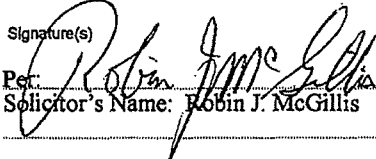
The land is registered in the name of The Corporation of the City of Ottawa, and I hereby apply under Section 71 of the *Land Titles Act* for the entry of a Notice in the register for the said parcel.

This notice will be effective for an indeterminate time.

Continued on Schedule

9) This Document relates to instrument number(s) PIN 04201 0147 (LT) -- Lease N-530327 and Assignment of Lease N-550799; and PIN 04201 0145 (LT) -- Lease LT 1349154 and Assignment of Lease LT 1349207

10) Party(ies) (Set out Status or Interest)

Name(s) McGillis, Robin J., Solicitor for MONTREAL TRUST COMPANY OF CANADA Applicant	Signature(s)  Pet: Solicitor's Name: Robin J. McGillis	Date of Signature Y M D 2000 12 20
---	--	--


By its solicitors,
Blake, Cassels & Graydon LLP

11) Address for Service 100 University Avenue, 12th Floor, South Tower, Toronto, Ontario M5J 2Y1

12) Party(ies) (Set out Status or Interest)

Name(s) THE CORPORATION OF THE CITY OF OTTAWA Ground Landlord)	Signature(s)	Date of Signature Y M D
Name(s) RIVERSIDE PROFESSIONAL CENTRE INC. Ground Tenant)	Signature(s)	Date of Signature Y M D

13) Address for Service If to Ground Landlord: 111 Sussex Drive, Ottawa, Ontario K1N 5A1
If to Ground Tenant: 1919 Riverside Drive, Ottawa, Ontario K1H 1A2

14) Municipal Address of Property 919 Riverside Drive Ottawa, Ontario K1H 1A2	15) Document Prepared by: BLAKE, CASSELS & GRAYDON LLP Barristers and Solicitors Box 25, Commerce Court West Toronto, Ontario M5L 1A9 (416) 863-2400 ATTENTION: Robin J. McGillis	Fees and Tax Registration Fee  Total
--	---	---

GROUND LEASE ACKNOWLEDGMENT AGREEMENT

THIS AGREEMENT made as of the 10th day of November, 2000.

BETWEEN:

THE CORPORATION OF THE CITY OF OTTAWA
(the "Ground Landlord")

OF THE FIRST PART

- and -

MONTREAL TRUST COMPANY OF CANADA
(the "Lender")

OF THE SECOND PART

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.
(the "Ground Tenant")

OF THE THIRD PART

WHEREAS:

- A. The Ground Landlord is the ground landlord and the Ground Tenant is the ground tenant, as the assignee of Health Development Services Inc., in trust, under a ground lease dated September 1, 1989, pursuant to which the Ground Landlord demised to the Ground Tenant the lands Firstly described in Schedule "A" hereto (the "Demised Lands") together with easements and rights in the nature of easements in the lands Secondly described in Schedule "A" hereto for the purposes of pedestrian, vehicular, services and utilities access to the Demised Lands (the "Easement Lands") notice of such lease being registered against title to the lands described in Schedule "A" hereto (the "Lands") in the Land Registry Office for the Land Titles Division of Ottawa-Carleton (No.4) as Instrument N-530327 and notice of such assignment being registered in the said Land Registry Office as Instrument N-550799.
- B. The Lender has agreed to make a loan to the Ground Tenant in the principal sum of \$4,300,000.00 (the "Loan") pursuant to a Commitment Letter dated September 25, 2000 between the Lender, Ground Tenant and Dr. Stanley Labow, as amended and supplemented from time to time (the "Commitment Letter").
- C. Pursuant to the Commitment Letter, the Ground Tenant will execute and deliver a mortgage dated November 21, 2000 (the "Mortgage") in favour of the Lender securing the Loan Indebtedness and containing a mortgage of the leasehold, easement and all other estates in the Lands created by the Ground Lease, all improvements constructed on the demised lands and all right, title and interest of the Ground Tenant therein (collectively, the "Leasehold Estate").
- D. In this agreement, "Loan Indebtedness" shall include the principal sum of the Loan, all interest thereon, and all other amounts comprising the Loan Indebtedness as more particularly set out in the Mortgage; "Loan Documents" shall mean the Commitment Letter, the Mortgage and all other documents, instruments and agreements evidencing, securing and/or relating to the Loan and the Loan Indebtedness as more particularly set out in the Mortgage.
- E. As a condition of making the Loan, the Lender has requested the Ground Landlord and the Ground Tenant to enter into this agreement (the "Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of \$2.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

11139154.4
Ground Lease Acknowledgment Agreement
Blake, Cassels & Graydon LLP
Loan No. PAR10010
RJM/54476/38 13 Dec 00; 17 Dec 00

1. **Ground Lease**

Notwithstanding any provision of the Ground Lease or any other agreement to the contrary, this Agreement shall apply and govern the respective rights and obligations of the parties in and to the Ground Lease and the Leasehold Estate in the case of any conflict between this Agreement and the Ground Lease and to the extent that this Agreement supplements the provisions of the Ground Lease, but only so long as the Loan Indebtedness or any part thereof shall remain outstanding.

2. **Consent to Mortgage**

The Ground Landlord hereby consents to the mortgage and charge of the Ground Lease and the Leasehold Estate contained in the Mortgage and the other Loan Documents.

3. **Representations**

The Ground Landlord and the Ground Tenant represent and warrant to the Lender as follows:

- (1) The term of the Ground Lease commenced on September 1, 1989, and expires on August 31, 2038.
- (2) The Borrower has one option of renewing or extending the term of the Ground Lease for a further 49 years as set out in the Ground Lease.
- (3) The basic rent for the entire initial 49 year term of the Ground Lease in the amount of \$300,000.00 has been paid in full. No additional rent or charge (including without limitation, as applicable, taxes, maintenance, operating expenses or otherwise) that has been billed to the Ground Tenant is overdue.
- (4) There are no provisions for, and the Ground Landlord has no rights with respect to, terminating the Ground Lease or increasing the rent payable thereunder, except as expressly set out in the Ground Lease.
- (5) The Ground Lease is in full force and effect and has not been assigned, modified or amended in any way. There are no agreements, whether oral or written, between the Ground Landlord and the Ground Tenant concerning the Ground Lease, the Leasehold Estate, or any improvements thereon, except as expressly set out in the Ground Lease, and the collateral agreement referred to in Section 15.01 of the Ground Lease between the Ground Landlord and Health Development Services Inc. does not amend or supplement the Ground Lease and it has expired and terminated, and the link mentioned in Section 15.01 of the Ground Lease has been constructed to the satisfaction of the Ground Landlord.
- (6) There is no default by either the Ground Landlord or the Ground Tenant under the Ground Lease of which either the Ground Landlord or the Ground Tenant is aware.
- (7) Any buildings or improvements required by the Ground Lease to be constructed or made by the Ground Tenant have been made to the satisfaction of the Ground Landlord. The Ground Landlord is not claiming any additional rent, costs or damages against the Ground Tenant.
- (8) The Ground Landlord has not granted any mortgage, charge, lien or other encumbrance securing, directly or indirectly, payment of money, of its fee simple interest in the Lands or any part thereof.
- (9) The Ground Landlord acknowledges that the Ground Tenant has mortgaged the Ground Lease to the Lender as security for the Loan Indebtedness. The Ground Landlord has received no notice of any other assignment or mortgage of the Ground Lease.
- (10) The easements and other rights granted by the Ground Landlord in Sections 16.03 and 8.02 of the Ground Lease are within the Easement Lands and they are owned in fee simple by the Ground Landlord and continue to provide and will continue to provide, for the term of the Lease and any renewal of the initial term, an easement for pedestrian and vehicular access between open public road(s) and the Demised Lands and an easement for services between such road(s) and the Demised Lands and rights in the nature of an easement for vehicular parking for the benefit of the Demised Lands.

- (11) The Covered Link, referred to in Section 15.01 of the Ground Lease, has been constructed to the satisfaction of the Ground Landlord.

4. Covenants

So long as the Loan Indebtedness remains outstanding:

- (1) subject to Section 5 hereof, the Ground Landlord will not terminate or accept a surrender of the Ground Lease or re-enter the Lands without giving the Lender not less than 30 days prior written notice (a "Termination Notice") of its intention to terminate the Ground Lease and the reason for such termination and will not amend the Ground Lease without giving the Lender not less than 30 days prior written notice;
- (2) any notice of default which is required or permitted to be given by the Ground Landlord to the Ground Tenant from time to time pursuant to the Ground Lease or otherwise by law shall also be given to the Lender in accordance with the notice provisions of Section 14 hereof;
- (3) any notice of default which is required or permitted to be given by the Lender to the Ground Tenant under the Mortgage shall be given by the Lender to the Ground Landlord in accordance with the notice provisions of Section 14 hereof; and
- (4) the Ground Tenant shall not amend or terminate the Ground Lease without the prior written consent of the Lender, and any such act and any agreement providing for same shall be null and void.

5. Right to Cure

The Ground Landlord and the Ground Tenant acknowledge that the Lender shall have the right, but not the obligation, to remedy any default under the Ground Lease by the Ground Tenant from time to time and the Ground Landlord shall accept such performance by the Lender as if it had been made by the Ground Tenant. In respect of any default by the Ground Tenant under the Ground Lease, the Ground Landlord shall give the Lender not less than 30 days to remedy each default after notice of such default has been given to the Lender by the Ground Landlord pursuant to Subsection 4(2) hereof, provided that if the nature of the default is such that it cannot reasonably be remedied within such period, the Lender shall be entitled to such longer period as may be reasonably required to remedy the default so long as the Lender is making diligent efforts to cure the default. During the period given by the Ground Landlord to the Lender hereunder for remedying a default, the Ground Landlord shall not exercise any rights it may have to terminate the Ground Lease or re-enter the Lands. In curing or attempting to cure any such default, the Lender may enter upon the Lands but shall not be a mortgagee in possession.

6. Termination of Ground Lease/New Ground Lease

If the Ground Lease is disclaimed, repudiated, terminated or surrendered for any reason whatsoever while the Loan Indebtedness remains outstanding, then upon request in writing given by the Lender to the Ground Landlord, the Ground Landlord shall immediately grant to the Lender, or its nominee, a new ground lease of the Lands to replace the Ground Lease (the "New Ground Lease") for the balance of the then unexpired term of the Ground Lease commencing on the day after the date of termination or surrender of the Ground Lease, and otherwise on the same terms and conditions as are contained in the Ground Lease.

If the Lender requests a New Ground Lease,

- (1) the Lender shall prepare the New Ground Lease at its expense;
- (2) the Lender may direct the New Ground Lease be drawn in favour of the Lender in the name of its nominee or any assignee of the Lender, or in the name of a purchaser of the Leasehold Estate from the Lender; and
- (3) the New Ground Lease shall retain in all respects the priority of the Ground Lease and the Ground Landlord shall obtain an express agreement from any mortgagee, chargee or other encumbrancers of the Ground Landlord agreeing to be bound by this Agreement.

7. **Exercise of Remedies by Lender**

- (1) If the Lender becomes entitled to exercise any of its rights and remedies under the Mortgage, the other Loan Documents or otherwise at law or in equity, the Lender may exercise all such rights and remedies freely and without restriction, including without limitation, the right to appoint a receiver to take possession of the Leasehold Estate and the right to sell or assign the Ground Lease or sublet all or any part of the Leasehold Estate to any person (subject to compliance with Section 7(2) hereof), or to acquire title to the Leasehold Estate and the Ground Lease by any means whatsoever, including foreclosure. If the Lender, its nominee or assignee, or any purchaser from the Lender acquires title to the Leasehold Estate, the Ground Lease or any New Ground Lease, it may freely assign any of subsequent assignment of such Leasehold Estate, Ground Lease or New Ground Lease, subject to compliance with Section 7(2) hereof and thereupon the Lender, or any such nominee, assignee or purchaser from the Lender shall be immediately released from all liability for performance or observance of the covenants and conditions contained in the Ground Lease or the New Ground Lease, as the case may be, from and after the date of such assignment. Any default by the Ground Tenant under the Ground Lease which is not curable by the Lender shall be deemed to have been waived (and all rights of the Ground Tenant under the Ground Lease re-instated) if the Lender or a receiver takes possession of the Leasehold Estate, if the Lender completes foreclosure proceedings in respect of, or otherwise acquires title to the Leasehold Estate, or upon the acquisition of the interest of the Ground Tenant in the Ground Lease and the Leasehold Estate by a purchaser pursuant to power of sale or other sale proceedings under the Mortgage.
- (2) Each assignment referred to in Section 7(1) shall be subject to:
- (a) written notice of the making of the assignment being given to the Ground Landlord within 30 days after execution and delivery thereof;
 - (b) a duplicate original of such assignment being given to the Ground Landlord within 30 days after execution and delivery thereof; and
 - (c) the assignee having assumed in writing in favour of the Ground Landlord the due and punctual performance and observance of all the agreements, provisions, covenants and conditions of the Ground Lease to be performed or observed from and after the execution and delivery of the assignment.

8. **Liability of Lender**

The Ground Landlord acknowledges that notwithstanding (i) the mortgage and charge of the Ground Lease and the Leasehold Estate contained in the Mortgage and the other Loan Documents, (ii) the exercise by the Lender of any right or remedy under the Mortgage or the other Loan Documents including without limitation, the right to sell or assign the Ground Lease or taking possession of the Lands, or (iii) the performance by the Lender of any of the Ground Tenant's obligations under the Ground Lease, the Lender shall not become a tenant under the Ground Lease or a subtenant of all or any part of the Leasehold Estate or become otherwise liable for any of the Ground Tenant's covenants or obligations under the Ground Lease unless and until the Lender delivers a notice in writing to the Ground Landlord expressly agreeing to assume and be bound by the provisions of the Ground Lease, provided that during any period in which the Lender is in possession of the Lands, (A) it shall be responsible for paying any portion of the rent or other amounts which accrues due and becomes payable to the Ground Landlord under the Ground Lease during such period of its possession (other than payment of any accelerated rent or other amount); and (B) its rights of possession of the Lands is subject to termination of the Ground Lease by the Ground Landlord as permitted in this Agreement. The Lender shall, upon vacating the Lands, be released from any and all obligations assumed by taking possession as aforesaid, and shall be released from any and all obligations under the Ground Lease or the New Ground Lease upon assignment thereof in accordance with the provisions hereof.

9. **Power to Exercise Ground Lease Renewal Options, Etc.**

The Ground Tenant hereby irrevocably constitutes and appoints the Lender, and any officer or agent of the Lender, with full power of substitution, as the true and lawful attorney of the Ground Tenant, with full power and authority in place of the Ground Tenant and in the name of the Ground Tenant or in its own name, at any time and from time to time:

- (1) to exercise any of the rights, powers, authority and discretion which under the terms of the Ground Lease could be exercised by the Ground Tenant with respect to exercise of all rights to renew the term of the Ground Lease from time to time as provided in the Ground Lease and to settle the rent for each renewal period as provided in the Ground Lease; and
- (2) after an Event of Default has occurred with respect to the Loan, to exercise any of the rights, powers, authority and discretion which under the terms of the Ground Lease could be exercised by the Ground Tenant with respect to the Ground Lease and the Lands, including without limitation, to exercise all of the rights to renew the term of the Ground Lease from time to time as provided in the Ground Lease and to settle the rent for each renewal period as provided in the Ground Lease,

and to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable in connection therewith. These powers are coupled with interest and shall not be revoked or terminated by any act or thing and shall remain in full force and effect until the Mortgage has been discharged by the Lender. The Ground Landlord is irrevocably authorized and directed to accept and rely on the Lender's statement that an Event of Default has occurred with respect to the Loan.

The Ground Landlord agrees to recognize such power of attorney and to accept the exercise and performance by the Lender of the Ground Tenant's rights as lessee under the Ground Lease pursuant to such power of attorney. This Section 9 shall not limit any other provisions of this Agreement, and the Lender shall not be deemed to have assumed the Ground Tenant's obligations as tenant under the Ground Lease by virtue of the Lender exercising its rights under such power of attorney unless and until the Lender has proceeded as provided in Section 8 hereof.

10. **Liability of Ground Landlord**

Nothing contained herein or arising by implication of law shall impose any obligation or liability whatsoever on the Ground Landlord in respect of the obligations and liabilities of the Ground Tenant under the Mortgage and the other Loan Documents.

11. **Time of the Essence**

Time shall be of the essence of this Agreement.

12. **No Release of Assignee**

Nothing herein contained shall be deemed to relieve or release the Ground Tenant from its covenants under the Ground Lease.

13. **Assignment**

The Ground Landlord shall not sell, transfer, mortgage or assign its interest in the Lands or the Ground Lease unless the proposed transferee, mortgagee or assignee enters into an agreement with the Lender and the Ground Tenant to assume the obligations of the Ground Landlord hereunder.

14. **Notice**

Any notice, demand, request or communication required or permitted to be given or made by any of the parties to the other shall be given by personal delivery, facsimile transmission or by registered prepaid mail addressed:

in the case of the Lender, to:

Montreal Trust Company of Canada
100 University Avenue
12th Floor, South Tower
Toronto, ON M5J 2Y1

Attention: Manager, Mortgage Backed Securities Department
Fax No.: (416) 981-9788

and in the case of the Ground Landlord, to:

The Corporation of the City of Ottawa
111 Sussex Street
Ottawa, ON K1N 5A1

Attention: City Clerk

Fax No.: (613) 244-5417

and in the case of the Ground Tenant, to:

Riverside Professional Centre Inc.
1919 Riverside Drive
Ottawa, ON K1H 1A2

Attention: Dr. Stanley Labow

Fax No.: (613) 733-7817

The address or facsimile number of any party may be changed from time to time to any other address or number by notice in writing given to the other parties as aforesaid. Any notice, demand, request or communication given as aforesaid shall be deemed to be received (i) in the case of registered prepaid mail, on the fifth (5th) day following the date of mailing, (ii) in the case of personal delivery, on the date of such delivery, and (iii) in the case of facsimile transmission, on the date of transmission. In the event of actual or apprehended interruption of a mail service, all such notices, demands, requests, or other communications shall be given by personal delivery or facsimile transmission.

15. **Merger**

Each of the parties agrees that no union of the interests of the interests of the Ground Landlord and the Ground Tenant shall result in a merger of the Ground Lease and the Leasehold Estate with the fee simple interest in the Lands.

16. **Right of First Refusal**

The Ground Landlord acknowledges and agrees that the Lender or any nominee or assignee of the Lender shall have the benefit of the first right of refusal contained in Section 16.11(a) of the Ground Lease, and that the 30 day period referred to in Section 16.11(b) of the Ground Lease is reduced to 5 business days for any bona fide third party offer the Lender is prepared to accept for the Building on a realization of its security. Each of the Ground Tenant and the Lender agrees that a Transfer by the Ground Landlord to The Ottawa Hospital (formerly The Board of Trustees of the Riverside Hospital of Ottawa) of its interest in the Demised Lands shall not be subject to the right of first refusal set out in Section 16.11(a) of the Ground Lease, and that such right of first refusal shall apply to future sales by The Ottawa Hospital in accordance with its terms.

17. **Counterparts**

This agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

and in the case of the Ground Landlord, to:

The Corporation of the City of Ottawa
111 Sussex Street
Ottawa, ON K1N 5A1

Attention: City Clerk

Fax No.: (613) 244-5417

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Riverside Professional Centre Inc.
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17. Counterparts

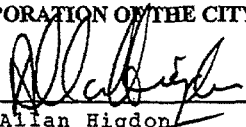
This agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have signed this Agreement under seal.



THE CORPORATION OF THE CITY OF
OTTAWA

Per: 
Name: Allan Higdon
Title: Acting Mayor

7 *Alta Bergson*
G. Bergson

Per: _____
Name: Guy Bergson
Title Deputy City Clerk

I/We have the authority to bind the corporation.

MONTREAL TRUST COMPANY OF CANADA

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

RIVERSIDE PROFESSIONAL CENTRE INC.

Per: _____
Name: Dr. Stanley Labow
Title: President

Per: _____
Name: Dr. Maureen Stewart
Title: Secretary

I/We have the authority to bind the corporation.

It is presently contemplated that The Ottawa Hospital (the "Hospital") will acquire the right, title and interest of the Ground Landlord in the Lands. In compliance with Section 13 hereof, the Hospital hereby assumes the obligations of the Ground Landlord hereunder, such assumption to be effective from and after the Hospital's acquisition of the Ground Landlord's right, title and interest in the Lands. The Hospital's address for service for purposes of Section 14 of this Agreement is:

The Ottawa Hospital
1053 Carling Avenue
Ottawa, ON K1Y 4E9

Attention: Vice President, Facilities Management

Fax No.: (613) 761-4509

THE OTTAWA HOSPITAL

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

IN WITNESS WHEREOF the parties have signed this Agreement under seal.

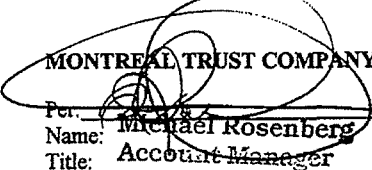
THE CORPORATION OF THE CITY OF OTTAWA

Per: _____
Name:
Title

Per: _____
Name:
Title

I/We have the authority to bind the corporation.

MONTREAL TRUST COMPANY OF CANADA

Per: 
Name: Michael Rosenberg
Title: Account Manager

Per: 
Name: Lina Latorre
Title: Account Manager

I/We have the authority to bind the corporation.

RIVERSIDE PROFESSIONAL CENTRE INC.

Per: _____
Name: Dr. Stanley Labow
Title: President

Per: _____
Name: Dr. Maureen Stewart
Title: Secretary

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Per: _____
Name:
Title:

Per: _____
Name:
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IN WITNESS WHEREOF the parties have signed this Agreement under seal.

THE CORPORATION OF THE CITY OF OTTAWA

Per: _____
Name:
Title

Per: _____
Name:
Title

I/We have the authority to bind the corporation.

MONTREAL TRUST COMPANY OF CANADA

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

RIVERSIDE PROFESSIONAL CENTRE INC.

Per: Stanley Labow (P.A.)
Name: Dr. Stanley Labow
Title: President

Per: Maureen Stewart
Name: Dr. Maureen Stewart
Title: Secretary

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Attention: Vice President, Facilities Management

Fax No.: (613)

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Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

7

Per: _____
Name:
Title

I/We have the authority to bind the corporation.

MONTREAL TRUST COMPANY OF CANADA

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the corporation.

RIVERSIDE PROFESSIONAL CENTRE INC.

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Name: Dr. Stanley Labow
Title: President

Per: _____
Name: Dr. Maureen Stewart
Title: Secretary

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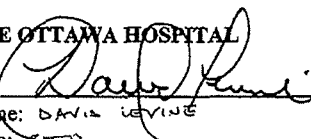
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
The Ottawa Hospital
1053 Carling Avenue
Ottawa, ON K1Y 4E9

Attention: Vice President, Facilities Management

Fax No.: (613) 761-4509

THE OTTAWA HOSPITAL

Per: 
Name: DAVID LEVINE
Title: CEO

Per: 
Name: R.P. THOMPSON
Title: VP FM

I/We have the authority to bind the corporation.

SCHEDULE "A"

Lands

Firstly: PIN 04201-0147 (LT)

That part of Lot 16, Junction Gore, City of Ottawa (formerly Township of Gloucester) designated as Parts 1 and 2 on Plan 5R-12853.

Secondly: PIN 04201-0145 (LT)

That part of Lots 15 and 16, Junction Gore, and of the road allowance between the said Lots 15 and 16 (closed by OT-48999 and N-451929), City of Ottawa (formerly Township of Gloucester) designated as Parts 1-16, both inclusive, Plan 5R-10708 and as Part 6 on Plan 5R-3582, excepting Parts 1 and 2 on Plan 5R-12853.

* * * * *

**This is Exhibit "1" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to read 'Alina Stoica', is positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVIT

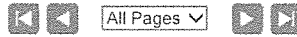
ALINA STOICA

ServiceOntario

[Main Menu](#) [New Enquiry](#)

Enquiry Result

File Currency: 20JUL 2021



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Note: All pages have been returned.

Type of Search Business Debtor
 Search Conducted On RIVERSIDE PROFESSIONAL CENTRE INC.
 File Currency 20JUL 2021

File Number	Family	of Families	Page	of Pages	Expiry Date	Status
676189233	1	2	1	3	10FEB 2037	

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period
676189233		001	002		20120210 1605 1862 1170	P PPSA	25

Individual Debtor	Date of Birth	First Given Name	Initial	Surname
Business Debtor		Business Debtor Name		Ontario Corporation Number
		RIVERSIDE PROFESSIONAL CENTRE INC.		
		Address	City	Province Postal Code
		181 BAY STREET, SUITE 1800	TORONTO	ON M5J 2T9

Individual Debtor	Date of Birth	First Given Name	Initial	Surname
Business Debtor		Business Debtor Name		Ontario Corporation Number
		Address	City	Province Postal Code

Secured Party	Secured Party / Lien Claimant
	THE MANUFACTURERS LIFE INSURANCE COMPANY
	Address City Province Postal Code
	200 BLOOR STREET EAST TORONTO ON M4W 1E5

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
		X	X	X	X	X			

Motor Vehicle Description	Year	Make	Model	V.I.N.

General Collateral Description	General Collateral Description
	GENERAL ASSIGNMENT OF ALL LEASES AND RENTS RELATING TO THE PROPERTY MUNICIPALLY KNOWN AS 1919 RIVERSIDE DRIVE, OTTAWA, GENERAL SECURITY AGREEMENT, AND OTHER SECURITY DOCUMENTS EXECUTED IN FAVOUR OF THE

Registering Agent	Registering Agent			
	GOWLING LAFLEUR HENDERSON LLP (WK) CORPORATE SERVICES			
	Address	City	Province	Postal Code
	2600-160 ELGIN STREET	OTTAWA	ON	K1P 1C3

CONTINUED

Type of Search	Business Debtor								
Search Conducted On	RIVERSIDE PROFESSIONAL CENTRE INC								
File Currency	20JUL 2021								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	676189233	1	2	2	3	10FEB 2037			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
676189233		002	002		20120210 1605 1862 1170				
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address			City	Province	Postal Code			
Secured Party	Secured Party / Lien Claimant								
	Address			City	Province	Postal Code			
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	SECURED PARTY.								
Registering Agent	Registering Agent								
	Address			City	Province	Postal Code			

END OF FAMILY

Type of Search	Business Debtor								
	RIVERSIDE PROFESSIONAL CENTRE INC								

Search Conducted On								
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File Currency	20JUL 2021							
File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
754101999	2	2	3	3	06AUG 2022			
FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN								
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period	
754101999		001	1		20190806 1017 1616 7739	P PPSA	03	

Individual Debtor Date of Birth First Given Name Initial Surname

Business Debtor Business Debtor Name Ontario Corporation Number
 RIVERSIDE PROFESSIONAL CENTRE INC
 Address City Province Postal Code
 181 BAY ST 1800 TORONTO ON M5J 2T9

Individual Debtor Date of Birth First Given Name Initial Surname

Business Debtor Business Debtor Name Ontario Corporation Number
 Address City Province Postal Code

Secured Party Secured Party / Lien Claimant
 STUART BUDD & SONS LTD.
 Address City Province Postal Code
 2454 SOUTH SERVICE RD W OAKVILLE ON L6L 5M9

Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
	X	X	X	X	X	X	53490	30JUL2022	

Motor Vehicle Description Year Make Model V.I.N.
 2016 LAND ROVER RANGE ROVER SPORT SALWR2KF6GA110156

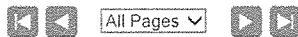
General Collateral Description General Collateral Description

Registering Agent	Registering Agent			
	JCLD ONLINE			
	Address	City	Province	Postal Code
	PO BOX 254, STATION B	TORONTO	ON	M5T 2W1

LAST PAGE

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**This is Exhibit "J" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RIVERSIDE PROFESSIONAL CENTRE INC.

Plaintiff

- and -

THE OTTAWA HOSPITAL

Defendant

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and reasonable costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court.

If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Sept. 29, 2017 Issued by: "M. Ryznaruk"
Local registrar

Address of
court office:

TO: THE OTTAWA HOSPITAL
1053 Carling Avenue
Ottawa, Ontario
K1Y 4E9

CLAIM

1. The Plaintiff, Riverside Professional Centre Inc. ("RPCI"), claims as against the Defendant, The Ottawa Hospital (the "Hospital"), for:

(a) A declaration that the Hospital has breached the terms of a ground lease agreement (the "Lease") entered into between the Corporation of the City of Ottawa (the "City"), Heath Development Services Inc. in trust ("HDS"), the Board of Trustees of the Riverside Hospital of Ottawa and the Riverside Hospital of Ottawa Foundation (the "Foundation") dated September 1, 1989, as amended, by:

i. failing to remit 90% of the revenues associated with forty parking spaces (the "40 Parking Spaces") in the parking lot owned and operated by the Hospital which parking spaces, pursuant to the terms of the lease, are to be held for the exclusive use of RPCI tenants;

i.a. Failing to ensure that RPCI can utilize up to two hundred and fifty (250) parking spaces at the Parking Lot (as defined below), which is owned and operated by the Hospital, as required by the terms of the Lease;

- ii. using and operating seven parking spaces (the "Encroaching Parking Spaces") located on the Demised Premises (defined below); and
 - iii. continual use of an access road (the "Access Road") located on the Demised Premises over which no easement exists;
- (b) Interim, interlocutory and permanent injunctions preventing the Hospital from the use of the Encroaching Parking Spaces for the remainder of the term of the Lease;
- (c) Interim, interlocutory and permanent injunctions prohibiting the Hospital from the use of the Access Road throughout the remainder of the term of the Lease;
- (c.1) An order for specific performance requiring the the Hospital to comply with its obligations under section 8.02 of the Lease to allow RPCI to utilize up to 250 parking spaces in the Parking Lot (as defined below);
- (d) An order requiring the Hospital to pay the arrears in rent due to RPCI in connection with the Hospital's rental of the 40 Parking Spaces from 2011 to the present;

- (e) An order requiring the Hospital to remit to RPCI ninety percent of the rental revenue generated by the Encroaching Parking Spaces from 2011 to the present;
- (f) Damages in an amount to be determined prior to trial for the Hospital's ongoing breach of the Lease, nuisance and trespass as a result of its continued operation of the Encroaching Parking Spaces;
- (f1) Damages in an amount to be determined prior to trial for the Hospital's ongoing breach of the Lease as a result of its continued failure to ensure that RPCI is entitled to utilize up to 250 parking spaces in the Parking Lot (as defined below);
- (g) Damages in an amount to be determined prior to trial for the Hospital's ongoing breach of the Lease, nuisance and trespass as a result of its continued use of the Access Road;
- (h) An accounting and disgorgement of all profits that the Hospital has derived from its breaches of the Lease;
- (i) Aggravated damages in the amount of \$200,000;
- (j) Punitive damages in the amount of \$200,000;
- (k) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended;

- (l) The costs of this action on a substantial indemnity basis; and
- (m) Such further and other relief as counsel may advise and this Honourable Court deems just.

The Parties

2. The Defendant Hospital is the current owner of lands known municipally as 1919 Riverside Drive, Ottawa, which property is leased to RPCI pursuant to the Lease (the "Demised Premises"). The Hospital is the successor in title to the lands from the City and is the current Lessor of the Demised Premises.

3. The Plaintiff, RPCI, is a corporation pursuant to *Business Corporations Act* (Ontario) which carries on business as an operator of commercial medical buildings. RPCI is the Lessee of the Demised Premises.

The Lease and the Demised Premises

4. The Demised Premises were leased to HDS in or about September 1989, for a term of 49 years. Pursuant to the terms of the Lease, the Lessee is entitled, on payment of the agreed-upon rent and performance of the covenants contained therein, to peaceably enjoy the Demised Premises for the term of Lease without interruption or disturbance from the Hospital or any person or persons lawfully claiming by from or under it.

5. At the time the Lease was executed, it was contemplated that HDS (or its successors) would have the right to construct and operate a medical-dental building (the "**Building**") on the Demised Premises at the sole cost of and for the exclusive ownership of HDS (or its successors) throughout the term of the Lease.

6. Construction of the Building on the Demised Premises was completed in or about 1991. RPCI has since operated and maintained the Building as a medical centre in which space is leased to doctors, dentists and other medical professionals.

The Parking Lot and RPCI's Parking Entitlements Under the Lease and Addendum

7. The Demised Premises are located next to the Hospital's Riverside Campus which contains a large parking facility (the "**Parking Lot**").

8. The Parking Lot is comprised of approximately 399 spaces. The Parking Lot is a paid parking facility where users are required to purchase either a monthly parking pass or pay a half-hourly fee of \$3.50, up to a daily maximum of \$13.00. The Parking Lot is generally open between the hours of 7 a.m to 7 p.m., five days per week.

9. A purchaser of monthly parking pass is not given a designated parking spot nor are they assigned to a particular area of the parking lot; rather pay-per-use and monthly pass users are commingled throughout the property. In result, each parking space on the subject Parking Lot generates rental revenues from both monthly pass users as well as pay-per-use users.

10. Under the terms of the Lease, RPCI is granted certain rights of use of, and access to, the Parking Lot. Specifically, section 8.02 of the Lease provides that:

The Lessor and the Hospital covenant and agree that the Lessee shall be entitled to utilize up to two hundred and fifty (250) parking spaces on the parking lot for the purpose of meeting the City of Ottawa bylaw requirements for the Building.

Notwithstanding anything hereinbefore contained, the Lessee shall have the exclusive right to the use of forty (40) parking spaces which shall be reserved and designated as being for the exclusive use of tenants of the Building and for which no parking fee shall be paid. The forty (40) spaces shall be a part of the two hundred and fifty (250) spaces referred to in this Section.

11. Although section 8.02 of the Lease provides that the 40 Parking Spaces are to be reserved on the Parking Lot for the exclusive use of RPCI tenants, such reservation and designation of spaces has not been carried out by the Hospital. Rather, in December 1991 the parties entered into an addendum to the Lease (the "Addendum") whereby they entered into a new arrangement with respect to the 40 Parking Spaces. Specifically, the Addendum provides that:

...the Hospital will retain ten percent (10%) of all revenues generated, after G.S.T, from the rental of the above forty (40) parking spaces as compensation for the administration of those parking spaces.

The Hospital further agrees to remit to [RPCI], on March 31 of each year, ninety percent (90%) of all revenues generated from the rental of the above forty (40) parking spaces.

The Hospital's Continuing Defaults on Its Obligations Under the Lease and the Addendum

12. In 2009, RPCI, under new management, became aware that the Hospital was in breach of a number of important provisions in the Lease.

(a) **The Hospital Has Failed to Remit the Full Rental Revenues in Respect of the 40 Parking Spaces**

13. In breach of its obligations under the Addendum to the Lease, the Hospital has failed to remit 90% of the rental revenue in connection with the 40 Parking Spaces granted to RPCI's tenants under the terms of the Addendum.

14. Since 2011, RPCI has sent annual invoices to the Hospital requesting payment of 90% of the rental revenues generated by the 40 Parking Spaces, which revenues include both monthly pass revenues and pay-per-use revenues.

15. Notwithstanding that the terms of the Addendum requirement payment of 90% of all revenues associated with the 40 Parking Spaces, the Hospital has failed to remit the full amounts to which RPCI is entitled. Since 2011, the Hospital has paid only 90% of the rental revenues generated by monthly pass holder sales in respect of the 40 Parking Spaces; the Hospital has not paid RPCI 90% of the rental revenues generated by visitor, pay-per-use parking in the 40 Parking Spaces.

16. In result, RPCI has been undercompensated by the Hospital in respect of the 40 Parking Spaces and is owed arrears in rent for the 40 Parking Space from 2011 through to the present.

(a.1) The Hospital's Failure to Make Parking Available to RPCI

16.1 In breach of the covenant in section 8.02 of the Lease, the Hospital has consistently failed to make available up to 250 spaces in the Parking Lot for the use of RPCI and/or RPCI's tenants.

16.2 Since 2009, the Parking Lot has become increasingly busy as the number of users of the Riverside Campus of the Hospital has grown. The result of this increase in users is that the Parking Lot frequently reaches capacity and is closed by the Hospital. Such closures have happened with growing frequency. Such closures often occur before RPCI has used up its entitlement to 250 parking spaces in the Parking Lot.

16.3 As a result of these frequent and ongoing closures, RPCI and its tenants have been denied its right to utilize up to 250 parking spaces, on a consistent basis, under the terms of the Lease.

16.4 The lack of available parking in the Parking Lot appears to have been caused, in significant part, by the Hospital's issuance of monthly permit passes to the Hospital's own personnel. The Hospital has denied all of RPCI's reasonable requests for information regarding the number of monthly permit passes issued by the Hospital, as well as the usage information for the Parking Lot by those attending the Building versus those attending the Hospital. Nevertheless, it appears that the ongoing closures of the Parking Lot may be due to the over-issuance of such passes which prevents RPCI

and its tenants to be able to utilize up to 250 parking spaces in the Parking Lot as required by the terms of the Lease.

16.5 The Hospital's continuing breach of its obligation to allow RPCI to use up to 250 parking spaces in the Parking Lot has caused, and will continue to cause, damage to RPCI. The Hospital's failure to allow RPCI and/or its tenants to use up to 250 parking spaces in the Parking Lot has adversely impacted RPCI's business interests. The inadequate parking in the Parking Lot for RPCI and/or its tenants has damaged the reputation of the Building and has caused difficulty in retaining existing tenants and attracting new tenants.

(b) The Hospital's Continuing Encroachments onto the Demised Property

17. Since at least 2009, the Hospital has breached its obligations under the Lease by interfering with RPCI's quiet enjoyment of the Demised Premises. In particular, the Hospital has continually and without authorization, entered onto and has used the Demised Premises without RPCI's consent.

18. The Hospital maintains the Encroaching Parking Spaces on the Demised Premises without the authorization or consent of RPCI. The Hospital's conduct in maintaining the Encroaching Parking Spaces is in breach of the terms of the Lease as well as contrary to the Hospital's common law obligations.

19. The Hospital rents these spaces on the Demised Premises on the same terms as applied to spaces in the Parking Lot. At no time has the Hospital remitted any portion of the rental revenues from the Encroaching Spaces to RPCI.

20. In addition, the Hospital continues to use the private Access Road located on the Demise Premises on an ongoing basis, notwithstanding it has no right to do so under the terms of the Lease and no easement has been registered on title in relation to the Access Road.

21. By continuing to use, and by authorizing the use of others, of the Access Road, the Hospital is trespassing on the Demised Premises and in breach of the terms of the Lease.

RPCI's Damages

22. RPCI has suffered damage as a result of the Hospital's breaches of the Lease and Addendum and as a result of the Hospital's continuing trespass onto the Demised Property.

23. RPCI is entitled to an accounting and disgorgement of profits earned by the Hospital as a result of its breaches of the Lease and Addendum.

24. The full particulars of RPCI's damages, which in part are known only to the Hospital, will be provided before trial.

25. The Hospital's conduct has been and continues to be deliberate, and undertaken with full knowledge that it has breached and continues to breach the terms of the Lease by accessing the Demised Premises without authorization, by failing to allow RPCI to utilize up to 250 parking spaces in the Parking Lot and by failing to remit 90% of the rental revenues generated by the 40 Parking Spaces.

26. The conduct of the Hospital is egregious and high-handed. It warrants sanction with an award of punitive damages.

27. RPCI pleads and relies on the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7.

28. RPCI proposes that this action be tried in the City of Ottawa, in the Province of Ontario.

Dated: September 29, 2017

CLYDE & CO CANADA LLP
401 Bay Street
Suite 2500, P.O. Box 25
Toronto, ON M5H 2Y4

Keith Geurts (LSUC#42172N)
Ellen M. Snow (LSUC # 52369B)

Tel: (416) 647-4812
Fax: (416) 366-6110

Lawyers for the Plaintiff

RIVERSIDE PROFESSIONAL
CENTRE INCORPORATED
Plaintiff

and

THE OTTAWA HOSPITAL
Defendant

Court File No.: 17-74085

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at OTTAWA

AMENDED STATEMENT OF CLAIM

CLYDE & CO CANADA LLP
401 Bay Street
Suite 2500, P.O. Box 25
Toronto, ON M5H 2Y4

Keith Geurts (LSUC#42172N)
Ellen M. Snow (LSUC # 52369B)

Tel: (416) 647-4812
Fax: (416) 366-6110

Lawyers for the Plaintiff

302
AMENDED THIS DAY / JOUR
MODIFIÉE DE

OF / DE 20¹⁸

PURSUANT TO RULE 26.02(a)
CONFORMÉMENT A LA REGLE

OR ORDER
OU A L'ORDONNANCE

DATED THIS / FAIT CE

DAY / JOUR OF / DE 20.....

REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER, COUR SUPÉRIEURE DE JUSTICE

"L. Parkes"

**This is Exhibit "K" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to read 'Alina Stoica', is positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVERSIDE PROFESSIONAL CENTRE INC.

Plaintiff
(Moving Party)

- and -

THE OTTAWA HOSPITAL

Defendant
(Responding Party)

FACTUM OF RIVERSIDE PROFESSIONAL CENTRE INC.

October 28, 2020

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“So parking still remains kind of like a key consideration for the staff experience, patient experience and safety at the hospital”¹

“Parking availability is always a question asked by tenants when they’re looking for space”²

PART I - INTRODUCTION

1. The Plaintiff, Riverside Professional Centre Inc. (“**RPCI**”), seeks summary judgment against the Defendant, the Ottawa Hospital (“**TOH**”), for multiple breaches of RPCI’s rights under its ground lease with TOH, including violating RPCI’s right to utilize up to 250 parking spaces in the parking lot (“**Lot B**”) which services RPCI’s medical professional building located at 1919 Riverside Drive, which is connected to the Riverside Hospital on the TOH Riverside Campus.

2. By actively permitting and encouraging its parking pass holders to park in Lot B at the expense of RPCI parkers, TOH caused significant parking shortages for RPCI’s tenants, staff and visitors, often resulting in lot closures, long waiting times to park, and missed medical appointments. The complaints culminated in a December 2017 tenant petition to protest the “untenable” situation. The parking shortages caused by TOH’s actions have caused RPCI’s vacancy rate to skyrocket to approximately 30% from historical levels which never exceeded 5% and have caused RPCI to suffer significant monetary damages.

3. In the face of this summary judgment motion, TOH took steps in August 2019 to segregate Lot B and in October 2019 to reduce the number of TOH staff with access to Lot B; however, these measures were taken on a without prejudice basis and under TOH’s full reservation of rights to unilaterally change RPCI’s access to parking. Given the undisputed importance of parking availability to prospective tenants, this continued parking uncertainty has not only led tenants to leave, but has hampered RPCI’s ability to market and lease its vacancies. Simply put, RPCI will go bankrupt if its parking rights are not recognized and enforced; this is nothing less than a matter of existential importance to RPCI.

¹ Transcript of cross-examination of Thomas Hayes on February 27, 2020 (“Mr. Hayes Transcript”) pg.21, Q.54, Joint Transcript Brief (“JTB”), Tab 1

² Transcript of cross-examination of Michael Church on February 28, 2020. (“Mr. Church Transcript”) pg.48, Q.178, JTB, Tab 4

PART II - FACTS

4. RPCI is the owner of the medical office building located at 1919 Riverside Drive, Ottawa Ontario, K1H 1A2 (“**1919 Riverside**”). 1919 Riverside is located adjacent to TOH’s Riverside Campus. Construction of 1919 Riverside, which contains approximately 48,000 square feet of rentable space over four floors, was completed in 1991. RPCI has since operated and maintained the building as a medical centre in which space is leased to doctors, dentists, and other medical professionals.³ In January 2008, Lawrence Bontje arranged for the purchase of RPCI and it has been under his management since.⁴

5. PAR-Med Property Services Inc. (“**PAR-Med**”) the largest third-party manager of medical office space in Ontario is the property manager for 1919 Riverside.⁵ Andrew Palin, a founding principal of PAR-Med, and Jeffrey McDonald, an employee of PAR-Med and the building manager for 1919 Riverside, both swore affidavits on this motion.

i) The Lease

6. In September 1989, a lease was signed by the Corporation of the City of Ottawa, Health Development Services Inc. in trust (“HDS”), the Board of Trustees of the Riverside Hospital of Ottawa, and the Riverside Hospital of Ottawa Foundation (the “**Lease**”). The lands leased to RPCI under the Lease (the “**Demised Premises**”) are located next to TOH’s Riverside Campus. Lease of the Demised Premises includes rights to a large parking facility to the east and north of 1919 Riverside (“**Lot B**”).⁶

7. Lot B currently contains approximately 385 parking spaces.⁷ It is a paid parking facility where users are required to purchase either a monthly parking pass or pay-per-use. A purchaser of a monthly parking pass is not given a designated parking spot nor are they assigned to a particular area of the parking

³ Affidavit of Lawrence Bontje, sworn August 20, 2019, para. 2 (“Bontje August 20 Affidavit”), Plaintiff’s Motion Record (“PMR”), Tab 2

⁴ Bontje August 20 Affidavit at para. 3, PMR, Tab 2

⁵ Affidavit of Andrew Palin sworn August 21, 2019 (“Palin August 21 Affidavit”), para. 1, PMR, Tab 4

⁶ Bontje August 20 Affidavit at para. 4 and 5, Exh. A and B, PMR, Tab 2

⁷ Affidavit of Thomas Hayes, sworn December 5, 2019 (“Hayes Affidavit”) at para. 2, Defendant’s Motion Record (“DMR”), Tab 2; Hayes Transcript, p.29, Q.73, JTB, Tab 1

lot; rather, pay-per-use and monthly pass users are commingled throughout Lot B. In the result, each parking space in Lot B generates rental revenues from both monthly pass users and pay-per-use users.⁸

8. Section 8.02 of the Lease provides that:⁹

The Lessor and the Hospital covenant and agree that the Lessee shall be entitled to utilize up to two hundred and fifty (250) parking spaces on the parking lot for the purpose of meeting the City of Ottawa bylaw requirements for the Building. Notwithstanding anything hereinbefore contained, the Lessee shall have the exclusive right to the use of forty (40) parking spaces which shall be reserved and designated as being for the exclusive use of tenants of the Building and for which no parking fee shall be paid. The forty (40) spaces shall be a part of the two hundred and fifty (250) spaces referred to in this Section.

9. In December 1991, the parties entered into an addendum to the Lease (the “**Addendum**”), which states, in part:¹⁰

...the Hospital will retain ten percent (10%) of all revenues generated, after G.S.T., from the rental of the above forty (40) parking spaces as compensation for the administration of those parking spaces. The Hospital further agrees to remit to [RPCI], on March 31 of each year, ninety percent (90%) of all revenues generated from the rental of the above forty (40) parking spaces.

10. In 1993, RPCI and TOH entered into an Amending Agreement in order to adjust the timing of TOH’s payments to RPCI with respect to the 40 parking spaces. The Amending Agreement confirms RPCI’s entitlement to “90% of all revenues generated from the rental of the 40 spaces.”¹¹

ii) The Ottawa Hospital Has Deprived RPCI of Its Parking Rights

11. Contrary to section 8.02 of the Lease, TOH has actively deprived RPCI of its entitlement to utilize up to 250 spaces in Lot B. The shortage of available parking for RPCI became a major issue in or around the Fall of 2015 when Lot B started closing with greater frequency because it was full.¹² On February 9, 2016, Mr. McDonald provided Mr. Bontje with a brief overview of the history and then-current state of

⁸ Bontje August 20 Affidavit at paras. 6 and 7, PMR, Tab 2

⁹ Bontje August 20 Affidavit, Exh. A, PMR, Tab 2

¹⁰ Bontje August 20 Affidavit, Exh. C, PMR, Tab 2

¹¹ Bontje December 6 Affidavit at para. 13, PMR, Tab 8; Affidavit of Cameron Love sworn October 31, 2019 (“Love Oct. 31 Affidavit”), Exh. D, DMR, Tab 1

¹² Bontje August 20 Affidavit at para. 10, Exhibit C, PMR, Tab 1

parking at 1919 Riverside, including his view that there has been a chronic shortage of parking at Lot B, that the parking problems have gotten worse over time, that TOH has been aware of the problem for many years, and that Lot B was at capacity or beyond for every Monday, Tuesday, Wednesday and some Thursdays for the past 9 months.¹³ Mr. McDonald subsequently sent Mr. Bontje a picture showing Lot B at capacity with vehicles lining up to enter.¹⁴

12. TOH chose not to cross-examine Mr. McDonald on his evidence. On cross-examination, Dr. Rosalind Labow, who swore an affidavit on behalf of TOH in this proceeding, expressed her view that Mr. McDonald is “definitely an honest guy.”¹⁵

13. As the parking shortages continued, RPCI tenants delivered a petition to RPCI in December 2017, expressing their serious concerns regarding the “untenable” parking situation and demanding that RPCI take immediate action to address it. A copy of this tenant petition was immediately provided to TOH.¹⁶

14. Thomas Hayes, who was in charge of parking for TOH during the relevant period, testified that prior to October 30, 2019, **621** TOH parking pass holders were authorized by TOH to park anywhere in Lot B at anytime.¹⁷ RPCI discovered this in Mr. Hayes’ affidavit sworn December 5, 2019.¹⁸

15. After October 30, 2019, TOH reduced the number of pass holders with access to Lot B to 359. Mr. Hayes conceded that TOH only implemented this reduction as a reaction to the lawsuit brought by RPCI.¹⁹ Had RPCI not commenced this litigation, 621 TOH pass holders would likely still have access to Lot B. While 359 is better than 621, it remains problematically high given that Lot B only has 385 parking spaces.

¹³ Affidavit of Jeffrey McDonald sworn December 6, 2019 (“McDonald Dec. 6 Affidavit”), at para. 4, Exh. B, PMR, Tab 10

¹⁴ McDonald Dec. 6 Affidavit, para. 5, Exh. C, PMR, Tab 10

¹⁵ Cross-Examination of Dr. Rosalind Labow on February 27, 2020, p.25, Q.118, JTB, Tab 3

¹⁶ Bontje August 20 Affidavit at para. 14, Exh. F, PMR, Tab 1

¹⁷ Hayes Affidavit, para. 11, DMR, Tab 2

¹⁸ Hayes transcript, pg.36, Q.91-93, JTB, Tab 1

¹⁹ Hayes transcript, pg.43, Q.117, JTB, Tab 1

By contrast, TOH, which controls the number of parking passes issued to RPCI tenants, has steadfastly refused to provide RPCI with more than 100 parking passes at any given time.²⁰

16. Moreover, TOH parking pass holders typically arrive early in the morning and leave sometime in the afternoon; they are generally not transient parkers who are parking in Lot B for a short period of time.²¹ This resulted in the unfortunate and entirely avoidable situation where TOH pass holders parked in the prime spots early in the morning, leaving elderly and disabled patients visiting 1919 Riverside with no option but to park in the far spots at the back. TOH was aware of this situation but did not address it.

17. Predictably, TOH's decision to authorize 621 of its pass holders to park in Lot B and its practice of directing its Staff to park in Lot B to keep more spaces open in Lot A²² resulted in Lot B being flooded with pass holders from TOH. A spreadsheet showing monthly parking pass swipes at Lot B from January 4, 2016 to February 9, 2018 was provided to RPCI by TOH in 2018.²³ The column with the heading "1919 Client" shows usage of Lot B by tenants of RPCI who had monthly parking passes. The column with the heading "TOH" shows usage of Lot B by TOH pass holders. The column with the heading "Grand Total" shows the sum of parking pass swipes between tenants of RPCI and Staff of TOH. Assuming Lot B had 387 spots prior to June 2019, as stated by Mr. Hayes²⁴, anytime the TOH column shows more than 138 means that less than 250 parking were able to be utilized by RPCI.

18. A quick look at the spreadsheet shows that on the vast majority of days recorded more than 138 TOH pass holders were parking in Lot B. A closer look at the period starting around February 27, 2017, shows that it was not uncommon for more than 200 and often close to 300 TOH pass holders to park in

²⁰ McDonald Dec. 6 Affidavit, Exh. B, PMR, Tab 10

²¹ Hayes transcript, pg.44-45, Q122-125, JTB Tab 1

²² Dr. Antoniak Affidavit at para. 12, PMR, Tab 5

²³ Bontje August 20 Affidavit, para. 13, Exh. E, PMR, Tab 1

²⁴ Hayes Affidavit at para. 2 (footnote 1), DMR, Tab 2

Lot B. Furthermore, this does not account for visitors of TOH who parked in Lot B as their parking would not be captured by parking pass data.

19. Mr. Hayes provided historical data for both TOH and RPCI pass holders. There are serious questions with respect to the accuracy of Mr. Hayes' data, at least as it purports to accurately reflect RPCI pass holder behaviour. Mr. Hayes explained that TOH's process for maintaining its list of RPCI pass holders involved using one list that was constantly "overwritten with each change".²⁵ TOH does not have historical lists of RPCI pass holders.²⁶ On cross-examination, Mr. Hayes acknowledged that the list of RPCI pass holders dated April 2019 attached as Exhibit "F" to his affidavit was inaccurate. Instead, Mr. Hayes agreed that the list attached as Exhibit "A" to Mr. Bontje's affidavit sworn February 12, 2020, which was approximately 15 names shorter, was accurate for the "most part".²⁷

20. When asked about the accuracy of lists for previous years, Mr. Hayes said that TOH relied upon documents provided by RPCI in this proceeding.²⁸ However, RPCI has not provided TOH with any historical lists in this proceeding so the basis of TOH's data as it relates to RPCI pass holders remains unclear and unreliable. If TOH's underlying data of RPCI pass holders is inaccurate, then the charts which relied on this underlying data are also inaccurate.

21. Notwithstanding the unreliability of Mr. Hayes' data as it relates to RPCI pass holders, some telling trends are revealed through an examination of the TOH pass-holder data. For example, Exhibit "K" to Mr. Hayes' affidavit includes a series of charts purporting to show the average number of spots available to RPCI in Lot B by hour from 2017 to 2019. If one reviews the chart for 2017 at Exhibit "K", it shows that at 10am, on average, 174 parking spaces were available to non-TOH pass holders. Mr. Hayes confirmed that this meant that on average 213 parking spots would have been occupied by TOH pass holders at 10am

²⁵ Hayes transcript, pg.49, Q.141, JTB, Tab 1

²⁶ Hayes transcript, pg. 49, Q.141; pg.54-55, Q.159, JTB, Tab 1

²⁷ Hayes transcript, pg.53-54, Q.154-157, JTB, Tab 1

²⁸ Hayes transcript, pg.54, Q.147, JTB, Tab 1

during 2017.²⁹ In other words, at the beginning of the peak busy period for the day, there were only 174 parking spaces on average available to be utilized by RPCI as well as TOH visitors seeking to park in Lot B, or 76 parking spaces short of 250. In fact, at no time between the hours of 7am and 2pm during 2017, was RPCI able to utilize, on average, 250 spots in Lot B.³⁰

22. Not surprisingly, this data corresponds with the time period in which there were frequent closures at Lot B as a result of the lot being at capacity. Indeed, Mr. Hayes agreed that given the lot closures, the average availability for RPCI shown in his data for 2017 was insufficient.³¹ Given these figures, it is apparent that TOH pass holders parking in Lot B were the single biggest reason contributing to the Lot B closures described below.

iii) Lot B at Capacity – Frequent Lot Closures

23. Parking shortages led to numerous parking lot closures at Lot B in 2016, 2017 and 2018. In order to record the closures, RPCI placed a camera on the roof of 1919 Riverside overlooking Lot B. Lot B closures captured by the camera between May 12, 2016 and December 18, 2018 are contained in videos which have been attached as Exhibit “I” to Mr. Bontje’s affidavit, sworn December 6, 2019. In addition, a detailed log of the closures recorded on the videos is attached as Exhibit “C” to Mr. Bontje’s affidavit sworn February 12, 2020. Neither Mr. Bontje nor Mr. McDonald were cross-examined on this log and the closures recorded therein are not challenged.

24. In total, there were approximately 225 closures at Lot B between May 12, 2016 and December 18, 2018, with multiple closures occurring on the same day in some instances. Approximately 98 of these closures lasted 10 minutes or longer, 25 of which lasted 20 minutes or longer.³²

²⁹ Hayes transcript, pg.103, Q.343, JTB, Tab 1

³⁰ Hayes transcript, pg.104, Q.345, JTB, Tab 1

³¹ Hayes transcript, pg.104, Q.346, JTB, Tab 1

³² Affidavit of Lawrence Bontje sworn February 12, 2020 (“Bontje Feb 12 Affidavit”), Exh. C, PMR, Tab 11

25. In his affidavit sworn December 5, 2019, Mr. Hayes states unequivocally at paragraph 15 that “Lot B was never closed”; however, on cross-examination he retreated from this statement and admitted that “it’s closed to them for all intents and purposes during that time, yes”.³³ Mr. Hayes further conceded that 10 minutes is a long time to wait for parking, and 20 minutes would be a very long time, in contrast to his affidavit statement that “vehicles do not need to wait very long before being allowed entry after a gate may have been temporarily blocked.”³⁴

26. Given the long line-ups to park, Mr. Hayes understood that sometimes appointments would get missed. He acknowledged that this was bad for business.³⁵ Mr. Hayes was also aware that elderly and mobility-impaired patients visiting 1919 Riverside would often be forced to park at the back of Lot B because the closer spots would be taken up by TOH pass holders. He admitted that this was “not a good patient experience”, nor was TOH’s “solution” of directing RPCI visitors to park in Lot A.³⁶

27. There are two access points to Lot B: i) a booth entrance where RPCI staff, tenants, visitors and the public as well as monthly pass holders for RPCI and TOH can enter and exit Lot B; and, (ii) a dedicated TOH pass holder entrance located at the south-east side. Most TOH pass holders use the dedicated TOH entrance.³⁷ All of the lot closures occurred at the booth entrance; none of the closures occurred at the TOH dedicated entrance.³⁸ In other words, RPCI parkers bore the brunt of the lot closures while TOH Staff were largely unaffected.

iv) Tenant Complaints

28. Over the years, and particularly in 2016 through 2018, RPCI received numerous complaints from several tenants about the parking shortages. Many of these complaints documented instances where

³³ Hayes Transcript, pg.79, Q.236, JTB, Tab 1

³⁴ Hayes Transcript, pg.80, Q.248, pg. 8, Q.274, JTB, Tab 1; Hayes Affidavit at para. 15, DMR, Tab 2

³⁵ Hayes Transcript, pg.82/83, Q.257-258, JTB, Tab 1

³⁶ Hayes Transcript, pg.85, Q.277; p.87-88, Q283-285, JTB, Tab 1

³⁷ Hayes Affidavit, para. 4, DMR, Tab 2

³⁸ Hayes Transcript, pg.73-74, Q.218-220, JTB, Tab 1

visiting patients of RPCI were late or missed appointments because of parking shortages and the negative effect the parking shortage was having on business. TOH's expert witness, Michael Church, acknowledged that parking shortages can cause problems for tenants of a medical professional building.³⁹

a) Dr. Teitlebaum

29. Dr. Peter Teitelbaum has worked at 1919 Riverside since approximately 1991. In his affidavit⁴⁰, Dr. Teitlebaum documents how he has had irate clients complain about being unable to find parking and some who have actually cancelled their appointments as a result. His evidence is that such instances are potentially very detrimental to his business and that he has likely lost clients as a result.⁴¹ Dr. Teitlebaum signed the tenant petition in December 2017 and has often complained about the parking situation.⁴²

30. Dr. Teitlebaum believes that the recent improvement in the parking situation is likely due to increased vacancy rates at 1919 Riverside. He is currently on a month-to-month lease due primarily to the parking issues and he remains unwilling to sign a long-term lease until parking issues are resolved.⁴³

b) Dr. Antoniak

31. Dr. Gregory Peter Antoniak is a medical doctor whose medical practice has been located at 1919 Riverside since in or around 1991. Dr. Antoniak signed the tenant petition in December 2017 and expressed his parking concerns on several occasions.⁴⁴ Throughout January 2018, Dr. Antoniak advised PAR-Med that the parking situation "really affects us and our clients on a daily basis (*sic*)."⁴⁵, "it is really tough for our patients and bad for the building"⁴⁶, and "the parking situation is now unbearable."⁴⁷

³⁹ Church Transcript, pg. 47, Q.173, JTB, Tab 4

⁴⁰ Affidavit of Dr. Peter Teitlebaum, sworn September 10, 2019 ("Dr. Teitlebaum Affidavit"), PMR, Tab 6

⁴¹ Dr. Teitlebaum Affidavit at paras. 3, 4, 5 and 12, PMR, Tab 6

⁴² Dr. Teitlebaum Affidavit at paras. 4, Exh. A-F, PMR, Tab 6

⁴³ Dr. Teitlebaum Affidavit at paras. 13 and 14, PMR, Tab 6

⁴⁴ Affidavit of Dr. Gregory Peter Antoniak, sworn September 5, 2019, ("Dr. Antoniak Affidavit") Exh. A-D, PMR, Tab 5; Affidavit of Andrew Palin sworn December 6, 2019 ("Palin Dec. 6 Affidavit") at para. 19, Exh. F, PMR, Tab 9

⁴⁵ Palin Dec. 6 Affidavit at para. 19, Exh. F, PMR, Tab 9

⁴⁶ Dr. Antoniak Affidavit at para. 7, Exh. C, PMR, Tab 5

⁴⁷ Dr. Antoniak Affidavit at para. 7, Exh. C, PMR, Tab 5

32. In 2016, in anticipation of his retirement, Dr. Antoniak entered into negotiations with another doctor he worked with to sell his clinic. A significant factor leading to the breakdown of those negotiations was the lack of available parking at 1919 Riverside. The doctor Dr. Antoniak was negotiating with left 1919 Riverside in or around December 2017.⁴⁸

33. Dr. Antoniak attributes the more recent decrease in parking shortages to the fact that there are less tenants in 1919 Riverside. Dr. Antoniak remains frustrated by the fact that TOH staff continue to park at the front of Lot B leaving undesirable spots at the back of Lot B for elderly and ill patients. Through discussions with Staff of TOH, it is Dr. Antoniak's understanding that TOH has directed its Staff to park in Lot B in order to open more spaces for TOH patients in Lot A.⁴⁹

34. Dr. Antoniak states that he is aware that other doctors, including Dr. Weber, Dr. Aubin, Dr. Javidnia as well as other doctors practicing in family medicine have left 1919 Riverside at least in part due to the parking situation. Despite the urging of two managers in his clinic, Dr. Antoniak has decided to stay at 1919 Riverside because of the capital investment he made in his operating room and the fact that he is nearing the end of his career. But for these factors, he probably would have left 1919 Riverside two years ago, in large part due to the parking issues.⁵⁰

c) Dr. Weber's Office (Affidavit of Bonnie Pankiw)

35. From 2013 to 2018, Dr. Christopher Weber ran a solo medical practice at 1919 Riverside. Bonnie Pankiw was his spouse and office manager. In December 2017, Ms. Pankiw spearheaded the tenant petition. She says that other tenants of the building shared her and Dr. Weber's frustration with the untenable parking situation.⁵¹

⁴⁸ Dr. Antoniak Affidavit at para. 3, PMR, Tab 5

⁴⁹ Dr. Antoniak Affidavit at para. 12, PMR, Tab 5

⁵⁰ Dr. Antoniak Affidavit at para. 13, PMR, Tab 5

⁵¹ Affidavit of Bonnie Pankiw sworn August 20, 2019 ("Pankiw August 20 Affidavit") at paras. 1, 8, 9, PMR, Tab 3

36. According to Ms. Pankiw, the parking problems at 1919 Riverside got progressively worse over the span of their five-year lease and peaked in 2016-2018. During this time, she regularly received complaints from patients about parking lot closures and shortages. She estimated that two-three times per week Lot B would be full such that their patients couldn't park there which would result in patients being late for appointments or missing them entirely.⁵² Parking shortages and lot closures resulted in upset patients and delayed or missed appointments which, in turn, caused the business to suffer.⁵³

37. On January 22, 2018, Ms. Pankiw advised Mr. Palin: "I don't know how to properly convey how much this is affecting our practice. Staff and clients cannot find parking, so come in late and/or upset. Office schedules are in disarray all day. It is very difficult to provide professional services and run a business under these circumstances."⁵⁴ The parking problems at 1919 Riverside led directly to Dr. Weber's office relocating to a new office when their lease expired on April 30, 2018. Had they known of the parking problems they would have never entered into their lease in the first place.⁵⁵

38. TOH chose not to cross-examine Dr. Teitlebaum, Dr. Antoniak and Ms. Pankiw and their evidence remains unchallenged.

d) Additional Tenant Complaints

39. As Ms. Pankiw stated, other tenants of 1919 Riverside shared their frustration and anger over the parking situation. Proof of this wide-spread sentiment can be seen in the tenant petition which was signed by twenty-two tenants. Included among the signatories was Dr. Kanigsberg, who swore an affidavit delivered by TOH in this proceeding, and Dr. Stan Labow, whose spouse, Dr. Rosalind Labow, swore an affidavit delivered by TOH in this proceeding. Prior to signing the tenant petition in December 2017, Dr.

⁵² Pankiw August 20 Affidavit, paras. 2, 3, PMR, Tab 3

⁵³ Pankiw August 20 Affidavit, paras. 4, 6, PMR, Tab 3

⁵⁴ Palin Dec. 6 Affidavit, para. 22, Exh. I, PMR, Tab 9

⁵⁵ Pankiw August 20 Affidavit, paras. 8-9, PMR, Tab 3

Stan Labow's office had advised Mr. McDonald that they had received several serious complaints from clients about the lack of parking.⁵⁶

40. Mr. McDonald was often times the point of contact for frustrated tenants and received numerous complaints regarding the parking situation⁵⁷, including from the Ottawa Vein and Cosmetic Medical Clinic at 1919 Riverside which advised on January 15, 2018 that parking was becoming a "huge problem" and that "we should not have doctors in an office unable to treat patients because there is nowhere to park."⁵⁸ Mr. McDonald also reported on his conversation with Dr. Weatherhead who was uneasy about renewing his lease on a long-term basis at least in part due to the parking issues at 1919 Riverside.⁵⁹

v) Vacancy Rates at 1919 Riverside Have Dramatically Increased as a Result of Parking Issues

41. Between 2010 and 2017, the vacancy rate at 1919 Riverside fluctuated between a low of 0% (2011) and a high of 4.40% (2014). However, in 2018 and 2019, the vacancy rate skyrocketed to 29.55%. The primary reason for this dramatic increase is the parking shortages and continued parking uncertainty. Not only has the parking issue been a primary factor contributing to tenants leaving or refusing to sign long-term leases⁶⁰, but, critically, the uncertainty surrounding parking has hindered RPCI's ability to market vacancies.⁶¹ When asked if he was prepared to accept that parking uncertainty at 1919 Riverside is a contributing factor to the high vacancy rate, Mr. Church responded "I don't know."⁶²

42. The vacancy rate is calculated by dividing the total amount of square footage which is vacant (14,357 sq ft) by the total amount of square footage available to be rented (48,852 sq ft).⁶³ Assuming the

⁵⁶ McDonald Dec. 6 Affidavit, para. 3, Exh. A, PMR, Tab 10

⁵⁷ McDonald Dec. 6 Affidavit, Exh. D, F, G, I, PMR, Tab 10

⁵⁸ McDonald Dec. 6 Affidavit, para. 6, Exh. F, PMR, Tab 10

⁵⁹ McDonald Dec. 6 Affidavit, para. 11, Exh. I, PMR, Tab 10

⁶⁰ Palin August 21 Affidavit, para. 8, PMR, Tab 4

⁶¹ Bontje Dec. 6 Affidavit, para. 24, PMR, Tab 8; Bontje Feb. 12 Affidavit, para. 9, PMR, Tab 11; Palin Dec. 6 Affidavit, para. 17, PMR, Tab 9; Affidavit of Warren Wilkinson sworn December 6, 2019 ("Wilkinson Affidavit") Exh. B, pg. 2-4, PMR, Tab 7

⁶² Church Transcript, pg.50, Q.189, JTB, Tab 4

⁶³ Palin August 21 Affidavit, para. 5, Exh. A, PMR, Tab 4

accuracy of the rent roll provided by Mr. Palin⁶⁴, which was not challenged on cross-examination, Mr. Church accepted that the vacancy rate for 1919 Riverside was 29.55%.⁶⁵

43. By comparison, the average vacancy rate for the five comparable medical professional buildings located on hospital campuses, as identified by RPCI's expert witness, Warren Wilkinson, was 2.24% and 2.53%, respectively.⁶⁶ The five comparable properties identified by Mr. Wilkinson are all professional medical buildings located on hospital campuses in Ontario, which is an important distinguishing feature and competitive advantage of 1919 Riverside. 1919 Riverside is the only privately owned medical building located on a hospital campus in Ottawa.⁶⁷

44. Remarkably, despite the fact that TOH's own signage and website refers to the Riverside hospital and 1919 Riverside as being located on a hospital campus, and despite the fact that Cameron Love, TOH's Executive Vice-President and Chief Operating Officer acknowledges that it is a hospital campus, Mr. Church refuses to consider it a hospital campus.⁶⁸ Despite Mr. Church's lonely assertion, he did agree that 1919 Riverside is well situated as a medical building due to its proximity to the Riverside hospital.⁶⁹

45. As demonstrated by Mr. Wilkinson and Mr. Palin, the vacancy rate for medical office buildings located on hospital campuses is typically very low. 1919 Riverside has the added benefit of being physically connected to the Riverside hospital via a heated indoor connection.⁷⁰ This connection constitutes a competitive advantage for 1919 Riverside.⁷¹ Mr. Church concedes that this is a unique benefit to 1919 Riverside.⁷²

⁶⁴ Palin Dec. 6 Affidavit, para. 3, Exh. A, PMR, Tab 9

⁶⁵ Church Transcript at pg.39, Q.139; Church Transcript, pg. 45, Q.163, JTB, Tab 4

⁶⁶ Palin August 21 Affidavit at para. 4, Exh. A, PMR, Tab 4

⁶⁷ Wilkinson Affidavit, Exh. B at p.5-6, PMR, Tab 7; Palin August 21 Affidavit at para. 3-4, PMR, Tab 4

⁶⁸ Church Transcript, pg.88, Q.346-347, Q.361, Q. 368, JTB, Tab 4; Affidavit of Michael Church sworn October 30, 2019 ("Church Oct. 30 Affidavit"), Exh. C, pg. 8 (top), DMR, Tab 5

⁶⁹ Church Transcript, p.86-87, Q.339, JTB, Tab 4

⁷⁰ Wilkinson Affidavit, pg. 6 (see table), PMR, Tab 7 ; Palin August 21 Affidavit, paras 3-4, PMR, Tab 4

⁷¹ Wilkinson Affidavit, pg.5, PMR, Tab 7

⁷² Church Transcript, pg. 97, Q.385, JTB, Tab 4

46. Perhaps the closest comparable to 1919 Riverside is the professional medical building located at 190 Sherway Drive which is part of the Trillium Health Partners Queensway Campus. 190 Sherway Drive is located on the hospital campus of the Queensway Health Centre and is very similar in size at 44,604 sq. ft (vs. approximately 48,000 square feet for 1919 Riverside). Furthermore, the Queensway Health Centre, like the Riverside hospital, is an ambulatory outpatient hospital.⁷³ Despite these obvious similarities, and despite the fact that he has never visited 190 Sherway Drive, Mr. Church refused to acknowledge any comparability between the two buildings.⁷⁴

47. The Wilkinson Report dispels Mr. Church's assertion that 1919 Riverside is too expensive as compared to other buildings or that its physical appearance is responsible for the dramatic increase in vacancy.⁷⁵ The ten properties identified by Mr. Church as "comparables", all of which were visited by Mr. Wilkinson and only three of which were visited by Mr. Church, are unsuitable comparisons by virtue of their size, age, access, and parking.⁷⁶ Even if the properties identified by Mr. Church are considered to be suitable "comparables", the current vacancy rate at 1919 Riverside of 29.55% is still approximately one-third higher than the weighted Class B vacancy rates for the "comparable" properties identified by Mr. Church for 2017, 2018 and 2019.⁷⁷

48. In his supplementary affidavit, Mr. Love effectively argues that the increased vacancy rate at 1919 Riverside is the result of the restructuring of the Riverside Hospital from a full-service community hospital to an ambulatory care centre, which was completed in 2008.⁷⁸ Mr. Church blindly adopts this argument.⁷⁹

⁷³ Church Transcript, Exh. 2 – website printout from Trillium Health Partners; Church Transcript, pg.102, Q.407, JTB, Tab 4

⁷⁴ Church Transcript, pg. 99, Q.396-397, JTB, Tab 4

⁷⁵ Wilkinson Affidavit, pg. 4, PMR, Tab 7

⁷⁶ Wilkinson Affidavit, pg.6-7, PMR, Tab 7; Church Transcript, pg.125-126, Q.526-531; pg.115-118, Q.467-479; pg.119, Q.484, JTB, Tab 4

⁷⁷ Church Oct. 30 Affidavit, Exh. C, pg.9, DMR, Tab 5; Church Transcript, pg.43, JTB, Tab 4

⁷⁸ Supplementary Affidavit of Cameron Love sworn February 14, 2020 ("Love February 14 Affidavit") at paras. 5, 35-36; DMR, Tab 6

⁷⁹ Affidavit of Michael Church sworn February 14, 2020 at para. 12, DMR, Tab 7

However, a review of the leases and renewals at RPCI throughout the relevant period shows this not to be true; the restructuring of the Riverside Hospital had virtually no effect on the vacancy rate.

49. Attached as Schedule “A” to this factum is a spreadsheet showing the history of tenant leases at 1919 Riverside. The evidence clearly shows that even after the restructuring was complete, tenant leases were consistently renewed or replaced by new tenants at 1919 Riverside. Presumably, if the commercial space at 1919 Riverside was no longer desirable because of the restructuring, then these tenants would not have renewed or signed new leases when their previous leases expired.⁸⁰

50. Moreover, the list of tenants provided at paragraph 35 of Mr. Love’s affidavit sworn February 14, 2020, ostensibly provided to illustrate that these tenants left 1919 Riverside as a result of the restructuring, was shown to be materially inaccurate.⁸¹ As just one of many examples, Mr. Love was not aware that Dr. Taylor continues to be a tenant of 1919 Riverside, contrary to the statement made at paragraph 35(dd) of his affidavit. On cross-examination, Mr. Love conceded that the information provided at paragraph 35 was based off of a list provided to him by his counsel and not his personal knowledge.⁸²

51. The increase in the vacancy rate at 1919 Riverside along with the reduction in TOH staff that has access to park in Lot B has resulted in the current reduction of parking demand in Lot B.⁸³ There is, however, no reason to believe that when 1919 Riverside’s vacancy rate normalizes in accordance with its historical precedent, the parking demands will increase and the shortages experienced in past years will resurface.

⁸⁰ Spreadsheet at Schedule “C” to RPCI Factum; Compendium of Lease Documents, PMR, Tab 13D

⁸¹ Undertakings Chart of Lawrence Bontje, Answer to Undertaking #3, PMR, Tab 13A

⁸² Transcript of cross-examination of Cameron Love on March 2, 2020, (“Mr. Love Transcript”) pg. 113-114, Q.334-335, pg 113-126, Q.334-371, JTB, Tab 5

⁸³ Hayes transcript, pg.127, Q.416, JTB, Tab 1; Transcript of cross-examination of Lawrence Bontje on March 4, 2020, (“Mr. Bontje Transcript”) pg.68, Q.245

vi) The Ottawa Hospital Segregates Lot B on a Without Prejudice Basis

52. On August 1, 2019, between the hours of 4:30am-6:30am, TOH repositioned 5 large concrete barriers in Lot B in an effort to segregate the lot. No explanation has been provided by TOH as to why this seemingly simple and straight-forward action which was completed in approximately 2 hours did not occur before August 1, 2019.⁸⁴

53. Mr. Hayes testified that it was first anticipated that Lot B would be segregated in “mid-2018”.⁸⁵ According to Mr. Hayes, the primary reason for the delay between mid-2018 and August 1, 2019 were internal discussions taking place at TOH to prepare for the segregation. TOH has refused to produce any internal communications dealing with the segregation of Lot B on the alleged basis of relevance.⁸⁶ These communications are clearly relevant to the issues in dispute. TOH remains in breach of its duties under the *Rules of Civil Procedure* by failing to produce them in this proceeding.

54. On August 9, 2019, at which point 621 TOH pass holders still had unfettered access to Lot B, RPCI raised again the issue of parking enforcement with TOH. The issue of parking enforcement is critical to RPCI as a lack of enforcement, such that TOH parkers could park in the segregated lot with impunity, defeats the very purpose of the segregated lot. RPCI proposed a commonly used automated parking enforcement system which is used effectively in other hospitals around the Province.⁸⁷ This proposal was rejected by TOH.

55. All mitigation efforts undertaken by TOH to date, including segregating Lot B, instituting jockey parking, and reducing the number of TOH pass holders with access to Lot B from 621 to 359, have been undertaken on a without prejudice basis and under full reservation of its rights.⁸⁸ TOH has signalled that

⁸⁴ Bontje August 20 Affidavit at para. 21, PMR, Tab 2; Hayes transcript, pg.111, Q.370, JTB, Tab 1

⁸⁵ Hayes transcript, pg.112, Q.374, JTB, Tab 1

⁸⁶ Hayes transcript, pg.115, Q.378, JTB, Tab 1

⁸⁷ Bontje August 20 Affidavit at para. 22, Exh J and K, PMR, Tab 2

⁸⁸ Hayes Affidavit, para. 39, DMR, Tab 2; Hayes transcript, pg.124, Q.407, JTB, Tab 1; Bontje August 20 Affidavit, Exh. G, PR, Tab 2

at any time these measures could be changed or reversed. On cross-examination, Mr. Hayes agreed that, to this day, TOH still refuses to provide RPCI with any confirmation or certainty with respect to its entitlement to 250 spots in Lot B.⁸⁹ RPCI's access to parking therefore remains at the complete mercy of TOH. Considerable uncertainty remains with respect to the parking situation going forward. As a result, RPCI remains unable to make firm representations to prospective tenants about parking availability.⁹⁰

vii) RPCI is Unable to Market and Lease Vacancies

56. According to Mr. Church, "parking availability is always a question asked by tenants when they're looking for space" and is "certainly" a consideration of prospective tenants when deciding to lease space. When touring vacancies with prospective tenants, parking is "always" discussed.⁹¹ Mr. Church conceded that a shortage of available parking would be a "concern" for prospective tenants.⁹²

57. Honesty and transparency on the part of the landlord is critical when marketing to prospective tenants; a failure to be transparent and honest would cause reputational harm. As Mr. Church stated, "it's not a landlord that I would deal with..."⁹³ Mr. Church agreed that if a party knows they don't have parking availability or there is uncertainty about parking availability, that fact would need to be disclosed to a prospective tenant.⁹⁴ Mr. Church agreed that it would not be prudent for a landlord to include parking information in its marketing materials if that information was uncertain.⁹⁵

58. In Mr. Wilkinson's opinion, marketing vacancies without being able to make firm representations regarding parking availability is inadvisable. In such a situation, a landlord would need to choose between not including parking availability in marketing materials, disclosing that there is no parking availability

⁸⁹ Hayes transcript, pg.124-125, Q.409, JTB, Tab 1

⁹⁰ Bontje Dec. 6 Affidavit, para. 24, PMR, Tab 8; Bontje Feb. 12 Affidavit, para. 9, PMR, Tab 11; Palin Dec. 6 Affidavit, para. 17, PMR, Tab 9; Wilkinson Affidavit, Exh. B, pg. 2-4, PMR, Tab 7

⁹¹ Church Transcript, pg.55-56, Q.212, JTB, Tab 4

⁹² Church Transcript, pg.48-50, Q.178-188, JTB, Tab 4

⁹³ Wilkinson Affidavit, Exh. B, pg.2, PMR, Tab 7; Church Transcript, pg.56, Q.216, JTB, Tab 4

⁹⁴ Church Transcript, pg.58, Q.221-22, pg.63-64, Q.248-265, JTB, Tab 4

⁹⁵ Church Transcript, p.64-65, Q.251, JTB, Tab 4

(or certainty), or advertising less parking availability than the landlord may actually be entitled to.⁹⁶ None of these are attractive options.

59. Mr. Church attributed the high vacancy rate at 1919 Riverside to the lack of an aggressive leasing and marketing plan at 1919 Riverside. There is no discussion in his report about the leasing and marketing challenges faced by a landlord in a predicament such as RPCI, where there is no parking certainty. The evidence amply demonstrates that RPCI, in consultation with its advisors, has acted prudently and responsibly in deciding not to aggressively market its vacancies while the parking situation remains unresolved.

60. Over the past year, PAR-Med has reached out to several real estate brokerages to discuss proposed listing agreements and marketing plans for 1919 Riverside, including discussions with Royal LePage, CLV Realty, CBRE Group and Colliers International. While RPCI proceeded to hear proposals, ultimately no listing agreements were entered into as it was determined that it would not be prudent to proceed with a listing agreement given the uncertainty surrounding the parking situation.⁹⁷

61. According to Mr. Bontje, “RPCI does not want to risk making representations to prospective tenants with respect to parking that ultimately it can’t fulfill. Similarly, RPCI does not want to make representations to prospective tenants with respect to parking that are inconsistent and undersell what RPCI believes it is entitled to under the Lease. As such, RPCI has been hamstrung in its ability to market vacancies at 1919 Riverside while the parking dispute remains unresolved.”⁹⁸

viii) Other Mitigating Steps Taken by RPCI

62. While RPCI’s ability to mitigate has been compromised by its inability to aggressively market vacancies in the absence of a parking resolution, it has taken other steps to try and mitigate its damages.

⁹⁶ Wilkinson Affidavit, Exh. B, pg.2-3, JTB Tab 7

⁹⁷ Palin Dec. 6 Affidavit, paras. 13- 17, Exh. C, D, E, PMR, Tab 9

⁹⁸ Bontje Dec. 6 Affidavit, para. 19, PMR, Tab 8

Primary among these measures has been increased flexibility on lease terms in an effort to retain existing tenants. For example, RPCI has agreed to enter into month-to-month leases with some of its tenants, including Dr. Teitlebaum, Dr. Weatherhead, Dr. Lee, and the radiology clinic.⁹⁹ Contrary to Mr. Church's evidence that month-to-month leases represented a "significant red flag" which made RPCI very susceptible to a rising vacancy rate¹⁰⁰, the provision of month-to-month leases has actually been effective in retaining tenants for RPCI. On cross-examination, Mr. Church acknowledged that providing month-to-month leases could have the effect of preventing the vacancy rate from growing higher.¹⁰¹

63. Over the course of its parking dispute with TOH, RPCI has presented a number of other options aimed at resolving the dispute and/or mitigating its damages. One of its proposals involved constructing an additional 29-spot parking lot on adjacent lands to Lot B which are owned by TOH. In or around 2013, the parties went so far as to obtain necessary municipal approvals and commissioned a parking plan by an engineering consulting firm. In 2018, with the parking dispute still unresolved and causing significant damage to RPCI, RPCI wrote "on the record" seeking TOH's consent to construct the new 29-spot lot. RPCI proposed to pay for the construction of the new spots provided it would retain the parking revenues. TOH refused to provide its consent.¹⁰²

ix) TOH's Failure to Remit Revenue

64. RPCI is entitled to 90% of all revenues associated with the rental of 40 parking spaces in Lot B. There is no qualification restricting RPCI's entitlement to revenues generated only by monthly pass holders. To date, TOH has paid only 90% of the rental revenues generated by 40 monthly pass holders. It has refused to pay 90% of the rental revenues generated by pay-per-use parking at the 40 parking spaces.¹⁰³

⁹⁹ Palin Dec. 6 Affidavit, para. 12, PMR, Tab 9; Bontje Dec. 6 Affidavit, paras. 21-22, PMR, Tab 8

¹⁰⁰ Church Oct. 30 Affidavit, Exh. C, pg.10, DMR, Tab 5

¹⁰¹ Church Transcript, pg.141, Q.611-612, JTB, Tab 4

¹⁰² Bontje Dec. 6 Affidavit, para. 20, PMR, Tab 8

¹⁰³ Bontje August 20 Affidavit at para. 24, PMR, Tab 2

There is no dispute that monthly parking passes, which are provided at a discounted rate, generate lower parking revenues as compared to pay-per-use parking rates which are more expensive.¹⁰⁴

65. TOH has taken the position that the number of parking passes RPCI is entitled to is entirely at its discretion and that TOH is under no obligation to provide RPCI with any monthly parking passes if it so chooses.¹⁰⁵ If TOH decided to withhold all parking passes from RPCI, then under its current practice, that would presumably eliminate any Lot B parking revenues owing to RPCI.

66. Despite being aware of RPCI's claim for revenues generated by pay-per-use parking since 2010, Mr. Hayes testified that prior to 2019, TOH's accounting of parking revenue did not separate revenues generated by monthly pass holders and pay-per-use parking.¹⁰⁶ When asked if it would have been prudent for TOH to separate the revenue figures given its knowledge of RPCI's claims, Mr. Hayes admitted that such a step "wouldn't be unreasonable."¹⁰⁷ Only in answer to undertaking did TOH provide any revenue data that it had access to the entire time. It remains unexplained why these clearly relevant records were not produced in accordance with TOH's production obligations.

PART III – LAW AND ARGUMENT

i) The Test for Summary Judgment

67. Rule 20.04(2)(a) of the *Rules of Civil Procedure* requires the Court to grant summary judgment where it is satisfied that there is no genuine issue requiring a trial.¹⁰⁸ TOH's clear breaches of its obligations under the Lease make this matter suitable for summary judgment.

¹⁰⁴ Bontje August 20 Affidavit, Exh. I, pg.2 (March 6, 2019 letter), PMR, Tab 2; Hayes transcript, p.60, Q.178, JTB, Tab 1

¹⁰⁵ Bontje August 20 Affidavit, Exh. I, pg.2 (March 6, 2019 letter at pg.2), PMR, Tab 2

¹⁰⁶ Hayes transcript, pg.61-62, Q.182-185, JTB, Tab 1

¹⁰⁷ Hayes transcript, pg.71-72, Q.211-213, JTB, Tab 1

¹⁰⁸ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 20.04(2)(a); *Hryniak v Mauldin*, [2014] 1 S.C.R. 87, paras. 4, 36, 49

ii) TOH Has Breached the Lease

68. Section 8.02 of the Lease provides, in part, that “[RPCI] shall be entitled to utilize up to two hundred and fifty (250) parking spaces...”. In considering the definition of “utilizing” in the context of the Quebec Labour Code, the Supreme Court of Canada referred to the Oxford Dictionary which defines “utilize” as: “make practical use of” and “use,” in its transitive sense, as “cause to act or serve for a purpose; bring into service; avail oneself of”.¹⁰⁹

69. In determining whether there was “use” of a firearm pursuant to section 85(1) of the Criminal Code, the Supreme Court of Canada has also looked to the Oxford Dictionary and Black’s Law Dictionary, the latter of which defines “use” as “make use of; to convert to one’s service; to employ; to avail oneself of; to utilize; to carry out a purpose or action by means of; to put into action or service, especially to attain an end.”¹¹⁰ The Court held that an offender “uses” a firearm where the offender “reveals by words or conduct the actual presence or immediate availability of a firearm. The weapon must then be in the physical possession of the offender or readily at hand.”¹¹¹

70. In the context of an Ontario labour arbitration, the word “utilize” in a collective agreement was held to “presume the expectation of a functional or operational capability” of the object in question.¹¹²

71. Applying this jurisprudence to this case, it is clear that the term “utilize” in section 8.02 of the Lease must be interpreted in a manner that permits RPCI to make “practical use of”, “avail [itself] of” or have “immediate availability” of up to 250 parking spaces in Lot B. The term “utilize” presumes the expectation that RPCI will be able to functionally use these spaces to satisfy its parking needs.

¹⁰⁹ *Alliance internationale des employés de scène & de théâtre, du cinéma, des métiers connexes & des artistes des États-Unis & du Canada, local no 56 v. S.P.A.*, 2004 SCC 2 at para. 25

¹¹⁰ *R v. Steele*, [2007] 3 S.C.R. 3 at para. 31

¹¹¹ *Ibid* at para. 32

¹¹² *Toronto District School Board and CUPE, Local 4400 (Complex Plants), Re*, 2013 CarswellOnt 17588 at paras.10, 35 and 37

72. Based on the facts and evidence set out above, there can be no doubt that RPCI has been deprived of its right to utilize up to 250 parking spaces because of the actions of TOH. The data provided by both RPCI and TOH clearly demonstrates that TOH pass holders regularly parked in Lot B in such high numbers that it was *impossible* for RPCI to utilize up to 250 parking spots.

iii) TOH's Continuing Encroachments onto the Demised Premises

73. TOH maintains seven parking spaces which are located on the Demised Premises leased by RPCI, without the authorization or consent of RPCI (the “**Encroaching Parking Spaces**”). TOH rents the Encroaching Parking Spaces on the same terms as applied to spaces in Lot B. TOH has refused to remit any portion of the rental revenues from the Encroaching Parking Spaces to RPCI, despite the fact they are located on the Demised Premises and are being operated without the consent or authorization of RPCI. As the Encroaching Parking Spaces are physically located within the Demised Premises, RPCI is entitled to be compensated for the use of these spots.¹¹³

iv) TOH's Unauthorized Use of the Access Road

74. In addition to the Encroaching Parking Spaces, TOH continues to use a private access road located on the Demised Premises on an ongoing basis despite the fact that no easement has been registered on title nor has any authorization been provided by RPCI. Since Mr. Bontje took over the management of RPCI, RPCI has been consistent in its position that it should be compensated for TOH's unauthorized use of the Access Road and Encroaching Parking Spaces.¹¹⁴ TOH has ignored RPCI's concerns and instead has continued to unilaterally derive benefits from its unauthorized use.

75. The constituent elements of trespass are: (i) the intrusion onto the land must be direct; (ii) the interference with land must be intentional or negligent; and (iii) the defendant's interference with the land

¹¹³ Bontje August 20 Affidavit at paras. 26-27, Exh. B, PMR, Tab 1

¹¹⁴ Bontje December 6 Affidavit at para. 15, Exh. B, PMR, Tab 8

must be physical.¹¹⁵ The tort of trespass operates to protect the possessor's interest in freedom of land use; it operates to allow the possessor to assert their proprietary rights. A possessor of land is not required to accommodate others who may have a reasonable need or desire to enter his land.¹¹⁶ It is not necessary for RPCI to prove damages but only that TOH used the Access Road without permission.¹¹⁷ By continuing to use and derive benefits from the Access Road and Encroaching Parking Spaces, TOH has trespassed on the Demised Premises and breached the terms of the Lease.

v) Damages

a) Lost Revenues Resulting from Increased Vacancy Rates

76. Mr. Palin presented a damages model for 1919 Riverside based on the uncharacteristically high vacancy rate.¹¹⁸ In his model, Mr. Palin adopts a series of reasonable and conservative assumptions which were informed by his thirty-plus years specializing in the medical office property management space. The purpose of Mr. Palin's model is to try and quantify the damages that have and will be suffered by RPCI as a result of the high vacancy rates it has experienced since 2018.

77. Based on the assumptions set out at paragraph 6 and Exhibit B of Mr. Palin's affidavit sworn August 21, 2019, the total vacancy cost from January 2018 to December 2021 is reasonably expected to be approximately \$1,133,210 and the total leasing cost for the same period is reasonably expected to be \$1,073,466.

b) Lost Revenues from Lot B

78. By way of answer to undertaking, Mr. Hayes provided what he describes as "public parking revenues derived only from Lot B" since July 2009. RPCI understands these amounts to represent revenues

¹¹⁵ *Shaman v. Meek*, 2019 BCSC 9 at para. 31

¹¹⁶ Osborne, Philip H., *The Law of Torts*, 4th ed. (Toronto: Irwin Law, 2011) at p.295-296 as quoted in *Shaman v. Meek*, 2019 BCSC 9 at para. 31

¹¹⁷ *Fleming's The Law of Torts* as quoted in in *Shaman v. Meek*, 2019 BCSC 9 at para. 31

¹¹⁸ Palin August 21 Affidavit at para. 6, Exh. B, PMR, Tab 4

generated by pay-per-use parking in Lot B, not revenues generated by monthly parking passes in Lot B. According to the data provided by Mr. Hayes, from July 2009 to March 2020, TOH received [REDACTED] from public parking revenues in Lot B.¹¹⁹

79. There are approximately 385 parking spots in Lot B.¹²⁰ RPCI is entitled to 90% of all revenues generated from the rental of 40 of these parking spots.¹²¹ Under the *Real Property Limitations Act*¹²², rent “includes all annuities and periodical sums of money charged upon or payable out of land.” This has been interpreted by the courts to mean “payment due under a lease between a tenant and landlord as compensation for the use of land or premises.”¹²³

80. The Lease gives RPCI the right to exclusive use of 40 parking spots in Lot B. There is no restriction in the Addendum limiting the rental revenues owing to RPCI to only those generated by monthly parking passes. To the contrary, the Addendum explicitly provides that RPCI is entitled to 90% of all rental revenues from the 40 parking spaces. There is no principled basis on which to conclude that revenues generated from monthly parking passes are rental revenues subject to the Addendum but revenues generated from pay-per-use parking are not.

81. Therefore, in addition to amounts RPCI has already received on account of monthly pass revenue, RPCI is entitled to \$477,096.03¹²⁴ in revenues generated from pay-per-use parking.

c) TOH’s Unauthorized Use of the Encroaching Parking Spaces and Access Road

82. In anticipation of this summary judgment motion, RPCI engaged Tino Tolot of Woodman Architect & Associates Ltd. in Ottawa to prepare a drawing on the assumption that RPCI had use of the

¹¹⁹ Answers to Undertakings of Thomas Hayes, answer to Under Advisement #5 - spreadsheet titled “Riverside Parking Revenue April 2009-July 2020” at Row 6

¹²⁰ Hayes Affidavit at para. 2, DMR, Tab 2; Hayes Transcript, p.29, Q.73, JTB, Tab 1

¹²¹ Bontje August 20 Affidavit, Exhibit C, PMR, Tab 2

¹²² R.S.O. 1990, c. L.15 s. 1

¹²³ *Pickering Square Inc. v. Trillium College Inc.*, [2014] O.J. No. 2014 at para. 36; cross-appeal dismissed at *Pickering Square Inc. v. Trillium College Inc.*, [2016] O.J. No. 1118

¹²⁴ [REDACTED]

land currently used for the Access Road and Encroaching Parking Spaces and decided to construct additional parking spaces on this land. According to Mr. Tolot's drawing, RPCI could build 17 additional parking spaces within the Demised Premises if it had use of this land.¹²⁵

83. RPCI currently receives revenues from pay and display parking spots located immediately to the east of 1919 Riverside on the Demised Premises. They are not part of Lot B. Using the actual revenue figures from these pay and display parking spots as a proxy, RPCI calculates that it has suffered losses of approximately \$1,122,000¹²⁶ in revenue that would have been generated from 17 additional pay and display parking spots on the Demised Premises.¹²⁷

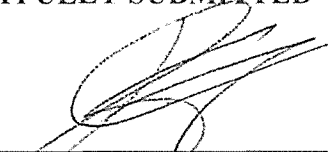
PART IV: RELIEF SOUGHT

84. RPCI seeks an order:

- a) For the relief set out in its Notice of Motion;
- b) Costs of this proceeding on a substantial indemnity basis; and,
- c) Such other and further relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 28, 2020



GROIA & COMPANY
Professional Corporation ■ Lawyers

¹²⁵ Bontje December 6 Affidavit at para. 16, Exh. J, PMR, Tab 8

¹²⁶ Calculation – approx. \$6,000 per spot x 17 spots x 11 years (2009-2020) = \$1,122,000

¹²⁷ Bontje December 6 Affidavit at para. 16, Exh. K, PMR, Tab 8

SCHEDULE “B” – Text of Statutes, Regulations, and By-Laws

Rule 20.04 (2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

DISPOSITION OF MOTION

General

20.04 (1) Revoked: O. Reg. 438/08, s. 13 (1).

(2) The court shall grant summary judgment if,

- (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or
- (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment. O. Reg. 284/01, s. 6; O. Reg. 438/08, s. 13 (2).

Section 1 of the *Real Property Limitations Act*, R.S.O. 1990, Chapter L. 15

Definitions

1. In this Act,

“action” includes an information on behalf of the Crown and any civil proceeding; (“action”)

“assurance” means a deed or instrument, other than a will, by which land may be conveyed or transferred; (“transfert”)

“land” includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency; (“bien-fonds”)

“rent” includes all annuities and periodical sums of money charged upon or payable out of land. (“loyer”) R.S.O. 1990, c. L.15, s. 1.

SCHEDULE "C" - List of Tonans

Year	Name	Age	Sex	Color	Hair	Build	Height	Weight	Complexion	Birthplace	Parents	Education	Occupation	Religion	Political Party	Marital Status	Spouse Name	Spouse Birthdate	Children	Children Birthdates	Other
1917	W. A. KAMAR	1917-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1918	J. J. KAMAR	1918-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1919	J. J. KAMAR	1919-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1920	J. J. KAMAR	1920-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1921	J. J. KAMAR	1921-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1922	J. J. KAMAR	1922-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1923	J. J. KAMAR	1923-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1924	J. J. KAMAR	1924-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1925	J. J. KAMAR	1925-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1926	J. J. KAMAR	1926-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1927	J. J. KAMAR	1927-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1928	J. J. KAMAR	1928-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1929	J. J. KAMAR	1929-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1930	J. J. KAMAR	1930-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1931	J. J. KAMAR	1931-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1932	J. J. KAMAR	1932-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1933	J. J. KAMAR	1933-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1934	J. J. KAMAR	1934-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1935	J. J. KAMAR	1935-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1936	J. J. KAMAR	1936-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1937	J. J. KAMAR	1937-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1938	J. J. KAMAR	1938-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1939	J. J. KAMAR	1939-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None
1940	J. J. KAMAR	1940-01-15	M	Brown	Black	Medium	5'10"	180 lbs	Fair	St. Louis, Mo.	W. A. & M. J. Kamars	High School	None	None	None	Married	None	None	None	None	None

Code	Agency	Activity	Priority	Start	End	Amount	Notes
10	State of California	Statewide	High	2018-01-01	2018-12-31	1,000,000	Statewide program for 2018-19.
11	State of California	Statewide	High	2018-01-01	2018-12-31	500,000	Statewide program for 2018-19.
12	State of California	Statewide	High	2018-01-01	2018-12-31	750,000	Statewide program for 2018-19.
13	State of California	Statewide	High	2018-01-01	2018-12-31	250,000	Statewide program for 2018-19.
14	State of California	Statewide	High	2018-01-01	2018-12-31	150,000	Statewide program for 2018-19.
15	State of California	Statewide	High	2018-01-01	2018-12-31	100,000	Statewide program for 2018-19.
16	State of California	Statewide	High	2018-01-01	2018-12-31	300,000	Statewide program for 2018-19.
17	State of California	Statewide	High	2018-01-01	2018-12-31	400,000	Statewide program for 2018-19.
18	State of California	Statewide	High	2018-01-01	2018-12-31	600,000	Statewide program for 2018-19.
19	State of California	Statewide	High	2018-01-01	2018-12-31	800,000	Statewide program for 2018-19.
20	State of California	Statewide	High	2018-01-01	2018-12-31	900,000	Statewide program for 2018-19.
21	State of California	Statewide	High	2018-01-01	2018-12-31	1,200,000	Statewide program for 2018-19.
22	State of California	Statewide	High	2018-01-01	2018-12-31	1,500,000	Statewide program for 2018-19.
23	State of California	Statewide	High	2018-01-01	2018-12-31	1,800,000	Statewide program for 2018-19.
24	State of California	Statewide	High	2018-01-01	2018-12-31	2,100,000	Statewide program for 2018-19.
25	State of California	Statewide	High	2018-01-01	2018-12-31	2,400,000	Statewide program for 2018-19.
26	State of California	Statewide	High	2018-01-01	2018-12-31	2,700,000	Statewide program for 2018-19.
27	State of California	Statewide	High	2018-01-01	2018-12-31	3,000,000	Statewide program for 2018-19.
28	State of California	Statewide	High	2018-01-01	2018-12-31	3,300,000	Statewide program for 2018-19.
29	State of California	Statewide	High	2018-01-01	2018-12-31	3,600,000	Statewide program for 2018-19.
30	State of California	Statewide	High	2018-01-01	2018-12-31	3,900,000	Statewide program for 2018-19.
31	State of California	Statewide	High	2018-01-01	2018-12-31	4,200,000	Statewide program for 2018-19.
32	State of California	Statewide	High	2018-01-01	2018-12-31	4,500,000	Statewide program for 2018-19.
33	State of California	Statewide	High	2018-01-01	2018-12-31	4,800,000	Statewide program for 2018-19.
34	State of California	Statewide	High	2018-01-01	2018-12-31	5,100,000	Statewide program for 2018-19.
35	State of California	Statewide	High	2018-01-01	2018-12-31	5,400,000	Statewide program for 2018-19.
36	State of California	Statewide	High	2018-01-01	2018-12-31	5,700,000	Statewide program for 2018-19.
37	State of California	Statewide	High	2018-01-01	2018-12-31	6,000,000	Statewide program for 2018-19.
38	State of California	Statewide	High	2018-01-01	2018-12-31	6,300,000	Statewide program for 2018-19.
39	State of California	Statewide	High	2018-01-01	2018-12-31	6,600,000	Statewide program for 2018-19.
40	State of California	Statewide	High	2018-01-01	2018-12-31	6,900,000	Statewide program for 2018-19.
41	State of California	Statewide	High	2018-01-01	2018-12-31	7,200,000	Statewide program for 2018-19.
42	State of California	Statewide	High	2018-01-01	2018-12-31	7,500,000	Statewide program for 2018-19.
43	State of California	Statewide	High	2018-01-01	2018-12-31	7,800,000	Statewide program for 2018-19.
44	State of California	Statewide	High	2018-01-01	2018-12-31	8,100,000	Statewide program for 2018-19.
45	State of California	Statewide	High	2018-01-01	2018-12-31	8,400,000	Statewide program for 2018-19.
46	State of California	Statewide	High	2018-01-01	2018-12-31	8,700,000	Statewide program for 2018-19.
47	State of California	Statewide	High	2018-01-01	2018-12-31	9,000,000	Statewide program for 2018-19.
48	State of California	Statewide	High	2018-01-01	2018-12-31	9,300,000	Statewide program for 2018-19.
49	State of California	Statewide	High	2018-01-01	2018-12-31	9,600,000	Statewide program for 2018-19.
50	State of California	Statewide	High	2018-01-01	2018-12-31	9,900,000	Statewide program for 2018-19.

Agency: State of California
 Activity: Statewide
 Priority: High
 Add relations in document reference name:
 State of California
 Statewide
 High

Date: January 15, 2018
 Page: 1 of 1
 State of California Department of Transportation
 1500 S Street, Sacramento, CA 95834
 Phone: (916) 227-8000
 Fax: (916) 227-8001
 Email: info@dot.ca.gov

Court File No.: 17-74085

RIVERSIDE PROFESSIONAL CENTRE INC.
Plaintiff

- and -

THE OTTAWA HOSPITAL
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding commenced at Ottawa)

**FACTUM OF RIVERSIDE
PROFESSIONAL CENTRE INC.**

GROIA & COMPANY
Professional Corporation ■ Lawyers
Wildeboer Dellelce Place
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Joseph Groia, LSO # 20612J
David Sischy, LSO# 57268B

Lawyers for the Plaintiff
Riverside Professional Centre Inc.

**This is Exhibit "L" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

CITATION: *The Riverside Professional Centre Inc. v. The Ottawa Hospital*, 2021 ONSC 1705
COURT FILE NO.: 17-74085
DATE: 20210308

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
THE RIVERSIDE PROFESSIONAL)
CENTRE INC.) Joseph Groia and David Sischy, for the
) Plaintiff/Moving Party)
Plaintiff/Moving Party)
)
– and –)
)
THE OTTAWA HOSPITAL) David Sherriff-Scott, Lawrence A. Elliot,
) Karen Perron and Laura E. Robinson, for the
Defendant/Responding Party) Defendant/Responding Party
)
)
)
)
)
)
) **HEARD:** Nov. 24 and 25th, 2020

2021 ONSC 1705 (CanLII)

REASONS FOR DECISION

R. SMITH J.

OVERVIEW

[1] The Professional Centre has brought a motion for summary judgment asking the court to interpret the parking provisions of the lease to determine if the Hospital has breached the lease and then if so, to award damages and injunctive relief. This case also requires a consideration of the good faith contractual discretion required when administering the parking provisions of the lease.

[2] In 1989, a group of medical doctors entered into two agreements with The Ottawa Hospital (the “Hospital”), a 49-year lease and a related Memorandum of Agreement (the “MOA”). In the MOA the doctors agreed to build a 50,000 square foot medical office building (the “building”) adjacent to the Riverside Hospital. which included expanding parking lot B to 325 parking spaces and the Hospital constructing a shared access road. At that time the Riverside Hospital was a fully

functioning hospital but was closed in 1998 and has been used as an outpatient centre since 2004-05. The MOA agreement was signed at the same time as the lease and forms part of the factual matrix when the lease was signed.

[3] The construction of the building, the expansion of parking lot B and the access road were completed in 1991 in accordance with the site plan (attached as “Schedule A” to this Decision). The access road and parking lot B were used by both parties without any dispute from 1991 until about 2015 when a complaint was made about the amount of parking available to the tenants of The Riverside Professional Centre Inc. (the “Professional Centre”).

[4] The Hospital denies that it has breached any of its obligations under the lease, submits that it has exercised its discretion when administering the parking in good faith, and that the Professional Centre has failed to prove that it has suffered any damages caused by the alleged lack of available parking spaces. In addition, the Hospital submits that this is not an appropriate case for summary judgment or for partial summary judgment.

[5] The Professional Centre argues that this is an appropriate case for summary judgment because the facts related to the interpretation of the parking provisions of the lease are largely undisputed and will determine whether any breach has occurred. The issue to be decided is whether the Hospital failed to provide the Professional Centre with the required number of parking spaces in the lot B and if so whether the difficulty some patients and tenants experienced to find parking in lot B have caused there to be a 29% vacancy rate in the building. Alternatively, the Professional Centre submits that partial summary judgment should be granted to determine whether the Hospital has breached the lease by failing to provide the Professional Centre with up to 250 parking spaces and the remaining issues including damages could be determined at a later trial.

Issue #1

Is This an Appropriate Case for a Partial Summary Judgment?

[6] The Court of Appeal has stated that partial summary judgments should be granted rarely. Very recently, on December 10, 2020 in *Malik v. Attia*, 2020 ONCA 787 at para 62 (released after this matter was heard), Brown J.A. stated that:

When faced with a request to hear a motion for partial summary judgment, a motion judge should make three simple requests of counsel or the parties:

- i. Demonstrate that dividing the determination of this case into several parts will prove cheaper for the parties;
- ii. Show how partial summary judgment will get the parties' case in and out of the court system more quickly;
- iii. Establish how partial summary judgment will not result in inconsistent findings by the multiple judges who will touch the divided case.

[7] In the circumstances of this case I am not satisfied that dividing the determination of this case into two parts would be cheaper or quicker for the parties. An appeal is likely on the first part and there is also the possibility of on appeal of the second part which would cause further delay. There is also no urgency at present, because the Hospital has currently segregated 250 parking spaces in lot B for the Professional Centre's use which has solved the parking problem.

[8] As a result, I am not prepared to grant a partial summary judgment. I will first consider whether the issues raised can be determined by way of a summary judgment motion in accordance with the criteria set out by the Supreme Court in *Hryniak v. Mauldin*, 2014 SCC 7 and if so, I will proceed to decide the issues raised.

Issue #2

Is there a genuine issue requiring a trial?

[9] Rule 20.04 of the *Rules of Civil Procedure* R.R.O., Reg. 194 states that the Court will only grant summary judgment if satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[10] Rule 20.04 (2.1) provides that in determining whether there is a genuine issue requiring a trial, a judge may weigh the evidence, evaluate credibility and draw reasonable inferences from the evidence, unless it is in the interest of justice for such powers to be exercised only at trial.

[11] In *Hryniak* the Supreme Court stated that on a motion for summary judgment, the judge should first determine if there is a genuine issue requiring a trial without using the fact-finding powers. If there appears to be a genuine issue requiring a trial, then the judge must determine if the need for a trial can be avoided by using the fact-finding powers in Rule 20.04 (2.1) and (2.2).

[12] In *Hryniak* at paras 49 the Supreme Court stated that there will be no genuine issue requiring a trial where a judge “is able to reach a fair and just determination” on the matter. At para 50 the court further stated that:

The standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[13] At para 59 of *Hryniak* the Supreme Court stated that “What is fair and just turns on the nature of the issues, the nature and strength of the evidence and what is the proportional procedure.”

[14] In *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200 the court stated that on a motion for summary judgment it was entitled to assume that the record contained all of the evidence the parties would provide if the matter proceeded to trial.

[15] At para 48 of *Hryniak* the Supreme Court referred to the Court of Appeal’s statement that summary judgments would most often be appropriate when cases were document driven, with few witnesses and limited contested factual issues.

[16] This summary motion raises the following issues:

- a) Did the Hospital breach the lease by failing to allow the Professional Centre to utilize up to 250 parking spaces in lot B?
- b) Did the Hospital breach the lease by failing to remit 90% of the total revenue generated from 40 parking spaces each year?

- c) Did the Hospital have the right to use and collect the revenue from seven parking spaces in lot B which encroach on the leased lands?
- d) Did the Hospital have the right to use the access road running over part of the leased lands without a registered easement?
- e) In the event the Hospital has breached the lease, what damages should be awarded?

Did the Hospital breach the lease by failing to allow the Professional Centre to utilize up to 250 parking spaces in lot B?

[17] The Professional Centre alleges that the Hospital deprived it of its entitlement to utilize up to 250 parking spaces in lot B by issuing too many (621) parking passes to Hospital staff, and directing them to park in lot B rather than lot A.

[18] The Hospital denies that it has breached the parking provisions of the lease and states that the Professional Centre has always been provided with “up to” 250 parking spaces in parking lot B, which initially had 325 and now has 385 parking spaces. The spaces in parking lot B have always been shared with Hospital staff on a first come, first served basis. The Hospital submits that the lease does not state that it was required to provide a minimum of 250 parking spaces but rather that any number of parking spaces less than or equal to 250 would meet the parking requirements set out in the lease.

[19] Determining the issue of whether the Hospital breached the lease involves interpreting the parking provisions of the 1989 lease, the Memorandum of Agreement, and the Site Plan attached thereto (schedule “A “ to these Reasons), along with considering the parties’ conduct for the last 28-29 years. The facts related to the above documents and the parties conduct are not disputed other than whether parking lot B was closed for short periods in 2017 and 2018.

[20] The period during which the Hospital is alleged to have failed to provide up to 250 parking spaces or sufficient parking spaces to the Professional Centre is limited to the period between the fall of 2015 until February of 2018 when an attendant was hired to jockey park cars or in any event by August 1st, 2019 when the Hospital installed concrete barriers segregating 250 parking spaces in lot B for the Professional Centre’s use.

[21] The Professional Centre argues that commencing in 2015 the Hospital increased the number of parking passes it gave out to its employees and directed them to park in lot B instead of lot A. This filled up parking lot B so that less than 250 parking spaces were available for the Professional Centre. The Hospital's evidence is that the number of parking passes issued to hospital staff over this time period remain constant at approximately 621 passes. The Hospital's evidence in this regard is not contradicted. However, there is some weak evidence that the Hospital had directed its staff to park in lot B to free up parking for its patients in lot A during the period where there was difficulty obtaining parking in lot B.

[22] The interpretation of the parking provisions of the lease is well suited to a summary judgment motion. The factual context and the terms of the lease are not contested nor is there any dispute about the manner the parking in lot B was shared by the Professional Centre and the Hospital employees from 1991 until 2015. In addition, a decision interpreting the parking rights of the parties will largely determine whether the Hospital has breached the parking provisions of the lease.

[23] The evidence is not contested that in 2018, on several occasions patients of the Professional Centre had to wait for between 10 and 20 minutes to enter lot B. The parties disagree on whether there was ever a situation where lot B was closed. The parties have conducted extensive cross-examination on this issue and I am satisfied that I am able to weigh the evidence and draw inferences to make a fair and just determination on the merits to determine the extent of the parking difficulties and whether the delays constitute a breach of the terms of the lease.

[24] As a result, I find that a trial is not required to interpret the parking provisions of the lease or to decide if the lease has been breached. The fact-finding powers in R. 20.04 (2.1) would allow me, without a trial, to make a fair and just determination on whether the delays experienced to find a parking space in 2017 and 2018 constitutes a breach of the lease.

Did the Hospital breach the lease by failing to remit 90% of the total revenue generated from 40 parking spaces?

[25] The lease initially stated that the Professional Centre would be entitled to 40 reserved and designated parking spaces in lot B. The parties never designated the reserved spaces and on

December 11, 1991 they amended this provision. The amendment agreement provided that 40 parking spaces would not be designated in lot B and instead the Hospital would remit to the Professional Centre “90% of all revenue generated from the 40 parking spaces and keep 10% as compensation for administering these parking spaces.”

[26] The Professional Centre argues that using the monthly pass method does not include the revenue from daily users who parked in lot B and as such the Hospital has not paid it based on all of the revenue generated from 40 parking spaces.

[27] The Hospital submits that the parties intended that it would pay the Professional Centre 90% of the revenue generated by 40 monthly passes on an annual basis. The parties have used this method of calculating the revenue from 40 parking spaces over the last 28 years and the Professional Centre has not objected to this method until this lawsuit was commenced.

[28] The facts are not contested, and I am satisfied that a trial is not required to determine this issue. The issue is document driven and the facts are not contested. In addition the court’s fact-finding powers may be used to draw the required inferences and make the required findings.

Does the Hospital have the right to use and collect the revenue from seven (7) parking spaces in lot B, and to use the part of the access road which encroaches on the leased lands?

[29] The Professional Centre alleges that the Hospital has received the revenue from seven (7) parking spaces in lot B that are located on part of the leased lands and has also made unauthorized use of the access road which crosses part of the leased lands. In addition, the Professional Centre claims damages for the loss of the revenue from seventeen (17) potential parking spaces, which could have been created on the access road portion of the leased lands.

[30] The Hospital denies that it has made unauthorized use of the access road. It submits that the parties intended that it have an implied easement as it has used the access road together with the Professional Centre for the past 28 years for a common purpose. The access road and approximately 7 parking spaces in lot B located on the leased lands were shown on the original site plan dated June 29, 1989 which was approved by the parties and the City of Ottawa. The site

plan clearly indicates that the parties intended that they would both be entitled to use the access road and that the seven (7) parking spaces would be part of lot B and administered by the Hospital.

[31] The issues of whether the Hospital is entitled to keep the revenue from seven (7) parking spaces that are located within the lands leased to the Professional Centre and whether the Hospital is entitled to an easement over the access road that lies within the leased lands do not raise a genuine issue requiring a trial because the facts are not contested. A determination of the parties' objective intentions on these issues requires a consideration of the lease, the MOA, the site plan and their conduct over the last 28 years.

[32] The request for injunctive relief will also be resolved by deciding the above issues and a trial is not required to decide these issues.

In the event the Hospital has breached the lease in the manner alleged above, what damages should be awarded?

[33] The Professional Centre claims that the Hospital's failure to provide it with 250 parking spaces in lot B has caused the vacancy rate in its building to increase to 29.55% commencing in 2018 and 2019. It claims that this rate is above a standard vacancy rate of 5% for medical buildings connected to a hospital. The Professional Centre claims damages for the vacancy rate being above 5% as well as the leasing costs it will incur to lease out the unleased space.

[34] The Hospital strongly disputes that there is a standard vacancy rate of 5% for medical buildings in Ottawa that are not connected to a fully functioning hospital. The Hospital also denies that the Professional Centre's high vacancy rate was caused by a failure to provide "up to 250" parking spaces, but rather submits that the Riverside hospital was closed in 1998 and since 2005 has operated as an outpatient clinic without any overnight patients. This change has removed any advantage for doctors (other than specialists working at the Riverside campus) to locate their offices next door to an ambulatory care centre. This change along with the change to the granting of privileges to the Ottawa Hospital, the termination of many of the leases with doctors who were the original owners/shareholders of the building, and the high rent sought by the Professional Centre have caused the high vacancy rate.

[35] The evidence from the experts is contested as to whether the high vacancy rate experienced by the Professional Centre since 2017 was caused by the lack of 250 available parking spaces for the Professional Centre. This does raise a genuine issue for trial if the fact-finding powers were not available. In this case both parties have conducted very thorough cross examinations on this evidence. In cross-examination the Professional Centre's expert appraiser agreed that all except one of his comparables were connected to or in very close proximity to fully functioning hospitals in Toronto, which is not the factual situation for this building. In addition, his opinion that there was a standard vacancy rate of 5% for medical office buildings was not based on any industry or trade data, or on any comparable medical buildings located in the city of Ottawa.

[36] I am satisfied that using the fact-finding powers in R 20.04 I can weigh the conflicting expert appraiser's evidence and draw inferences based on the very effective cross examinations by both counsel to make a fair and just determination on this issue.

Disposition of Issue #2

[37] For the above reasons I find that issues as outlined above do not raise a genuine issue requiring a trial and may be determined on a fair and just basis on a summary judgment motion.

Issue #3

Did the Hospital breach the lease by failing to allow the Professional Centre to utilize "up to" 250 parking spaces in lot B?

Legal Test to Interpret a Contract

[38] In *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para 55 the Supreme Court stated that in order to interpret the lease, the Court must ascertain the objective intentions of the parties. In *Sattva* at para 47 the Supreme Court held that the Court "must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract."

[39] In *Sattva* the Supreme Court further stated at para 47 that the contract (in this case a lease) should be interpreted in light of its purpose and commercial context. In *Bell Canada v. The Plan*

Group, 2009 ONCA 548 at para 37 the Court of Appeal stated that a contract should also be interpreted “in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective.”

[40] In *Sattva* the Supreme Court also held that a Court can consider the “surrounding circumstances” or “factual matrix” when interpreting a contract. The Court may consider the conduct of the parties and the objective evidence of the background facts at the time of the execution of the contract. The surrounding circumstances may be used as an interpretive aid for determining the meaning of the written contract.

Background and Finding of Facts

[41] The lease was signed on September 1, 1989 between the City of Ottawa (the “City”), Health Development Services Inc., In Trust (“HDS”) The Board of Trustees of the Riverside Hospital of Ottawa (the “Riverside Hospital”) and the Riverside Hospital of Ottawa Foundation (“the Foundation”).

[42] HDS’s shareholders were a group of medical doctors who became the tenants in the medical building. The parties intended that HDS would build a medical office building of approximately 50,000 square feet adjacent to the Riverside Hospital along with a covered link connecting the building to the Riverside Hospital.

[43] HDS later became Riverside Professional Centre Inc., which is the plaintiff in these proceedings.

[44] HDS built a 50,000 square foot medical office building in accordance with the plans provided to the City, which were approved by all the required authorities. HDS also increased the parking spaces in lot B to 323 parking spaces and the Hospital built an access road as shown on the site plan attached as Schedule “A” hereto.

[45] On September 1, 1989, the same date as the lease was signed, the same parties entered into a Memorandum of Agreement (“MOA”) related to construction of the medical office building and the parking lot expansion. In para 5 of the MOA, HDS agreed to expand the parking lot to 300

parking spaces in accordance with the site plan filed and identified as Schedule 4 to the MOA. The parties intended the construction of the parking lot to be an extension and improvement to the existing parking lot. The parties agreed on how the site would be developed because the site plan shows the proposed medical office building and shows the exact location of the parking spaces in lot B and the future access road.

[46] In the MOA the parties agreed that the parking lot (“lot B”) would remain the property of the Riverside Hospital and stated that it would have the exclusive right to all revenues derived from the operation thereof.

[47] At para 7 of the MOA the parties further agreed that the Riverside Hospital would designate 250 parking spaces for the purposes of meeting the City of Ottawa bylaw requirements for parking for the building to be erected by HDS. The parties agreed that the parking lot would be constructed in accordance with the site plan which laid out the 323 parking spaces.

[48] I find that when signing the lease, HDS and the Riverside Hospital objectively intended to share the use of 323 parking spaces in lot B for the following reasons:

- a) The site plan did not designate any specific area for 250 parking spaces for the Professional Centre’s use and parking lot B contained more than 250 parking spaces (323);
- b) The second paragraph of section 8.02 of the lease stated that forty (40) parking spaces were to be reserved and designated as being for the exclusive use of the tenants of the building. This provision indicates that the balance of the 323 parking spaces were not reserved for the exclusive use of the tenants of the building. In other words, other than for 40 reserved parking spaces, the balance of the parking spaces were available for use by the Professional Centre and the Hospital;
- c) Both parties knew that the proposed building was adjacent to the Riverside Hospital and that the Riverside Hospital used both lots A and B as parking for patients, staff, doctors and visitors;
- d) The Professional Centre and the Riverside Hospital never designated an area for 250 parking spaces for tenants of the building in lot B for about 29 years, until August 1, 2019 after this Application was brought. If the Professional Centre expected to receive 250 designated spaces for their exclusive use in lot B, I infer that they would have

objected much sooner. The Professional Centre did not make any objection about how the parking in lot B was shared for about 25 years which indicates that it intended to share the parking spaces in lot B with the Hospital staff.

[49] Section 8.02 of the lease states that the lessee shall be entitled to use “up to” 250 parking spaces “for the purpose of meeting the City of Ottawa bylaw for the building.” In the MOA the parties stated that HDS planned to erect a 50,000 square foot building on the lands. The zoning bylaw in force for the lands occupied by the Riverside Hospital campus treated the whole area as one lot, which included the Hospital, the medical office building and parking lots A & B.

[50] Section 16(A) of the City of Ottawa’s zoning bylaw sets out the “Parking Requirement for Non-Residential Zoning.” Section 16(A) (4) 4 required one parking space for every 18.5 square metres of gross floor area. A building containing exactly 50,000 square feet was required to have 251.88 parking spaces. I find that the parties intended that 250 parking spaces were sufficient to comply with the zoning bylaw and provided sufficient parking for a building of approximately 50,000 square feet.

[51] Section 16(A) 2 of the zoning bylaw also states that the requirements for parking shall be minimums unless otherwise stated. The zoning bylaw therefore required the building to have a minimum of 250 spaces available to comply with the bylaw. Lot B initially contained 323 parking spaces. I infer that the City was satisfied that the parking lot B met the requirements of its zoning bylaw as it was a party to the MOA. The number of parking spaces in lot B was further expanded to the current 385 spaces in 2003-2004.

Analysis

[52] *Good Life Corporation v. Hazeldean Properties Inc.*, 2008 ONCA 742 is a decision which involved parking provisions in two leases. Royal LePage’s lease guaranteed that at least 30 spaces would be available to its clients and staff and 6 of the spaces would be reserved exclusively for Royal LePage. The second lease with Good Life provided it with unlimited access to parking for Good Life’s clients and staff at no cost and imposed a constraint on Hazeldean’s ability to “reduce the available spaces for tenant parking available at the commencement of the lease.”

[53] Good Life sought an injunction to restrain Hazeldean from permitting the reservation of parking spaces for the exclusive use of any other tenant and for a declaration that Hazeldean was in violation of the parking provision because it had given exclusive parking spaces to both Royal LePage and the Bank of Nova Scotia.

[54] The Hazeldean site plan contained 275 parking spaces. In Royal LePage's lease, the landlord guaranteed to provide it with a minimum of 30 parking spaces, with 6 of the 30 spaces marked reserved for its customers. Royal LePage sought a declaration that it was entitled to 30 spaces reserved exclusively for its use

[55] The Court of Appeal held that the parties intended that Good Life would have unlimited access to the parking lot and also decided that the landlord could not grant exclusive parking spaces to any other tenants after the lease with Good Life was signed because these spaces would no longer be available to Good Life.

[56] The Court of Appeal dismissed Royal LePage's claim for 30 reserved parking spaces and held that only 6 spaces could be reserved for Royal LePage and the remaining 24 parking spaces could be used by all of the tenants.

[57] In the case before me, the Professional Centre's lease stated that "the lessee shall be entitled to utilize up to 250 parking spaces for the purpose of complying with the bylaw." The second paragraph of s. 8.02 stated that the "lessee would have the right to forty (40) parking spaces which shall be reserved and designated." The parties never designated 40 spaces and ultimately amended this provision. This section indicates that the parties only intended to have 40 reserved spaces for the Professional Centre and the balance of 283 (323-40) parking spaces were not reserved and were intended to be shared with the Hospital.

[58] I conclude that the parties did not objectively intend that the Professional Centre would have the right to 250 reserved and designated parking spaces in lot B as the lease only provided that it had the right to 40 reserved and designated spaces. I find that the parties intended that the Professional Centre would have the right to use the balance of up to 210 parking spaces (250 – 40) in lot B along with the Hospital.

[59] The lease did not contain any restriction on the Hospital's right to issue reserved parking spaces for lot B to others as in the *Good Life* situation. However, I also find that the parties intended to comply with the zoning bylaw which required that a minimum of 250 parking spaces were to be available to the tenants, staff and patients of the Professional Centre on the whole site.

[60] In 2003/2004, lot B was increased to 385 parking spaces. The Hospital did not designate or reserve any specific parking spaces for use by Hospital staff, but it issued monthly parking passes to staff members. As of October 30, 2019, the Hospital had issued 621 monthly parking passes, the holders of which could park in lot B. Mr Haye's uncontradicted evidence was that the Hospital did not substantially increase the number of passes issued to Hospital staff in 2015. His evidence was that approximately 621 parking passes were issued to Hospital staff during the relevant time period. After October 30, 2019, the Hospital reduced the number of staff pass holders with access to part of lot B to 359. The Professional Centre's tenants have been allowed to purchase about 100 monthly parking passes for lot B each year.

[61] In 1998 the Riverside Hospital was closed as a result of an amalgamation of the Hospitals in Ottawa and it ceased to be used as a fully functioning Hospital with overnight patients. The former Riverside Hospital premises were reopened in 2005 as an outpatient facility.

[62] There is weak evidence that at some time in 2015, the Hospital staff, who worked at the Riverside outpatient facility and had monthly parking passes, were directed to park in lot B to free up space for day patients in lot A. Mr Haye's evidence was that such a direction was never given. Whatever the cause a large number of Hospital staff with monthly passes parked in the prime spots in lot B during the periods when complaints were made about parking. The number of vehicles parking in lot B by hospital staff caused difficulties with parking for the Professional Centre from the fall of 2015 to February of 2018 when jockey parking was instituted.

[63] Commencing in the fall of 2015, the number of available parking spaces in lot B became an issue. During the 2016-2018 period, lot B operated at or near capacity. Between May 12, 2016 and December 18, 2018 (2 ½ years), individuals seeking entry to lot B had to wait 20 minutes on 25 occasions and 10 minutes on 98 occasions.

[64] On December 4th of 2017 the tenants at the Professional Centre delivered a petition to the Hospital demanding that it take immediate action to address the parking situation. The Hospital responded within 2 months and in February of 2018 hired an attendant to jockey park vehicles.

[65] The chart prepared by Mr. Hayes shows that in 2017 at 10:00am there were on average 174 parking spaces available for non-hospital passholder parking in lot B. This means that on average 211 parking spaces were occupied by Hospital pass holders at 10:00am. At 12:00pm there were on average 183 parking spaces available for non-hospital passholder parking. In 2018 at 10:00am there were on average 188 non-hospital passholder parking spaces available and at 12:00pm there were 192 spaces available. The number of parking spaces available to the Professional Centre in 2017 and 2018 on average was less than 250 parking spaces by between 62-76 spaces at 10am. This explains why the tenants and some of their patients complained about problems obtaining parking during this time period.

[66] On February 26, 2018 the Hospital hired an attendant, to “jockey” park the cars when lot B reached full capacity. The Hospital initially hired two attendants but based on the small number of cars that had to be jockey parked, the number of attendants was reduced to one. On a majority of the days there was no requirement to jockey park cars, and on the busiest days typically only 5 cars had to be jockey parked. This evidence was not contested. I find that since February 26, 2018, no one has been denied entry to park in lot B.

[67] The factual situation related to the parking in lot B is largely uncontested and can be summarized as follows:

- a) The Professional Centre and the Hospital shared parking in lot B without any problems since the building was built in 1991 until the fall of 2015;
- b) The first complaint about the amount of parking available to the Professional Centre was made in the fall of 2015;
- c) Between May 12, 2016 and December 18, 2019, ninety-eight (98) individuals seeking to park in lot B experienced a 10-minute delay and 25 individuals experienced a delay of 20 minutes. This means that a 10-minute parking delay occurred less than once per week during this period and a 20-minute delay occurred .19 times per week or about

once every 5 weeks. I conclude that this amount of delay amounts to an inconvenience and not a breach of the lease.

- d) Lot B has been accessible for parking at all times since the jockey parking attendant was hired on February 26, 2018.
- e) The Professional Centre has had access to 250 segregated parking spaces in lot B since August 1, 2019 on a without prejudice basis and there is no evidence that the Professional Centre has had any parking problems since that date. On Oct. 31, 2019 the Hospital staff were no longer allowed to park in the segregated part of lot B.

[68] When the parties signed the lease, they intended to share the parking in lot B between the Professional Centre and the Hospital staff. They did so without any complaints from 1991, when the Building was completed, until the first complaint was made in the fall of 2015. I infer from the parties' conduct for approximately 25 years of sharing parking in lot B that they did not objectively intend or expect to have 250 spaces reserved only for the Professional Centre's doctors, staff and patients.

[69] The lease states that the Hospital agreed to allow the Professional Centre to utilize "up to" 250 parking spaces to comply with the zoning by-law. The plain meaning of the words used in section 8.02 indicates that the parties also intended to comply with the City's parking requirements set out in the zoning bylaw which required a minimum of 250 spaces to be available for use by the Professional Centre. The City signed the lease and approved the site plan proposal and as a result I infer that the parties and the City believed that the parking spaces set out in the site plan showing 323 available parking spaces, complied with the bylaw requirements for the proposed building.

[70] No problems were experienced with parking while the Riverside Hospital continued to operate as a fully functioning Hospital. A change in use occurred when the Riverside Hospital closed in 1998. In 2004-2005 the former Riverside Hospital building began to be used as an outpatient facility. The Hospital added an additional 60 parking spaces to lot B at about that time.

[71] The Professional Centre did not negotiate any term in the lease that limited the Hospital's ability to issue monthly parking passes to its staff or corporate Hospital personnel. However as the parties intended to comply with the parking provisions of the zoning bylaw, I infer that the

parties intended that the parking in lot B would be shared with the Hospital and approximately 250 parking spaces would be available to the Professional Centre in lot B.

[72] The lease did not specify that a minimum number of parking spaces could be utilized by the Professional Centre but rather used the language of “up to 250 parking spaces”. The Hospital argued that the wording of “up to” meant that there was no minimum number of parking spaces required. It submitted that any number from 1 to 250 would meet the parking requirements of the lease. While the lease did not state that a minimum number of parking spaces would be provided to the Professional Centre, if only one parking space was made available to it in lot B, then I find that this would have been inconsistent with the parties objective intentions because they also intended to comply with the zoning bylaw, which required a minimum of 250 parking spaces to be available for the Professional Centre’s building.

[73] The plain meaning of the words “up to 250 parking spaces” indicate that this is the maximum number of spaces that the Professional Centre was entitled to use. The parties agreed that the Professional Centre could use up to 250 spaces and this constrains the Hospital’s ability to manage the parking lot in a manner that prevents the Professional Centre from using up to 250 parking spaces in lot B.

[74] On August 1, 2019 the Hospital segregated 250 parking spaces with concrete barriers for the Professional Centre, and on October 31st, 2019 required Hospital passholders to park in the remaining area of lot B. I find that this arrangement meets the objective intentions of the parties as expressed in section 8.02 of the lease.

[75] The parties were given an opportunity to make further submissions on the applicability of good faith to discretionary contacts as discussed in the recent decision of *Westech Services v. Greater Vancouver* 2021 SCC 7. In *Wastech* the Supreme Court held that there is a duty to exercise contractual discretion in good faith. The Hospital has always been and continues to be in complete control of the management of the parking in lot B and exercises a contractual discretion on the number of parking passes it will issue. I find that the Hospital has a duty to exercise its contractual discretion concerning parking in good faith and in a reasonable manner in accordance with the purposes of the lease and the reasonable expectations of the parties.

[76] The Hospital is not restricted from issuing parking passes for lot B, provided that the number of passes issued does not prevent the Professional Centre from reasonably accessing up to 250 parking spaces in lot B. For example, if the Hospital was to issue 2000 parking passes to Hospital staff for lot B, the Professional Centre would only be able to access very few parking spots. This would not be reasonable or in accordance with the expectations or objective intentions of the parties.

[77] I conclude that the parties intended that the parking spaces in lot B would be shared to meet the reasonable parking requirements of both parties and to comply with the zoning bylaw, and that the Hospital could issue monthly parking passes for lot B, provided the number of parking passes issued would not unduly interfere with Professional Centre's ability to access up to 250 parking spaces in lot B.

[78] The Hospital has the unilateral authority to increase or decrease the number of parking passes that it issues for lot B, which allows it to decrease or increase the number of parking spaces available to the Professional Centre. I find that the Hospital has met its good faith obligations to manage the parking in lot B by hiring a parking attendant in Feb. of 2018 to jockey the vehicles when necessary, by segregating 250 parking spaces for the Professional Centre in lot B on August 1, 2019, and by preventing the hospital staff monthly pass holders from parking in the segregated area on October 31, 2019.

[79] To summarize, I find that the Hospital has not breached the terms of the lease for the following reasons:

- a) The parties shared the parking spaces in lot B on a first come, first served basis from 1991 until the fall of 2015 without any complaints being made;
- b) The lease did not specify that a minimum number of parking spaces were to be provided to the Professional Centre but stated that "up to" 250 spaces could be utilized to comply with the zoning bylaw;
- c) the Professional Centre always had sufficient parking to meet its needs from 1991 until the fall of 2015. Delays of 10 minutes to obtain parking occurred less than once a week and a wait time of 20 minutes occurred about once every 5 weeks during the 2016 to 2018 time period. I find that these delays were an inconvenience and not serious

enough to amount to a breach of the lease as the Hospital took reasonable good faith steps to remedy the situation;

- d) In February of 2018 the Hospital hired an attendant to jockey park vehicles when lot B reached capacity to ensure that the Professional Centre had adequate parking;
- e) The evidence shows that in 2017 and 2018 there were times during the day from 10:00am to 1:00pm when less than 250 parking spaces were available to the Professional Centre because of the number of parking spaces used by Hospital staff passholders. However, the fact remains that the Professional Centre had access to 385 parking spaces available on a first come, first serve basis and the lease did not give the Professional Centre the exclusive right to 250 parking spaces in lot B, rather the parking spaces were intended to be shared.
- f) The Hospital took further steps on August 1, 2019 to segregate 250 parking spaces in lot B for use by the Professional Centre and on October 31, 2019 prevented its staff from using their parking passes to enter and park in the segregated area of lot B. Patients of the outpatient facility or Hospital staff without a monthly pass or members of the public can still access the segregated parking spaces in lot B, but I find that this solution implemented by the Hospital complies with the requirements of section 8.02 of the lease and with their discretionary contractual obligation of good faith.

Disposition of Issue #3

[80] For the above reasons I find that the Hospital has not breached the terms of the lease set out in section 8.02. In addition, I also find that the Hospital has taken reasonable steps to ensure its continued compliance with the lease by segregating 250 parking spaces in lot B and preventing its monthly pass holders from parking in this area as implemented on August 1 of 2019 and October 31, 2019 respectively. The actions taken by the Hospital to deal with parking problems were reasonable and complied with its discretionary contractual duty of good faith.

Issue #4

Did the Hospital breach the lease by failing to remit 90% of the total revenue generated from the 40 parking spaces each year?

[81] The lease initially stated that the Professional Centre was to have the exclusive right to use 40 parking spaces to be reserved and designated in lot B. However, the parties never designated the 40 spaces and on December 11, 1991 entered into an amended agreement whereby the Hospital

agreed to transfer “90% of all revenues generated from the forty (40) parking spaces” to the Professional Centre as compensation for the exclusive use of 40 parking spaces. The parties agreed that the Hospital would retain 10% of the rental revenue from the 40 parking spaces as compensation for its administration.

[82] The Hospital has always calculated the total revenue generated from the 40 parking spaces using the annual cost of 40 monthly parking passes. The Professional Centre has accepted this method of calculation for the past 25 years until this application was brought. Mr. Palin was the Professional Centre’s agent and was present when the 1991 amending agreement was signed. He gave uncontradicted evidence that the parties intended that the total revenue from the 40 parking spaces would be calculated based on the revenue generated by 40 monthly parking passes for a year.

[83] The Professional Centre claims that in addition to the monthly pass revenue for 40 spaces it is also entitled to a share of the day use parking revenue generated from April of 2009 until July of 2020. The Professional Centre claims the additional revenue from day use parking entitles it to damages of \$438,471.40.

[84] I find that the parties intended to calculate the total revenue from 40 parking spaces based on the cost of 40 monthly parking spaces for 12 months, based on Mr. Palin’s evidence that this was what both parties intended and by the parties’ conduct over the past 25 years.

[85] Some of the tenants and staff of the Professional Centre paid for and were issued monthly parking passes. The exact number of passes allocated to the Professional Centre varied over the years but was approximately 100 monthly parking passes. The Hospital agreed to remit 90% of the revenue generated from the 40 parking spaces on March 31 of each year.

[86] The 40 reserved parking spaces provided for in the lease were never designated in lot B and as a result the exact revenue generated from 40 undesignated parking spaces is unknown. The Professional Centre submits that it should receive 40/385 of the total revenue generated by lot B, including the revenue from all day parking as well as from all monthly parking passes. The amending agreement does not specify the method to be used to calculate the total revenue. The method of calculating the total revenue based on 40 monthly passes for the year is not

unreasonable. Based on the parties conduct in calculating the revenue in this manner over 25 years and Mr. Palin's evidence, I infer that the parties intended that using the annual cost of 40 monthly parking passes was a fair way to calculate the amount owed for the total revenue from 40 parking spaces.

Disposition of Issue #4

[87] I find that the plaintiff has failed to prove that it is entitled to any damages for any additional revenue from 40 parking spaces. I find that the parties objectively intended to calculate the total revenue generated by 40 parking spaces based on the cost of 40 monthly parking passes for the year.

[88] For the above reasons, the plaintiff's claim for damages of \$438,471.40 based on how the 90% of the revenue for the 40 parking spaces was calculated, is dismissed.

Issue #5

Did the Hospital have the right to collect revenue from seven (7) parking spaces in lot B which encroach on the leased lands?

[89] The site plan attached as Exhibit 4 to the 1989 MOA, outlines the lands leased to the Professional Centre. The lands leased to the Professional Centre are shown as a dark square on the site plan which includes seven (7) parking spaces in lot B, located immediately east of the access road.

[90] The Hospital constructed the access road and the Professional Centre expanded parking lot B in accordance with the site plan. The Hospital has administered and maintained parking lot B and the access road since 1991, as agreed in the MOA. Both the Hospital and the Professional Centre have used the access road as shown on the site plan since it was constructed in 1991, for their common purpose and without any objection. The Hospital has managed, maintained and collected the revenue from all of the parking spaces in lot B as shown on the site plan, including the seven parking spaces which are shown as part of the leased lands.

[91] The site plan forms an important part of the 1989 MOA. In paragraph 5 of the MOA, the parties agreed that the Professional Centre (previously NHS) would construct/expand the parking area of lot B according to the site plan and the parties agreed that “The Hospital shall have the exclusive right to all revenues obtained therefrom.”

[92] The parties’ intentions were clearly expressed in the 1989 MOA as they stated that the Hospital would receive all of the revenue generated from parking lot B, as shown on the site plan. The seven parking spaces in question are located within lot B and are clearly indicated on the site plan. As such I find that the parties objectively intended that the Hospital was entitled to receive all of the revenue from the parking spaces shown in lot B on the site plan, which included the seven parking spaces in lot B, which were within the Professional Centre’s leased lands.

[93] This finding is also supported by the parties’ conduct over twenty five years where they acted in accordance with the September 1, 1989 MOA and agreed that the Hospital was entitled to collect all of the revenue generated by all of the parking spaces in lot B, including the seven parking spaces shown as being part of the Professional Centre’s leased lands.

Disposition of Issue #5

[94] I find that the Hospital did not breach a term of the lease or the 1989 MOA by receiving the revenue from 7 parking spaces located in lot B which were part of the leased lands.

[95] The plaintiff’s claim for damages for the Hospital’s use and collection of revenues from the 7 parking spaces located in lot B, within the description of the leased lands is dismissed. In addition, the Professional Centre’s claim for an injunction to prevent the Hospital from using and collecting the revenue from the 7 parking spaces is dismissed for the same reasons.

Issue #6

Does the Hospital have the right to use the access road running over part of the leased lands without a registered easement?

[96] The proposed access road was shown on the site plan attached to the 1989 MOA which dealt with constructing the Building and expanding parking lot B. I infer from the parties’

agreement to construct an access road as described in the site plan, that the parties objectively intended that the access road would be constructed and used for their mutual benefit.

[97] The Hospital and the Professional Centre (formerly NHS) knew that the proposed access road ran through a part of the lands that were leased to the Professional Centre, because this is clearly shown on the site plan. The 1989 MOA attaching the site plan did not require the Hospital to pay any money for the use of that part of the access road that crossed the Professional Centre's leased lands other than assuming the responsibility to pay for all maintenance costs for the access road. I find that the parties objectively intended that they could both use the access road for their common purpose and that the Hospital would not have to pay the Professional Centre to enjoy access over that part of the access road running over the Professional Centre's leased lands based on their conduct of so doing over 25+ years with the knowledge based on the site plan.

Implied Easement

[98] In *Barton v. Raine et al.; Barton, Third Party*, 1980 CanLII 1932 (ON CA) at paras 4-6 the Court of Appeal held that an easement may be implied if it is found that there was a common intention and that the benefit was an obvious and necessary inference from the circumstances.

[99] Equity supports the granting of an implied easement in favour of the Hospital over that part of the access road that runs through part of the leased lands as shown on the site plan. I infer that the parties shared a common intention that the Hospital would enjoy an easement over that part of the access road for the following reasons:

- a) the Hospital and The Professional Centre have openly shared the use of the access road consistently for their mutual benefit without any objection over the last 29 years;
- b) the parties entered into an agreement to develop the site and build the access road in accordance with the site plan which clearly showed the access road crossing part of the leased lands;
- c) by examining the site plan it is obvious that the access road provided(s) access to both the building and to the former Riverside Hospital. In this situation it is an obvious and necessary inference that the Hospital would enjoy an easement over the access road where it crossed the leased lands; and

- d) the Hospital has paid and continues to pay for all maintenance of the access road, which is used for the mutual benefit of both parties.

Disposition of Issue #6

[100] Based on my finding that the parties shared a common objective intention to grant an implied easement to the Hospital over that part of the access road that was included in the description of the leased lands, I grant the Hospital an implied easement over those lands.

[101] The Professional Centre's Claim for damages of \$1,122,000.00 for the unauthorized use of the road allowance is dismissed as is the Professional Centre's request for an injunction preventing the Hospital from using the access road over part of the leased lands.

[102] In addition, based on the above findings the Professional Centre's claim for damages for the loss of the revenue for seventeen potential parking spaces that could have been created on that part of the access road which crosses the leased lands, is dismissed based on my finding that the Hospital has an implied easement over the part of the access road that crosses over part of the leased lands.

Issue #7

In the event the Hospital has breached the lease in any of the ways alleged above, what damages should be awarded?

[103] I have found that the Hospital has not breached the parking provisions of the lease and is therefore not liable for damages of \$ 1,33,210.00 as it did not cause the Professional Centre to have a vacancy rate above 5% or for \$1,073,464.00 for lease up costs to rent out the vacant space.

[104] Even if the Hospital breached the parking requirements of the lease, I find that the Professional Centre's evidence did not meet its burden of proof to establish that its 29.55% vacancy rate was caused by parking difficulties in lot B for the following reasons:

- a) The evidence of the Professional Centre's expert appraiser, Mr. Wilkinson, was not credible or reliable because he was not aware of several very important facts concerning the Professional Centre's medical building. Mr. Wilkinson was not aware that the Riverside Hospital was not a fully functioning hospital, as it was closed in

1998 and its campus has only been used as an outpatient facility since 2005, without any overnight patients.

- b) Mr. Wilkinson expressed his opinion that a vacancy rate of 5% was standard for medical buildings closely connected with a Hospital. However, he did not provide any industry or trade data to support his opinion. The medical office buildings used by Mr. Wilkinson were not comparable to the Professional Centre's medical building. All of the comparables he relied on, except one, were connected with fully functioning Hospitals, whereas the Riverside hospital was closed in 1998 and is not operated as a fully functioning Hospital. Mr. Wilkinson admitted under cross-examination that he was not aware that the Riverside Hospital had been closed in 1998 or that the Hospital building on the Riverside campus has only been used as an outpatient facility since 2005. In addition, none of Mr. Wilkinson's comparables were located in the City of Ottawa and as a result, all of his comparables are not applicable to the Professional Centre's medical office building in Ottawa.
- c) The difference between a medical office building connected to a fully functioning Hospital and one without any such connection is that there is no advantage for a medical doctor to locate at the Professional Centre's medical building (other than a specialist with a clinic at the Riverside campus), because there are no longer any overnight patients to visit at an outpatient facility.
- d) I am also not persuaded of the correctness of Mr. Wilkinson's opinion that it was not advisable to attempt to rent out the vacant space since 2018 because renting out the vacant space would have mitigated the Professional Centre's damages. The Wilkinson firm's office in Ottawa, as did Royal LePage, submitted a proposal to lease up the vacant space within a six (6) month period which indicates that it was possible.
- e) I also find Mr. Church's opinion that there is no standard 5% vacancy rate for medical office buildings in Ottawa not directly connected to a fully functional Hospital to be more persuasive. Mr. Church's opinion was supported by evidence of a wide range of vacancy rates for medical office buildings in Ottawa not connected to a fully functioning hospital, as set out in his report. Many vacancy rates for medical buildings in the City of Ottawa were above 5% and several were above 30%.

[105] I also find that the Professional Centre has failed to meet its burden of proof to show that the delays to obtain a parking space in lot B during the 2016-2018 period caused the 29.55% vacancy rate at the Professional Centre's medical office building for the following reasons:

- a) There are several other reasons which could have caused a 29.55% vacancy rate at the Professional Centre's building including:
 - i. The rents sought by the Professional Centre may be above market rents as testified by Michael Church;
 - ii. The building's location is no longer a competitive advantage since it is not connected to a fully functioning Hospital. There is no longer an advantage for a medical doctor (who is not a specialist with a clinic at the Riverside campus) to locate at the Professional Centre since the Riverside Hospital was closed in 1998. This adversely affects the buildings marketability.
- b) The Hospital's system for granting privileges to physicians was also changed in the 2005 time period. Doctors with privileges are now provided free space within the Hospital and must assume some teaching responsibilities. As a result, there is no longer any reason for a physician to locate in close proximity to the Riverside outpatient facility;
- c) No evidence was presented that any prospective tenant did not rent space in the Professional Centre building because of lack of or problems with parking;
- d) Sixteen (16%) of the tenants who left the building did so for reasons unrelated to parking and there is no evidence why the other 10.9% left; and
- e) The original physician owners were the tenants in the medical office building. In 2008, shortly before the sale of the building to Mr. Bontge and the Professional Centre, they all signed 5 to 10-year leases, creating nearly a 100% occupancy rate. Most of these leases have reached their term and the physicians no longer have a reason to remain as tenants in this building and several have reached retirement age. This is another explanation for the vacancy rate at the Professional Centre's building.

Disposition of Issue #7

[106] For the above reasons I find that the Professional Centre has not met its onus of proof to demonstrate that the 29.55% vacancy rate at the medical building was caused by difficulty to obtain parking in lot B. I have also found that the Hospital has not breached any of the terms of the lease and has met its good faith contractual obligations by the steps taken to ensure the parking requirements for the Professional Centre were and are being met in a reasonable manner; namely


the segregation of 250 spaces on August 1, 2019 and limiting the access of Hospital passholders to the segregated area on October 31, 2019. The claim for damages is dismissed.

Punitive and Aggravated Damages

[107] For the same reasons given above, the Professional Centre’s claim for punitive and aggravated damages is dismissed as I have found that the Hospital has not breached the lease or any other agreement.

Costs

[106] The Hospital shall have 15 days to make submissions on costs, the Professional Centre shall have 15 days to respond and the Hospital shall have 10 days to reply thereafter. All costs are to be sent to SCJ.Assistants@ontario.ca to the attention of Justice Robert Smith.


Mr. Justice Robert Smith

Released: March 8, 2021

CITATION: *The Riverside Professional Centre Inc. v. The Ottawa Hospital*, 2021 ONSC 1705
COURT FILE NO.: 17-74085
DATE: 20210308

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE RIVERSIDE PROFESSIONAL CENTRE INC.

Plaintiff/Moving Party

– and –

THE OTTAWA HOSPITAL

Defendant/Responding Party

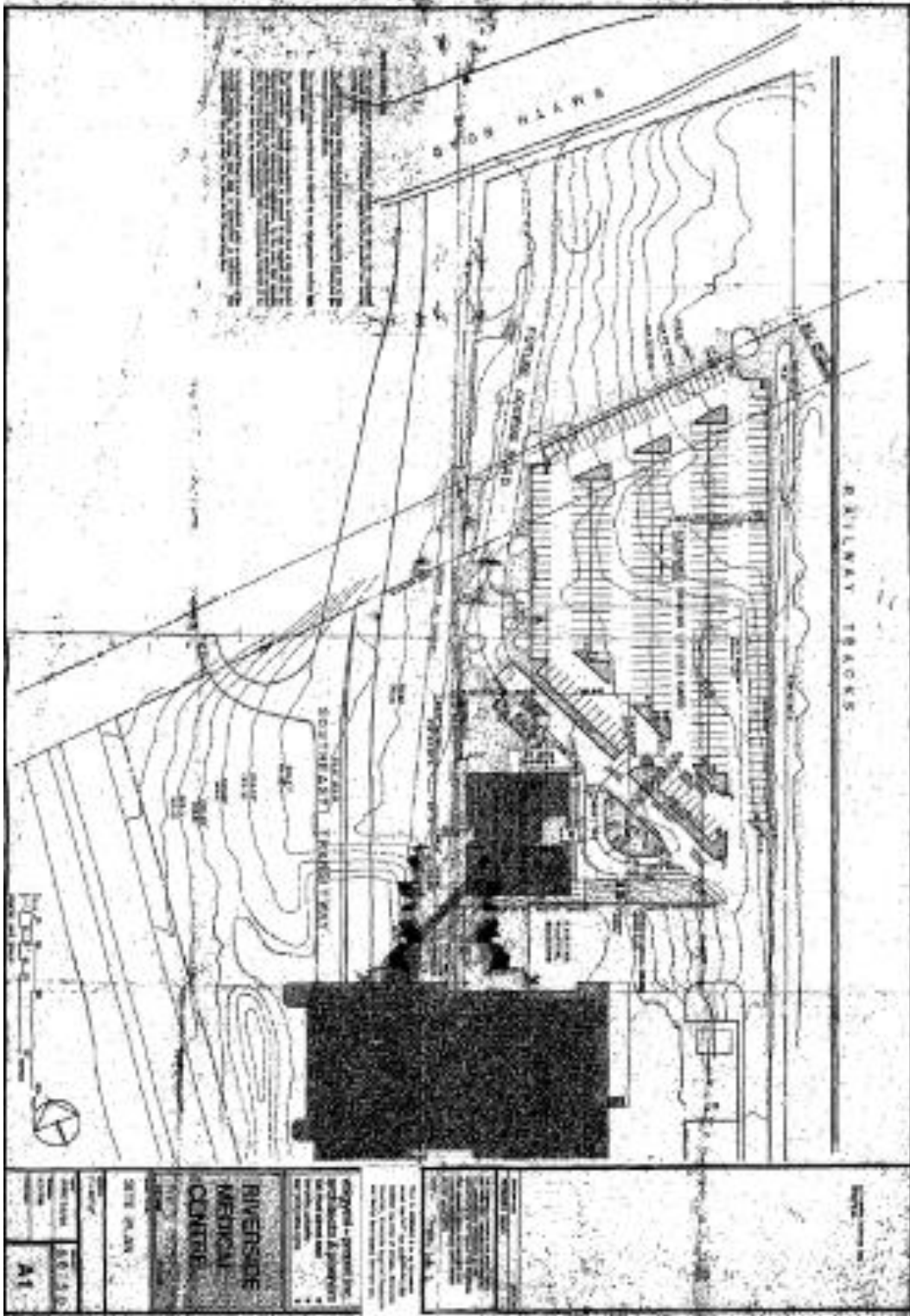
REASONS FOR DECISION

R. Smith J.

Released: March 8, 2021

Schedule A

Site Plan



**This is Exhibit "M" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

CITATION: *The Riverside Professional Centre Inc. v. The Ottawa Hospital*, 2021 ONSC 3606
COURT FILE NO.: 17-74085
DATE: 20210518

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
THE RIVERSIDE PROFESSIONAL)	
CENTRE INC.)	Glenn R. Solomon, for the Plaintiff/Moving
)	Party
Plaintiff/Moving Party)	
)	
– and –)	
)	
THE OTTAWA HOSPITAL)	David Sherriff-Scott, Lawrence A. Elliot,
)	Karen Perron and Laura E. Robinson, for the
Defendant/Responding Party)	Defendant/Responding Party
)	
)	
)	
)	
)	HEARD: In Writing

2021 ONSC 3606 (CanLII)

DECISION ON COSTS

R. SMITH J.

OVERVIEW

[1] The Ottawa Hospital (“TOH”) was successful in opposing the plaintiff Riverside Professional Centre Inc. (“RPCI”)’s motion for summary judgment. In fact, all claims against TOH were dismissed, including the claim that it had breached the terms of the lease, the claim for arrears of revenue generated by 40 parking spaces and 7 encroaching parking spaces in Lot B, the claim for damages of approximately \$4,200,000, injunctive relief and aggravated punitive damages of \$400,000. In addition, TOH was successful in obtaining a grant of easement over the Access Road.

[2] TOH seeks costs of \$586,141.79 inclusive of disbursements on a substantial indemnity scale for both the summary judgment motion and in the action because all of the plaintiff’s claims were dismissed.

[3] The Riverside Professional Centre Inc. submits that the costs should only be awarded for the summary judgment motion and not for the whole action, that costs should only be awarded on a partial indemnity basis, and that the time spent and the hourly rate claimed is excessive.

Factors

[4] The factors to be considered when fixing costs are set out in Rule 57 of the *Rules of Civil Procedure* and include in addition to success, the amount claimed and recovered, the complexity and importance of the matter, unreasonable conduct of any party which unduly lengthened the proceeding, scale of costs and any offer to settle, hourly rate claimed, the time spent, and the amount that a losing party would reasonably expect to pay.

Success

[5] TOH was completely successful on the summary judgment motion brought by the plaintiff, such that the plaintiff's claim was dismissed, and TOH was granted an easement over the shared Access Road. RCPI was unsuccessful on all of its claims.

Complexity, Importance and Amount Claimed

[6] Several issues were raised in the summary motion, including a claim for \$4.2 million in damages, and aggravated and punitive damages of \$400,000. RCPI alleged that TOH had breached the terms of the lease by failing to provide 250 parking spaces for its exclusive use. RCPI alleged that TOH's failure to provide the required number of parking spaces had caused it to be unable to lease space in its medical office building, causing it \$2.2 million dollars in damages. The parties had shared the parking space without complaint for about 25 years.

[7] Extensive affidavit evidence was required to outline the conduct of the parties over many years, from when the agreements were entered into in 1989 to the present, including structural changes at the Riverside Hospital, changes in hospital privileges and market changes over time.

[8] RPCI presented an expert report and two other witnesses on damages, and TOH responded with detailed affidavit evidence in its own expert report. The evidence was voluminous and cross-examinations took place over a lengthy period.

[9] The issues were important to both parties and in particular to TOH, which was accused of acting in bad faith and in a deliberate egregious and high-handed manner. These accusations attacked TOH's integrity and character as an institution.

[10] The amount claimed of \$4.6 million dollars was substantial and the plaintiff did not recover any damages.

Scale of Costs and Offers to Settle

[11] In *Laczko v Alexander*, 2012 ONCA 872, para. 2 the Court of Appeal held that costs on a substantial indemnity scale should only be awarded where there was reprehensible conduct which was "egregious behaviour deserving of sanction". I find that RPCI's behaviour did not reach this level and did not rise to a level deserving of sanction by awarding substantial indemnity costs.

[12] The conduct of RPCI in bringing the motion for summary judgment allowed the issues to be decided, albeit against the plaintiff, and saved the parties time and expense and made efficient use of judicial resources as contemplated by Hyrniak.

[13] RPCI argued that none of the offers to settle made by TOH triggered the mandatory cost consequences of Rule 49.10. However, TOH submitted that an offer to settle on October 13, 2020, more than 7 days before the hearing which remained open until 1 minute after the commencement of the hearing of the motion. TOH offered to continue to segregate 250 parking spaces for RPCI's use, to install an automated ticket entry system, to continue to remit 90% of the revenue from 40 monthly parking passes, TOH would receive an easement over the Access Road and the 7 parking spaces on the leased lands, and TOH would pay \$250,000 to RPCI.

[14] This was a very reasonable offer as TOH achieved a result that was more favourable than its offer, as it had offered to pay \$250,000 to RPCI, which was not ordered. An easement was granted over the Access Road and while an easement was not granted over the 7 encroaching parking spaces in Lot B, the result was almost the same, as TOH was allowed to keep the revenue from the 7 parking spaces and could continue to administer and use the 7 spaces.

[15] Under Rule 49.10 where a defendant makes an offer to settle, and achieves a more favourable result after the hearing, it is entitled to receive partial indemnity costs from the date of

the offer to settle. This is a significant incentive if the plaintiff enjoys some success but achieves less than the defendant's offer. However, where the plaintiff's claim is completely dismissed and achieves zero success, the effect of the offer is nullified because the defendant is entitled to partial indemnity costs in any event.

[16] In *S & A Strasser Ltd. v. Richmond Hill (Town)*, 1990 CanLII 6856 (ONCA) Carthy J. awarded substantial indemnity (solicitor-client) costs to a defendant who exceeded its offer to settle in circumstances where the plaintiff's case was dismissed.

[17] Since 1990 there has not been very many decisions following *S & A Strasser*. In addition, the Court of Appeal in *St. Elizabeth Home Society v. Hamilton (City)*, 2010, 319 O.L.R. [4th] 74, 266 O.A.C. 136 (C.D.) reached the opposite finding. Rule 49.10 limits a defendant to partial indemnity costs from the date of its offer to settle. Based on the *St. Elizabeth Home Society* decision, I will not award substantial indemnity costs on the basis of the offer to settle under Rule 49.10.

[18] Rule 49.13 provides the court with discretion to consider offers to settle when awarding costs. TOH made several very reasonable offers to settle which RCPI decided not to accept. In addition to the offer to settle of October 13, 2020, an offer was made on April 13, 2018, in May of 2018 and December 17, 2018, all of which were very reasonable proposals to settle the parking issues in a fair manner.

[19] Notwithstanding the discretion under Rule 49.13, making reasonable offers to settle is but one factor in deciding on the amount of costs to be awarded.

Hourly Rates, Time Spent and Costs of the Action

[20] I agree with TOH's submission that the costs of the action, as well as for the summary judgment motion, should be awarded because the plaintiff's action was completely dismissed and costs on a partial indemnity basis for the entire action should follow the dismissal.

[21] The time spent was extensive, but the issues raised were serious for TOH as its integrity was being challenged and a substantial claim of \$4.6 million dollars was being made against it. The case was also complicated because the evidence covering the previous 30 years had to be

presented. This included detailed evidence on the use of parking Lot B over many years. In addition, there was expert evidence on damages which had to be challenged, extensive affidavits of documents had to be provided and lengthy cross-examinations were conducted over a week.

[22] I conclude that given the complexity of the claim covering over 25 years, that the time spent to obtain a superb result was reasonable.

[23] Counsel for TOH also divided the work between senior and junior counsel. A substantial part of the work was performed by more junior counsel. A team approach to performing legal services has been recognized as a reasonable way to proceed, and I find this was the case in these circumstances.

[24] I find that the hourly rates claimed by both senior and junior counsel were reasonable in the circumstances, given their experience, the complexity of the case, the substantial amount involved, and the excellent results achieved by counsel.

Amount the Losing Party Would Reasonably Expect to Pay


[25] RPCI is a sophisticated party and had retained and dismissed at least 5 Toronto counsel, including its counsel who argued the summary motion. As a result, I infer that RPCI was well aware of the substantial legal costs that he was incurring when pursuing this litigation. The hourly rates of a senior Toronto counsel which it retained, would have been equivalent, if not higher, than the hourly rates charged by senior Ottawa counsel.

[26] RPCI had received several very fair and reasonable offers to settle from TOH, at least one of which they exceeded at the summary judgment motion. Notwithstanding the very reasonable offers to settle, RPCI chose to “roll the dice” in an attempt to obtain a greater financial outcome on the summary judgment motion, which forced TOH to spend a lot of time to appropriately defend the claims made against it.

[27] For these reasons I find that the amounts claimed by TOH on a partial indemnity basis would be in accordance with RCPI’s reasonable expectations.

Disposition

[28] For the above reasons, RCPI is ordered to pay costs to TOH on a partial indemnity basis of \$370,000 for fees inclusive of HST plus disbursements of \$28,000 inclusive of HST for a total of \$398,000.


Mr. Justice Robert Smith

Released: May18,2021

CITATION: *The Riverside Professional Centre Inc. v. The Ottawa Hospital*, 2021 ONSC 3606
COURT FILE NO.: 17-74085
DATE: 20210518

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE RIVERSIDE PROFESSIONAL CENTRE INC.

Plaintiff/Moving Party

– and –

THE OTTAWA HOSPITAL

Defendant/ Responding Party

REASONS FOR DECISION

Released: May 18, 2021

R. Smith J.

**This is Exhibit "N" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA



CITY OF OTTAWA / VILLE D'OTTAWA
 Revenue Services / Services des Revenues
 Tel/Tel. : 813-860-2444 TTY/ATS : 813-560-2461

STATEMENT OF TAX ACCOUNT / ÉTAT DE COMPTE DE TAXES

Issue Date / Date d'émission
 MAY2021 07, 2021



ROLL NUMBER / NUMÉRO DU RÔLE
 0614.105.701.01001.0000

RIVERSIDE PROFESSIONAL
 CENTRE INC
 C/O PAR-MED PROPERTY SEKV. INC
 301-370 QUEENS OAKY W
 TORONTO ON M5V 3J3

MORTGAGE / HYPOTHEQUE

ACCESS CODE / CODE D'ACCÈS : VZZZ700

PROPERTY LOCATION AND DESCRIPTION
 EMPLACEMENT ET DESCRIPTION DE LA PROPRIÉTÉ

1918 RIVERSIDE DR
 LEASEHOLD INTEREST PT FRT PT
 LOT 16 JUNG GORE PTS 1 AND 2
 R OF W PTS LOT 1 TO 18

Late payment penalty

Payments are applied first toward the outstanding interest and penalty, then to the oldest outstanding taxes. A penalty of 1.25% for late payment was added the day following the due date and will be applied the first day of each month thereafter until it remains unpaid.

Pénalité de retard

Les paiements sont appliqués d'abord aux intérêts et pénalités non payés et ensuite à l'arriéré de taxes le plus ancien. Une pénalité de retard de 1,25 % a été ajoutée le jour suivant la date d'échéance et sera imposée à chaque jour de chaque mois subséquent de paiement non effectué.

Breakdown of Unpaid Taxes / Détails des taxes impayées

Year / Année	Taxes	Penalty / Interest Pénalité / Intérêts	Amount Added / Montant Ajouté
2021	\$111,833.10	\$2,795.72	\$0.00
2020	\$206,869.91	\$31,182.45	
2019	\$210,157.60	\$52,004.80	
2018+	\$0.00	\$0.00	
Total	\$528,870.61	\$85,982.97	\$0.00

Total Balance Owning / Total dû : \$624,853.58

Issue Date / Date d'émission : MAY2021 07, 2021

Due upon receipt / Dû à réception : \$624,853.58

SEE REVERSE / VOIR AU VERSO

Detach and return this stub with your payment.

Veuillez retourner cette partie avec votre paiement.



Statement of Tax Account / État de compte de taxes

Issue Date / Date d'émission : MAY2021 07, 2021

Due upon receipt / Dû à réception : \$624,853.58

Amount Paid / Montant payé

ROLL NUMBER / NUMÉRO DU RÔLE : 0614.105.701.01001.0000

Name / RIVERSIDE PROFESSIONAL
 Nom / CENTRE INC

10570101001000001000624853581



104034=900%

96



Payment Options

- Internet or telephone banking
- At your financial institution
- By mail
Send your stub and payment to:
City of Ottawa, PO Box 4647, Station A, Toronto ON M5W 0E7
- At any City of Ottawa Client Service Centre (CSC)

My ServiceOttawa & Paperless Billing

- Register for paperless billing with My ServiceOttawa and receive an email notification when your bill is ready for viewing. This is a secure website where you can manage your bills online, view, print and pay. To register, you will need your property tax roll number and access code located on your tax bill. Register online at myserviceottawa.ca

Fees

- Receipts: Only ONE (1) tax bill is issued. Should you require a receipt, return the entire bill with your payment. If a duplicate tax bill is required, a \$26.75 charge will apply.
- Change in name: If you have recently purchased, transferred title or changed your name, there is a \$40.00 fee to cover the costs associated with making the changes to the tax roll. You will be billed separately from your tax bill.
- New account: If your property is new to the tax roll, you will incur a one-time \$75.00 fee to cover the costs associated with adding your tax roll. This fee will be charged on your first tax bill.
- Reminder Notice: All tax notices issued in Reminder Notice will be charged \$8.00 to cover the production, mailing and administration costs involved. Reminders are issued after each billing and at year's end.
- Returned Notice: There is a \$65.00 notice fee for all Notices returned from your financial institution.
- Payment Over/Underpaid Fee: If you have moved or you have more than one property tax account, you must ensure all your tax accounts have been successfully set up for internet/te phone banking or online banking. A payment at your financial institution. If a payment fails to be installed from one account to another, a \$30.00 fee will be incurred.

Questions or Correspondence

View online returns or contact us by:

Mail and Payments: City of Ottawa, Revenue Services
PO Box 4647 Station A
Toronto ON M5W 0E7

Phone: 613-580-2444 (TTY may be recorded)
TTY: 613-580-2401
Fax: 613-580-2457

Email: revenue@ottawa.ca

Revenue Services, hours of operation: weekdays,
8 a.m. to 4:30 p.m. (June to August, 8 a.m. to 4 p.m.)

Please have your property address and the roll number listed on your notice handy when you contact us.

TB-37H-85-2030

Modes de paiement

- Paiement par Internet ou par téléphone
- À votre institution financière
- Par la poste
Faire parvenir votre paiement, accompagné du talon de la facture à
Ville d'Ottawa, CP 4647, Succursale A, Toronto ON M5W 0E7
- Centres de service à la clientèle (CSC) de la Ville d'Ottawa

Mon ServiceOttawa et la facturation sans papier

- Inscrivez-vous au service de facturation sans papier avec Mon ServiceOttawa afin de recevoir un avis par courriel lorsque votre facture peut être consultée en ligne. Ce site internet sécurisé permet la gestion de vos factures en ligne, vérifier, imprimer et payer. Pour vous inscrire, vous devez fournir votre numéro de rôle et le code d'accès qui figurent sur votre relevé d'imposition foncière. Inscrivez-vous en ligne à myserviceottawa.ca

Frais

- Reçu : UNE seule facture de taxes est envoyée. Si vous avez besoin d'un reçu, veuillez nous retourner la facture complète avec votre paiement. Pour obtenir un double de la facture, vous devrez payer des frais de 26,75 \$.
- Changement de nom : Si vous avez récemment procédé à une acquisition, à un transfert de titre ou à un changement de nom, vous devez acquiescer des frais de 40,00 \$ pour couvrir les coûts associés aux modifications du rôle de taxes foncières. Ces frais vous seront facturés séparément.
- Nouvelle notice : Si votre propriété est nouvellement inscrite au rôle de taxes, vous devrez acquiescer des frais de 75,00 \$ pour couvrir les coûts associés à l'établissement de votre compte de taxes. Ces frais figurent sur votre première facture de taxes.
- Rappel de paiement en retard : Des frais de 8,00 \$ seront imposés aux contribués de taxes foncières par un rappel de paiement en retard afin de couvrir les coûts de production, d'envoi postal et d'administration. Les rappels seront envoyés après chaque facturation et à la fin de l'année.
- Paiement refusé : Des frais de service de 40,00 \$ seront ajoutés pour tout paiement refusé par votre institution financière.
- Frais de répartition des paiements : Si vous avez déposé ou si vous possédez plusieurs comptes de taxes foncières, veuillez vous assurer que chaque compte a bien été établi pour vous permettre d'effectuer des paiements par Internet, par téléphone ou à votre institution financière. Si un paiement doit être transféré d'un compte à un autre, des frais de 30,00 \$ seront perçus.

Questions ou correspondance

Veuillez contacter notre call-centre ou communiquer avec nous :

par la poste et paiements : Ville d'Ottawa, Services des recettes
CP 4647 Succursale A
Toronto ON M5W 0E7

par téléphone : 613-580-2444 (Les appels peuvent être enregistrés)
ATE : 613-580-2401
par télécopieur : 613-580-2457
par courriel : revenue@ottawa.ca

Services des recettes : heures d'ouverture : en semaine,
de 8 h à 16 h 30 (épisode print-été), de 8 h à 16 h)

Quand vous communiquez avec nous, assurez-vous d'avoir à portée de la main l'adresse et le numéro du rôle de votre propriété, tels qu'ils figurent dans votre avis de taxes.

OTT-TAX-BILL-03-2018

CITY OF OTTAWA - Property Taxes

Don't forget
send your tax bill stub with your payment
do not fold, staple, stamp
or write on the payment stub
make cheques payable to City of Ottawa
write your property tax roll number
on the front of the cheque
cheques dated for due date or earlier are accepted

Web payable at www.ottawa.ca

Mail and Payments:
City of Ottawa
Revenue Services
PO Box 4647 Station A
Toronto ON M5W 0E7

Par la poste et paiements :
VILLE D'OTTAWA
Services des recettes
CP 4647 Succursale A
Toronto ON M5W 0E7

VILLE D'OTTAWA - Impôts fonciers

N'oubliez pas
- d'envoyer le talon de la facture avec votre rec-
- de ne pas plier, sceller ou tamponner le talon
- ni écrire dessus
- de régler votre cheque à l'ordre de la Ville d'Ottawa
- d'écrire votre numéro du rôle d'imposition foncière
sur le devant de votre cheque
- de dater votre cheque à la date d'échéance
ou d'une date antérieure
Aussi, ils peuvent être payés dans le Japon
des établissements financiers



Tel / TTY : 613-580-2444 TTY / ATS : 613-580-2401
Fax / Télécopieur : 613-580-2457

**This is Exhibit "O" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

October 22, 2020

David S. Ward
Direct Line: 416.595.8625
dward@millerthomson.com

By E-mail

Riverside Professional Centre Inc.
1919 Riverside Drive
Ottawa, ON K1H 7W9

Attention: Lawrence Bontje

Dear Mr. Bontje:

Re: Loan No. 862196:11 ("Loan") advanced by The Manufacturers Life Insurance Company ("Lender") to Riverside Professional Centre Inc. ("RPCI") pursuant to the commitment letter dated December 15, 2011 (as amended and extended, the "Commitment Letter")

We are writing to you as solicitors for the Lender. Our client has advised us that you are in default of your obligations under the above referenced Loan.

As you are aware, the Loan is secured by, among other things, a first ranking leasehold mortgage on the property municipally known as 1919 Riverside Drive, Ottawa, Ontario ("**Mortgage**") governed by standard charge terms 200410 ("**Standard Charge Terms**"). A copy of the Standard Charge Terms is attached hereto as **Schedule "A"**.

A tax search with the City of Ottawa on September 28, 2020 indicates that you have a tax balance of \$488,138.65, which amount is unpaid and overdue. A copy of the tax certificate is attached hereto as **Schedule "B"**.

Pursuant to section 5.3 of the Standard Charge Terms, you are required to pay property taxes when they come due. Failure to do so constitutes a breach of the terms of the Mortgage. Accordingly, RPCI is in default of its obligations under the Mortgage.

This tax default is a material payment default and is understandably a matter of serious concern to our client.

Please contact us, or have your lawyer contact us, as soon as possible and, in any event, by no later than Wednesday, October 28, 2020.

The Lender reserves the right to consider such other notices and remedies as it may consider desirable. No extension of time or other indulgence by the Lender constitutes any general waiver of rights.

Sincerely,

David Ward

David Ward

/sm



SCHEDULE "A"
STANDARD CHARGE TERMS

Attached.

The Manufacturers Life Insurance Company, its permitted successors, affiliates and assigns

Ontario Conventional Commercial Mortgage

Land Registration Reform Act

SET OF STANDARD CHARGE TERMS

Filed by The Manufacturers Life Insurance Company, its permitted successors, affiliates and assigns.

The following set of standard charge terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

In the mortgage, you are each person by whom security is given under the mortgage (and your and yours refer to that person). We are each person to whom security is given under the mortgage (and us, our and ours refer to that person). The mortgage is the mortgage or charge in which these terms are included, and includes these terms. Other expressions have the meanings set out at the end of these terms.

Contents

1 Preliminary matters	5 Your other responsibilities
2 Payment obligations	6 Enforcing security
3 Our security	7 Other terms
4 Leasehold property	8 Meaning of terms used

1 Preliminary matters.

1.1 **Your verifying your knowledge.** A promise by you to us in the mortgage may be limited to what you know. Where this is so, you promise that you have done what a reasonable person would do to verify the promise.

1.2 **Information you have supplied.** You promise that, as far as you know, all information that you have supplied to us for the mortgage is substantially accurate and complete.

1.3 **Your legal obligations.** You promise that you are not a party to a legal proceeding (except one that you have informed us about in writing), and are not in serious default under your legal obligations.

1.4 **Your documents.** You promise that you have given us a copy of all of the following documents relating to the property that are in your possession or control. Documents affecting the title (except those available in the land registration office). And surveys, tests and reports.

1.5 **Work on the real estate.** You promise that you are not giving the mortgage to secure the financing of work on the real estate. This statement is subject to anything as to which you have informed us in writing.

1.6 **Your obligations under the mortgage.** You promise that you are complying with all of your obligations under the mortgage when it is given.

1.7 **Condition of the property.** You promise that, as far as you know, the property has no defect that cannot be found by a reasonable inspection.

1.8 **Legal requirements.** You promise that, as far as you know, the property and its use comply substantially with every law. If we are making a loan for work on the real estate, you promise that, as far as you know, the law permits the work and its use.

1.9 **Environmental.** You promise that, as far as you know, nothing that is part of the real estate (including water) is composed of a pollutant that causes or is likely to cause harm to the life or health of a human being. This does not apply to anything about which you have fully informed us in writing.

1.10 **Specific environmental problems.** You promise that you have not done any of the following things or permitted anyone else to do them, and that, as far as you know, no one else has done them. This promise does not limit our rights under the previous section. The promise does not apply to anything about which you have fully informed us in writing. The things are as follows. Insulating a building on the real estate with urea-formaldehyde foam. Using asbestos as an insulating or building material for a building on the real estate. Placing an underground storage tank in the real estate. Burying a pollutant in the real estate. Having polychlorinated biphenyls (PCBs) on the real estate. Disposing of garbage or industrial waste on or in the real estate. Spilling a pollutant on the real estate. Allowing petroleum products to leak into the real estate. Allowing a pollutant to enter the drains of the real estate. Keeping a pollutant on the real estate other than a reasonable quantity that is to be used on the real estate in the normal course within a reasonable time. Or putting radioactive material in or on the real estate.

1.11 **Residence.** You promise that the following are resident in Canada for tax purposes: every owner (as

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE
Filing No. 200410

defined in Part 8) of an interest that is subject to our security and, where the interest is subject to a bare trust, every beneficial owner. If any owner or beneficial owner ceases to be a resident of Canada for tax purposes, the section headed **Effect of an owner ceasing to be a resident** will apply.

2 Payment obligations.

2.1 What obligations the mortgage secures. The mortgage secures all obligations to pay money under its terms. It secures all obligations that are described in its terms as secured by it. Where, as a result of the mortgage, the law requires you to make a payment, it secures your obligation to make the payment. And it secures compensation that is or may become payable because of a breach of your obligations under the mortgage or under any other agreement that relates to mortgage.

2.2 Your obligations under a term loan. Where the mortgage sets out payment terms for a term loan, the terms set out below apply. The details referred to are those in the mortgage.

2.2.1 Interest to interest adjustment date. You must pay interest, on as much of the principal amount as is owing, at the interest rate, calculated for the interest calculation period. Until the interest adjustment date, you must, on the same days as those for regular payments, pay the interest for the period to the day. On the interest adjustment date you must pay the interest to that date.

2.2.2 Regular payments. You must pay the amount of each payment on the first payment date, on every payment date after that until the last payment date, and on the last payment date. We must use each payment first to pay the interest on the principal up to the payment date, and then to reduce the principal.

2.2.3 Balance on maturity. On the maturity date or balance due date, you must pay the balance of the principal amount and any unpaid interest in full.

2.2.4 No prepayment. You must make payments only as the mortgage requires. You may not make early payments unless the mortgage specifically gives you the right to do so. If the mortgage gives you a right to prepay part of the amount owing, and you do so, you must continue after that to make the regular payments.

2.2.5 Dates on which interest is calculated. Where an interest rate is calculated half-yearly not in advance, the calculation is to be made on the half-yearly dates that we usually use.

2.2.6 Your liability. You are personally liable to pay the payment obligations under this section in the way in which the mortgage requires you to pay them.

2.2.7 Future changes. Whenever we agree to change the terms of payment obligations for the term loan in any way or replace it, the mortgage secures the payment obligations as changed or replaced. This is so, for example, if we renew the loan or extend the time for payment, and even if that increases the interest rate. You agree that, when the mortgage was given, we had not agreed to give any right to renew or extend.

2.3 Taxes. You must pay when due every tax on the mortgage and on every existing or future agreement

which relates to the payment obligations or security for them. You must pay when due every additional tax in respect of amounts paid or payable under the mortgage. Additional tax is tax under the law of a jurisdiction outside Canada. It does not include a tax on our overall net income, unless it is deducted or withheld from an amount paid or payable under the mortgage. Tax is a present or future tax, charge, levy, impost, stamp tax, duty, deduction, withholding, compulsory loan, or similar amount, under the law of any jurisdiction; interest or a penalty on any of those things; and a payment for any of those things. You must indemnify us against every additional tax for which we become liable in respect of amounts paid or payable under the mortgage. You must make every payment under the mortgage free of, and without deduction for or on account of, any additional tax, except where you are compelled by law to make the payment subject to the tax. Where you are compelled by law to pay subject to the tax, you must pay the additional amount needed to ensure that we receive a net amount equal to the full amount we would have received had payment not been made subject to the tax. You must pay it in the currency in which the payment was to be made. Where we decide that additional tax on a payment does not increase our liability for tax, we must return to you the tax that you paid and as far as it does not increase our liability. A certificate of a financial officer of ours as to the amount to be returned is conclusive.

2.4 How interest is calculated. All rates of interest under the mortgage (including compound interest) apply both before and after demand, maturity, default or judgment.

2.5 Compound interest. If interest is not paid on the day that it is payable, interest must be paid on the unpaid interest. This interest must be paid at the same rate as the unpaid interest, is calculated in the same way, and must be paid on the same days. If interest on unpaid interest is not paid on the day that it is payable, interest must be paid on that interest as provided above, and so on.

2.6 Costs.

2.6.1 You agree that we are to receive payment under the payment obligations free from every cost other than the costs referred to below. You agree to pay every other cost and, specifically, every other cost relating to the property, even if it does not arise during the security. You agree to pay every cost payable under the mortgage, including these terms. We are however responsible for our costs in receiving payment in the normal course of the payment obligations. Where the mortgage refers to a specific cost, that does not limit this subsection.

2.6.2 You must pay us our costs in taking our security, whether an advance is made or not. The costs include costs for negotiating the security, searching title to the property, obtaining title insurance, and preparing or registering the security. You must pay us money payable under a commitment for the mortgage.

2.6.3 You must pay us our costs for the following. Renewing a filing or registration. Providing a statement other than a statement sent to you regularly. Giving a consent or approval under the mortgage and checking that conditions are met. Protecting our security or ourselves from claims relating to it, for example, under liens of those who

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do work on the real estate. Giving effect to a right you may exercise at your option. Doing anything relating to the mortgage that we are not required to do and that you want us to do, for example, entering into an agreement.

2.6.4 Wherever the mortgage requires you to pay a cost, the following terms apply. If it was caused by an act of ours, it is payable if we acted honestly. Its amount must be reasonable. It includes lawyers' fees and disbursements, charged on the basis that applies between a lawyer and his or her own client, and even though we may not have taken court proceedings. It includes fees and expenses for other professionals or agents. It includes a fee for the time and services of an employee or agent of ours. It includes a usual service charge of ours. If the cost is for something we do, and doing the thing is part of our business, it includes our normal charge. You must pay it to us as soon after it has been incurred as we ask in writing for it. You must pay interest on it from when it is incurred. Where the interest rate on any of the unpaid payment obligations is a floating rate, the interest rate is the floating rate (or, if there is more than one, the highest floating rate), plus 2% per annum. Where the interest rate on none of the unpaid payment obligations is a floating rate, the interest rate is the rate on the unpaid payment obligations (or, if there is more than one, the highest rate).

2.7 General terms as to payments. Except where the mortgage provides otherwise, all amounts are expressed in Canadian money and are payable in Canadian money. All payments must be made to us care of our mortgage administrator. We will advise you of the location of our mortgage administrator. But if we ask in writing for payments to be made to us at another place, payments must be made there. Payments must be made while we are open for business where they must be made. If we ask in writing, you must authorize your bank to make payments, or you must make any other reasonable arrangement for them to be paid. If a payment is made on a day after 3 p.m., Toronto time, it is treated for calculating interest as made on the next business day. A business day means any day on which Canadian Chartered Banks are open for business during normal business hours in Toronto, Ontario, other than a Saturday or Sunday or statutory holiday. Payments must be made without set-off, counterclaim or deduction. A payment is not made until we have actually and irrevocably received the full amount in immediately available funds.

2.8 How we may apply payments. Except where we specifically agree otherwise, we may apply a payment made to us to reduce whatever part of the payment obligations we choose. After doing so, we may apply the payment to reduce a different part of the payment obligations as we choose.

3 Our security.

3.1 Real estate. The following terms apply wherever the mortgage includes land or an interest in land in the security. They do not apply where your interest in the land is as a tenant under a lease.

3.1.1 Described land. You grant, mortgage, charge, bargain, sell, and release all your claims on, the land described in the mortgage, to us and our heirs and successors, together with all rights that go along with the land.

3.1.2 Abutting land. Where the law would make security under the mortgage invalid because you have an interest in abutting land, you grant, mortgage, charge, bargain, sell, and release all your claims on, all abutting land that must be included in the mortgage to make the security valid, to us and our heirs and successors, together with all rights that go along with the land.

3.1.3 Security on other related land. If you are entitled to an interest in other land and the other land or interest is used in connection with land described in the mortgage, you grant, mortgage, charge, bargain, sell, and release all your claims on, the other land, to us and our heirs and successors, together with all rights that go along with the land. You also agree that, if you obtain, or become entitled to obtain, an interest in other land, and the other land or interest is used in connection with land described in the mortgage, you must grant, mortgage, charge, bargain, sell, and release all your claims on, the other land, to us and our heirs and successors, together with all rights that go along with the land. Land is subject to this subsection only if it is used directly and exclusively in connection with the land that is covered by the mortgage.

3.2 What is included in land. The land includes the land to which the mortgage relates and fixtures on the land, whether they exist when the mortgage is given or come into existence after then. Without limiting this, the land includes the things listed below, whether they exist when the mortgage is given or come into existence after then. You agree that these things are intended to be fixtures on the land. The things are the following. Buildings on the land; other structures on the land, and fences on the land or improvements to the land. A structure on the land that is being used like a building, even if the structure is mobile or designed to be made mobile, or was wholly or partly made before being placed on the land. Equipment on the land for heating, ventilating or air-conditioning a building. Fixed machinery and mechanical equipment on the land serving a building, including elevators and escalators. Equipment on the land for supplying electricity, gas, steam, hot or cold water and communications. Lighting equipment on the land, including bulbs and tubes. Window or door screens, storm windows and window blinds, shutters and awnings for a building on the land. Antennas, satellite dishes and similar equipment on the land. Fire alarm and security systems on the land. Wall to wall floor covering in a building on the land and fixed mirrors. Crops and plants on the land. Built-in appliances on the land such as a stove or dishwasher. And a sculpture or other work of art on the land outside a building.

3.3 Rights to insurance. You assign and give us a security interest in the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, the following rights. The rights under every insurance policy covering loss of or damage to property. The rights under every insurance policy covering loss of present and future income, rents or profits from the property. And the rights under any insurance policy covered by the mortgage. This applies whether the right exists when the mortgage is given, or comes into existence after then. We are not bound to enforce a right under an insurance policy or comply with your obligations in respect of it. We need only account for money we actually receive.

3.4 Rights to income. You assign and give us a security interest in the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, the rights set out below. This applies whether the right exists when the mortgage is given, or comes into existence after then. The landlord's rights under every lease. The landlord's rights to rent and other money payable under every such lease and every other right to income from the real estate. And the landlord's rights in respect of every lease, including a guarantee or indemnity, a security and a right to insurance. Lease includes a lease specifically covered by the mortgage. We are not bound to collect the income from the property, to enforce a lease or to comply with the landlord's obligations under a lease. We need only account for income we actually receive. This section and anything we do under it do not put us in possession of real estate. Nor do they authorize you to enter into a lease. Nor do they give the interest of a tenant priority over the mortgage or create a relationship of landlord and tenant between a tenant and us.

3.5 Other rights. You grant and assign to us, and you give us a security interest in, the full benefit of, and you irrevocably appoint us as your attorney to exercise at any time, every right of yours described below. This applies whether your right exists when the mortgage is given, or comes into existence after then. A right under an encumbrance to which your interest in the property is subject. A right to repayment of a property tax. A right to occupy, use or enjoy a benefit over adjacent or other land in connection with land described in the mortgage. This includes a licence, an encroachment agreement or a right to park. A right to require anyone to make good a defect in the property or to pay any loss you may suffer because of a defect. This includes a warranty. A right to require anyone to provide a service for maintaining or operating the property. A right to a supply of services or materials for work on the real estate or relating to work on the real estate. This includes an approval, permit or similar right. It also includes a construction contract or consultant's agreement. A right under a trust or other agreement relating to an insurance policy that covers loss of or damage to any part of the real estate. A right under an agreement to sell or dispose of an interest in the property or part of it. And any other right covered by the mortgage. You also assign to us the full benefit of all of your rights in connection with these rights, including a guarantee, indemnity, letter of credit or bond, a security and a right to insurance. We are not bound to enforce a right or comply with your obligations in respect of it. We need only account for money we actually receive. This section does not authorize you to enter into an agreement that binds us or our interest in the property. Where your giving the security under this section would be a breach of the agreement, it is effective when it can be made without a breach. You must if we ask in writing use your best efforts to make the security effective.

3.6 Movable property and other security. Except where your interest in property is as a tenant under a lease, you grant, mortgage, release all your claims on, and give us a security interest over the following. Your interest in all property that is needed for or relates exclusively to the real estate. Where the real estate is a residential unit, an appliance provided by the landlord to a tenant in the real estate, such as a stove or refrigerator. Where work is being done on the real estate, your interest in materials and equipment for the work. Any property covered by the mortgage. And the proceeds of an interest of yours in all or part of the property intended to be subject to security under the

mortgage. You grant, mortgage, charge, assign, bargain, sell, and release all your claims on, your interest in that interest or property, to and our heirs and successors. This applies whether the property or your interest exists when the mortgage is given, or comes into existence after then. Where the property is on the real estate, you must not, without our prior written consent, remove it from the real estate, except under the section headed **Your rights to remove and dispose of property.** The word "property" in this section has its ordinary meaning, and includes rights under agreements, intellectual property, goodwill and a claim for damages.

3.7 When security attaches. The time for attachment of a security interest under the mortgage has not been postponed. For property in which you have an interest when the mortgage is given, the security interest attaches then. For property in which you have an interest after then, the security interest attaches when you acquire the interest.

3.8 Registration. You irrevocably authorize us, and a person we authorize, to agree to, sign and register for you an electronic document needed to register the mortgage or further register it.

3.9 Our priority. Our security under the mortgage has priority for the payment obligations over every interest in the property created after the mortgage in favour of another person. It has priority even if we make an advance after the other person's interest was created. It has priority even if an agreement creating or changing payment obligations is entered after the mortgage was given, and even if the agreement not registered. Where the law limits our priority after we have notice of an interest in the property in favour of another person, a notice is not valid unless it is in writing, is handed personally to a senior officer of ours, clearly refers to the mortgage, and clearly states its purpose. Every person acquiring an interest in the property must be taken to agree to the terms of this section. We may have entered into an agreement with a tenant of the real estate (or any part of it) that affects our priority or other rights under the mortgage, on terms that we chose. We may do so in the future, on any terms that we choose. You agree that your interest is bound by the agreement. In particular, you agree that, if the agreement affects our priority over the tenant, it does not affect our priority over you. This section does not limit any other term of the mortgage or right of ours under it.

3.10 Future interests of yours. You agree that, if after the mortgage is given you acquire another interest in the property, the interest will be security for the payment obligations. This also applies if your interest increases, for example, through a joint owner's right of survivorship. Our security under this section has priority over any interest in the property in favour of anyone else created after you acquire your interest. This section does not limit any other term of the mortgage or right of ours under it.

3.11 Other parties or interests. Every person who is a party to the mortgage, other than you and us, and including a spouse, agrees with us as follows. If the person is a spouse, the person consents to the mortgage where it affects the interest of the person's spouse, and postpones every claim as spouse to the mortgage. Where the person has an interest in the property or its proceeds, and the interest is not being mortgaged under other terms of the mortgage, the person gives us security over the interest in the same way as if the

person was you, or agrees to do so. This applies whether the interest exists when the mortgage is given, or comes into existence after then. As to the interest, the person grants, mortgages, charges, bargains, sells, releases all claims on, assigns, gives a security interest in, transfers, and subleases, the property to us and our heirs and successors in the ways set out in the mortgage. As to the interest, the person agrees to be subject to all of the terms of the mortgage, and gives us all of the powers under the mortgage, as if the person was you. Where the person has a claim on money that leads to payment obligations, the person releases us from any liability for the claim.

3.12 Your enjoyment of the property. Until we can enforce the security, you may remain in possession of your interest in the real estate and continue to use movable property that is subject to the mortgage. Until we can enforce the security, we authorize you to collect the rent currently due under a lease. This authorization does not detract from the legal effect of an assignment in the mortgage. You may not do anything beyond these things, and we are not bound by anything beyond them that you do.

3.13 Your rights to remove and dispose of property. You may remove property from the real estate and dispose of it provided all of the following conditions are met. When you remove the property, we must not be entitled to enforce the security. The property must be movable or be machinery or equipment in a building. The property must be obsolete, be worn out, be such that it cannot be repaired or not be needed for the operation of the real estate. And, if the property needs to be replaced, it must be replaced immediately, the replacement of it must be at least as good as the property replaced and you must own the replacement free from encumbrances.

3.14 Your title obligations.

3.14.1 Nature of your title. Where you give us security over property, you will be taken to give security over the absolute ownership of or absolute right to the property. Where this section refers to your interest in property, it refers to that ownership or right. For real estate, this is an estate in fee simple. For all property it is the absolute ownership or absolute right, both legally and beneficially. However, where the mortgage specifically says that you have another interest, this section refers to the interest described in the mortgage.

3.14.2 Your obligations.

3.14.2.1 You promise that you have a good title to your interest in the property, free from encumbrances or defects. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you give us the following promises as to your interest and every interest on which your interest depends. The interest conforms to every description in the mortgage and has not been changed. The person that created the interest had a good title to the interest required to create a valid interest, free from encumbrances. The interest is valid and in force. The interest has not been terminated or surrendered, and is not voidable. And there is no outstanding default in complying with obligations relating to the interest. Where the property is a right, such as a right to income or an insurance policy, you promise that the right is valid.

3.14.2.2 You promise that you have the right, power and authority (including any required approval or consent) to mortgage, charge, bargain and sell, assign or deal with your interest in the property in the manner set out in the mortgage, free from encumbrances. Where the mortgage refers to your interest in the property as being less than the absolute ownership, you promise that the person that created every interest on which your interest depends had the right, power and authority (including any required approval or consent) to create the interest, free from encumbrances.

3.14.2.3 You promise that you have not done, omitted or permitted anything by which your interest in the property is or may be affected or made subject to an encumbrance. You agree that, while we are entitled under the terms of the mortgage to possess or enjoy your interest in the property, we will have quiet possession or enjoyment of your interest in the property free from encumbrances. You must at our request do anything that we think is necessary or advisable to confirm any of our rights under the mortgage and pay our costs for that. You must defend your title to the property. You must not create or attempt to create an encumbrance that is prior to the mortgage or has the same priority as the mortgage. You must give us a copy of all of the documents relating to the property that are in your possession or control affecting the title (except those available in the land registration office), including surveys.

3.14.2.4 You promise that the real estate conforms to every description or plan given to us, and that it includes all buildings and improvements in every description. If your interest in the property is subject to an encumbrance, you promise that the encumbrance conforms to every description given to us.

3.14.3 Rights included. Where you give us security over property, our security covers every claim of yours on the property, interest of yours in it, or right of yours over it. For example, if you are a co-owner, partner or trustee, it includes your rights as co-owner, partner or trustee.

3.15 Permitted encumbrances. You are not liable for a breach of your obligations under the section headed **Your title obligations** merely because of the encumbrances described below. You promise that you have given us full details of all of those encumbrances that exist when the mortgage is signed.

3.15.1 The encumbrances include a lien for a property tax that is not yet due or can only be estimated because the assessment has not yet been made.

3.15.2 The encumbrances include a construction lien for an improvement that is being made in accordance with the terms of the mortgage, as long as it is not yet payable and no step has been taken to preserve, perfect or enforce it.

3.15.3 The encumbrances include an exception or reservation in favour of the Crown for mines or minerals, a right of way, any other easement, a licence similar to an easement, a restrictive covenant or a municipal bylaw provided that, in every case, it does not prevent the real estate from being used in a way that it is being used or that you have led us to expect that it will or could be used. We must

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postpone the mortgage to a right of way, other easement, licence or restrictive covenant that you reasonably wish to give, provided that it does not prevent the real estate from being used in that way. We need do this only if you meet all of the following conditions. You must ask us in writing. When we are to give the postponement, we must not be entitled to enforce the security. And you must show us that the encumbrance is one described above and pay our costs.

3.15.4 The encumbrances include a title defect which is minor and which, with any other defects, has no material effect on our security.

3.15.5 The encumbrances include a lease a true copy of which you have given to us or our lawyer before the mortgage was signed. And they include a tenancy agreement for a residential unit which is in favour of a person who occupies the unit as a home, which is for a term ending no more than one year after this mortgage was signed and which conforms to the last rent roll that you delivered to us before the mortgage was signed.

3.16 Discharge. When the payment obligations have been paid on the dates they were due and in accordance with their terms, and you ask us in writing to do so, we must give a discharge of the mortgage and a reassignment to you any rights that you have assigned to us in the mortgage. Or, if you are entitled to and do require us to assign the mortgage and rights to someone else, we must do so. You must give us a reasonable time after payment to verify our records and complete the discharge or assignment. You must pay our costs for doing what this section requires. You are responsible for registering the discharge or assignment.

4 Leasehold property.

4.1 Leasehold property. The following terms apply where we would have received security under part 3 if your interest in the property had not been as a tenant under a lease. They also apply where you give us security over property in which your interest is as a tenant under a lease.

4.1.1 Lease. We refer in this section to the lease to you as the lease. In this section lease does not include the other agreements referred to in the definition of lease in part 8. We refer to the property leased by the lease as the leased property. We refer to your interest in the leased property as a tenant under the lease as your leasehold interest.

4.1.2 How the mortgage applies to a leasehold interest. You do not grant, mortgage, charge, assign, bargain sell, or release all your claims on, the leased property or lease to us under part 3; instead you give us the security provided for below. No assignment of rights in part 3 applies to your leasehold interest or the lease. All other terms of the mortgage apply to the leased property. However, if the lease gives you both a leasehold interest and some other interest in the leased property, this section applies to the leasehold interest and part 3 applies to the other interest.

4.1.3 Our security. You grant us the following security over the leased property. Except as set out in the next sentence, you mortgage or charge the leasehold interest to us. But, where the effect of the previous sentence, or any other term of the mortgage, would be to assign your leasehold interest to us, the

sentence or term does not apply. You sublease the leased property to us for the rest of the term of the lease, except the last day of the term. Because you have not assigned the lease to us, your giving us the security does not put us under an obligation to your landlord to comply with your obligations under the lease. Although you have not assigned the lease to us, you must hold your remaining leasehold interest in trust for us. You must, when we can enforce the security, dispose of or deal with your interest under the lease, as we require. We may at any time after we can enforce the security appoint anyone as a new trustee in place of you or any other trustee, and we may use every power given by law to a person who appoints a new trustee to transfer the leasehold interest to the new trustee.

4.1.4 Landlord's interest. You agree that, even if you acquire the landlord's interest under the lease, the lease will continue to exist. If you have a right when the mortgage is given or after then to acquire the interest of any landlord in the leased property, you must give us security over the interest.

4.1.5 Renewal. If you have an option to renew or extend the lease, you must exercise the option and do everything needed to obtain the new lease or extension. If you have a right when the mortgage is given or after then to obtain a new lease of the leased property or to extend the lease, you must give us security over the new lease or extension.

4.1.6 Power of attorney to us. You irrevocably appoint us your attorney to do for you everything that this section requires you to do. We may authorize anyone to exercise this power for us.

5 Your other responsibilities.

5.1 Insurance.

5.1.1 Kinds of insurance required. You must insure your interest in every building and other improvement on the real estate against loss or damage by fire, extended perils and other risks normally covered by a fire insurance policy. If there is a boiler or machinery on the real estate, you must insure your interest against losses usually covered by a boiler and machinery policy. Where the real estate is leased, your insurance must cover your loss of rents and payments by tenants towards costs for at least a year. Where you use the real estate for a business purpose, the insurance must cover your loss of income for at least a year. You must also insure against general public liability. Where work is being done on the real estate, your insurance must cover builder's risks. In addition, you must carry that insurance for all of the property that a careful owner would usually carry when insuring a similar property and using it in a similar way and in a similar locality. You must also carry any insurance that any other agreement between you and us requires you to carry. If we ask in writing, you must carry any kind of insurance relating to the property that we reasonably require you to carry.

5.1.2 Insurance against damage. Your insurance against loss of or damage to a building or other property must be for the cost in Canadian dollars of replacing all of the building or property with a similar building or property. The policy must provide that the proceeds of any loss are payable to us and the insurer must, if we ask in writing, consent to the transfer of the benefit of the policy to us. Any

proceeds payable under this policy are to be made by a cheque payable to both you and ourselves. The proceeds cheque must be delivered to us. Insurance on a building must contain a mortgage clause in the standard form approved by the Insurance Bureau of Canada. The policy must also contain any other usual term for the protection of the holder of a mortgage and a provision for us to receive at least 30 days notice before the policy is cancelled or materially altered.

5.1.3 Company and terms. All insurance required by the mortgage must be with a reputable insurer. If we ask in writing, insurance must be with an insurer we reasonably require. The policy must be for an amount and contain terms that a careful owner would usually require when insuring similar property, using it in a similar way and in a similar locality. If we ask in writing, the policy must also be for any amount or contain any other terms that we reasonably require. If we at any time ask in writing, you must cancel a policy and replace it with a policy approved by us and issued by an insurer approved by us.

5.1.4 Compliance. You must promptly pay the premiums and other costs for all insurance required by the mortgage, comply with all of your obligations in relation to the policy and comply with all of the terms relating to your right to collect under the policy. You must, if we ask in writing, ensure that we receive a certified copy of every policy for the insurance required by the mortgage and every amendment to the policy. Where a policy expires, you must, if we ask in writing, ensure that we receive proof of the renewal or replacement at least 30 days before the expiry. You must also, if we ask in writing, provide us with a receipt for the premium and other proof that you are complying with your obligations as to insurance.

5.1.5 Claims and proceeds. If any of the property that is insured is lost or damaged, you must notify us in writing and make a claim in accordance with the insurance policy. Despite the loss or damage, you remain liable under your obligations to us, and you must pay the payment obligations as agreed. Despite any law, the proceeds of all insurance against loss of or damage to property (including income) will, at your option, either: (a) be deposited in a cash collateral account, or (b) be used to restore or replace the property, or (c) partly in one way and partly in the other. This is subject to the section headed Using insurance proceeds to restore property.

5.1.6 Our right to insure. If you do not comply with any of your obligations as to insurance in the mortgage, we may obtain any insurance that the mortgage requires you to obtain or any insurance that we think is needed to protect our interest. We are not obliged to do so and have no responsibility to you for any insurance we obtain. Anything we pay under this subsection is a cost that you must pay.

5.2 Using insurance proceeds to restore property.

5.2.1 When you have a right to use proceeds. Subject to the provisions below, we must allow you to receive the insurance proceeds for a loss to real estate, or make them available to you, under this section only if the other conditions in this section are met and both of the following conditions are met when the loss occurs. The principal owing under the mortgage must be two million dollars or more. And

the remaining term of the mortgage must be one year or more.

5.2.2 Proceeds under \$100,000. If the conditions in the subsection headed **When you have a right to use proceeds** are met and the insurance proceeds for a loss to real estate are less than \$100,000, we must allow you to receive the proceeds. We need not do so after anything has happened which gives us a right to enforce the security. You may make us a written offer to prepay your payment obligations to the extent of the insurance proceeds that are received within 30 days after the loss. If you do not make this offer, you must use the proceeds to restore the real estate.

5.2.3 Proceeds of \$100,000 or more and conditions not met. If the conditions in the subsection headed **When you have a right to use proceeds** are not met and the insurance proceeds for a loss to real estate are \$100,000 or more, you must make us a written offer to prepay your payment obligations, to the extent of the insurance proceeds that are received. This offer must be made within 30 days after the loss.

5.2.4 Proceeds over \$100,000 and conditions met. If the conditions in the subsection headed **When you have a right to use proceeds** are met and the insurance proceeds for a loss to real estate are \$100,000 or more, we must make them available to you by progress payments to pay the cost of restoring the real estate provided all the conditions set out below are met. The proceeds cheque will be payable to both you and ourselves. Prior to the insurance proceeds cheque being endorsed, you will open a cash collateral account in which we will have a first charge or security interest on terms satisfactory to us, which will be held and invested by a third party in term deposits or certificates of deposit issued by a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada) or bonds issued or guaranteed by the Government of Canada or other investments approved by us (all costs of establishing the cash collateral account and paying the third party to control the cash collateral account will be paid by you). We will have the right to approve the identity of the third party, but we must act reasonably. The insurance proceeds cheque will be endorsed by you and ourselves and we will deposit it into the cash collateral account. You will irrevocably instruct the third party to only disburse monies from the cash collateral account in accordance with our instructions which will be in compliance with these standard charge terms. We will instruct the third party that controls the cash collateral account when they may make proceeds available to you by progress payments to pay the cost of restoring the real estate and the amounts of those progress payments. If you do not want to restore the real estate, you must make us an offer to prepay your payment obligations to the extent of the insurance proceeds. This offer must be made within 30 days after the loss and the offer must be made in writing.

5.2.4.1 Preliminary conditions. If you decide to restore the real estate, the following conditions must be met if we are to instruct the third party to pay any proceeds to you. Within 30 days after the loss, you must give us written notice asking us to make the proceeds available. Within 90 days after the loss, you must satisfy us of the following. That the restoration is commercially reasonable. That the restoration, and the real estate after it, will

comply with all laws. That during the restoration all expenses will be paid and we will receive payment of the payment obligations as agreed. (We may require you to do that by depositing cash with us or giving us other security acceptable to us to cover the expenses). And that no material lease of any part of the real estate is terminated or can be terminated because of the loss and, when the restoration is completed, all material leases of the real estate will continue. We must within 90 days after the loss have given our written approval to the plans and specifications for the restoration (and we may not withhold approval unreasonably). And you must have started the restoration promptly after the loss and, in any event, within 120 days after the loss.

5.2.4.2 Conditions for each payment. The following conditions must be met when we instruct the third party to make each payment to you. You must have complied with your obligations under the mortgage particularly those as to work on the real estate. Nothing must have happened which gives us the right to enforce the security. You must have satisfied us that the proceeds retained in the cash collateral account after the payment are sufficient to pay all unpaid costs for the restoration and provide a reasonable reserve for contingencies. You must have given us a certificate signed by a professional architect or professional engineer who has been approved by us and has supervised the restoration. The certificate must state that all the requirements of the mortgage relating to the restoration have been fulfilled. It must also set out in reasonable detail the costs of the restoration to date and the estimated costs to complete. You must have satisfied us that you have a right to the payment. You must have satisfied us that the payment will be used to pay the cost of restoring the real estate. We must have received an opinion from our lawyer that there is no encumbrance on the real estate that has priority over the mortgage (except a permitted encumbrance). And not more than two years must have passed since the loss occurred.

5.2.5 Effect of enforcement. When we can enforce the security, we may give you written notice that we require proceeds of insurance to be used to reduce or pay payment obligations. When we do so, your rights under this section come to an end as to proceeds that are then held in the cash collateral account or that we receive after then for the same loss.

5.2.6 Holding proceeds. If the investment proceeds are held in a cash collateral account, we need not instruct the third party to pay or credit you with interest on insurance proceeds while they are held in the cash collateral account. However, the third party must invest proceeds for you, at your risk and expense, in any investment that you ask the third party in writing to make, provided that it is an investment that the law allows a trustee to make. Any proceeds of investment will be added to the proceeds.

5.3 Taxes and other charges.

5.3.1 Payment by you. You must pay all property taxes when they are due. You must pay all other charges on the property when they are due. The charges include amounts under an encumbrance on the property. Every year, within two weeks after the last payment of realty taxes was due, you must give

us a receipt or other proof that you have paid all of the realty taxes for the year. If we ask in writing you must give us a receipt or other proof that you have paid every property tax and other charge. This subsection is subject to the section headed **Your rights to contest taxes or other payments.**

5.3.2 Payment by us. Whenever we ask in writing, you must allow us to pay the property taxes on the real estate. You must then promptly forward to us all bills for property taxes that you receive. We may decide to pay property taxes once or twice a year in advance, even if they can be paid more frequently. We may require you to pay instalments to us to enable us to pay property taxes. We may estimate the amount needed to pay any property taxes and decide when to pay them. We may choose the period over which we wish to collect instalments. We may then require you to pay us the estimated property taxes by instalments at any intervals that we choose. If the period started before we began collecting the instalments, we may require you to pay a lump sum to cover previous instalments. We must use the instalments to pay the property taxes. However, if any of the payment obligations has not been complied with, we may use the instalments to reduce the payment obligations. If we have not collected enough to pay the property taxes, you must pay the shortfall when we ask in writing for it. We need not credit you with interest on the instalments except in accordance with our general administrative practice at the time for the same kind of mortgage.

5.4 Your rights to contest taxes or other payments. Where the mortgage requires you to pay a property tax and you wish in good faith to contest the tax, you need not pay it as long as all of the following conditions are met. The total that you are contesting must not be more than 2% of the total payment obligations owing. You must be proceeding in good faith and in the best possible manner to contest the tax. You must have deposited with us cash or given us other security acceptable to us for the full amount that we think you might have to pay if your contest does not succeed. It must not be possible for your interest in the property to be forfeited, sold or affected in any other way while you are contesting the tax. We must not then have the right to enforce the security. And you must keep us fully informed of the proceedings.

5.5 Maintenance and replacement of property. You must put and keep the property in good repair. You must restore or replace property that cannot be repaired.

5.6 Alterations or additions.

5.6.1 Restrictions. Except as set out in the subsection headed **Permissions** below, you must not, without our prior written approval do any of the following things, even if the work was proposed or in progress when the mortgage was given. Make or permit a structural alteration, structural addition or major change to the real estate. Remove any machinery or equipment that serves a building on the real estate. Demolish a building on the real estate. Or do or permit anyone else to do anything that lowers the value of the real estate. We may make our approval subject to conditions.

5.6.2 Permissions. You need not obtain our approval for an alteration or addition to a building where all of the following requirements are met. The purpose of the alteration or addition must be to make

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the building suitable for a tenant or occupant or to replace equipment that has become obsolete. The alteration or addition must be made in the ordinary course of business and must not interfere with the rights of a tenant or occupant. The alteration or addition must not weaken the structure of the building. The cost of all alterations and additions in progress at any time must not be more than 5% of the total payment obligations then owing. And we must not then have the right to enforce the security.

5.7 Work on real estate. Where you do work on the real estate, you must comply with the following obligations. You must do the work in a good and workmanlike manner, using good materials. You must conform to any contracts, plans, specifications or other description that we may have approved, and you must comply with any conditions to which our approval is subject. You must do the work with reasonable speed and without interruption until it is completed, and you must not abandon it.

5.8 Liens.

5.8.1 You must comply with all your legal obligations as to payment for any work on the real estate and you must comply with laws relating to encumbrances of those who do the work. If a claim is made for an encumbrance against your interest in the real estate, you must if we ask in writing immediately have it removed, by court order if necessary. If you fail to do so, we may have the encumbrance removed and provide any security needed for the purpose. Anything we pay under this section is a cost that you must pay.

5.8.2 If we reasonably conclude that our security may be subject to a construction lien, we may do any of the following things. We may require you to ensure that a certificate or declaration of substantial performance for the work is published in accordance with the law. When enforcing the security, we may provide anyone dealing with us with a financial guarantee bond or other security to cover a risk of there being a construction lien on the real estate.

5.9 Obligations affecting property. You must comply with every covenant, condition and other obligation that affects your interest in the property. If your interest in the property is subject to an encumbrance, they include those under the encumbrance. If property is leased to you, they include those under the lease. You agree that nothing will be done or omitted under them that might impair your interest in the property. This includes anything that could accelerate an amount owing under an encumbrance.

5.10 Preferred claims. This section applies to a preferred claim. This is an amount to which any of our rights under the mortgage is or may become subject, which takes or may take away any of those rights or which impairs or may impair those rights. It includes an amount that does or may do so in any of the following ways, for example. It causes a lien, implied lien, charge, trust, deemed trust or other claim on the property, or on the income or any other benefit from the property. It prevents us from receiving, or a receiver, manager from giving us, the full benefit of our security. It runs with the property or imposes an obligation on anyone who acquires an interest in the property from us. Or it may allow a person supplying an important service for the property to cut off the service. You must pay every preferred claim when it is

due. If the claim became due before the mortgage was given and is unpaid, you must pay it immediately. Where anything that you do may create a preferred claim in the future, you must set and keep money aside to pay the claim.

5.11 Legal requirements and environmental. You must ensure that the property and its use comply with every law. You must not put or allow anyone else to put a pollutant in or on any part of the real estate (including water) that causes or is likely to cause harm to the life or health of a human being. You must not, without our prior written approval, use the real estate or allow it to be used, in a way that creates or increases a risk of a breach of this section, even if the use was proposed or in progress when the mortgage was given. We may make our approval subject to conditions, including security for clean-up costs, and you must comply with those conditions. You must give us prompt written notice of any material fact of which you become aware and which relates to the status of the real estate under any law or to any pollutant on or in the real estate, and a copy of any report that you prepare or receive on that. You agree to pay to the persons described below all loss that they suffer and that is caused by any of the causes listed below, and the persons are not liable to you for any loss so caused. The loss includes loss from a liability or from a cost relating to the liability. The causes are a breach of any law relating to the real estate or its use, or a pollutant in or on the real estate (including water), even if the breach occurred, or the pollutant was in or on the real estate, when the mortgage was given. The persons are as follows. Us, a person for whom we hold the payment obligations, a person for whose benefit we or the person hold any of the payment obligations, and a receiver or receiver and manager appointed under the mortgage. A shareholder, director, officer, employee and agent of us, the person or the receiver or receiver and manager. And an heir, legal representative, successor or assignee of anyone listed in the previous two sentences. This section does not limit a right of us or a person who benefits under this section under any other term of the mortgage.

5.12 Specific environmental problems. You have given us a promise about things in a list in section 1.10. You agree not to do or allow anyone else to do any of the things. This does not limit our rights under the previous section. It does not apply to anything for which you have obtained our prior written approval under the previous section.

5.13 Leases.

5.13.1 Our approval required for some leases. Before entering into any of the following leases, you must obtain our written approval to the lease. A lease of more than 20% of all rentable areas on the real estate. A lease (or series of related leases) at a net rent of more than 20% of the total net rent from the real estate. (The total net rent is the actual net rent for premises then leased, the proposed net rent for the premises then being leased and the projected net rent for all other unleased premises.) A lease of premises which were previously leased, if the net rent under the lease is at a rate for the rentable area of less than 85% the highest yearly rate under the previous lease. And a lease to a tenant not dealing at arm's length with you. In calculating net rent under this subsection, we may reduce the rent to take into account your expenses, such as for inducements. You will be bound by a calculation of the percentages under this subsection that we make in good faith. We

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will not withhold our approval to a lease unreasonably, except to a lease to a tenant not dealing at arm's length with you. Our approving a lease does not mean that our interest is bound by it.

5.13.2 Your general obligations as to leases. You must not enter into a lease unless the lease satisfies the following conditions. The lease is to a tenant, at a rent and on terms, that are reasonable to the landlord, and you have taken the steps in entering into the lease that would be taken by a prudent landlord. The lease restricts the tenant's use of the premises to a use that is appropriate for the real estate. The lease does not require the tenant to pay rent more in advance than monthly or make any other kind of advance payment to you for the benefit of the lease (except for any security deposit of not more than one month's rent). The lease prevents the tenant from setting-off against or deducting from the rent or from other payments due to the landlord under the lease any amount that the tenant may claim from the landlord.

5.13.3 Your dealings with tenants. You must not accept rent under a lease more than one month in advance (except for a security deposit of not more than one month's rent). We are not bound by it if you do. We are not bound by any of the things listed below unless we give our prior written approval to them. We may not withhold our approval unreasonably. The things are the following. A surrender or termination of a lease or an agreement to surrender or terminate a lease. A material amendment of a lease. A release or waiver by you of a material obligation under a lease. Or a release by you of any of your remedies for a serious breach of an obligation under a lease. If a tenant of the real estate becomes insolvent, you must give us written notice of that, and you must if we ask in writing give us the opportunity to take part in any proceeding.

5.13.4 Rent control and standards. You must comply with every law as to the rents that may be charged to tenants of the real estate and as to the standards to which the real estate must conform.

5.13.5 Your obligation to obtain agreements between tenants and us.

5.13.5.1 If we ask in writing, you must exercise your rights and use your best efforts to have the tenant under every lease that exists when the mortgage is signed enter into an agreement with us. If we ask in writing, you must have the tenant under every other lease enter into an agreement with us.

5.13.5.2 In the agreement, the tenant must postpone the lease to the mortgage. The tenant must also agree, if we ask in writing, to permit us (including a purchaser from us) to enforce the lease. The agreement must contain such terms as we reasonably require.

5.13.5.3 In the agreement referred to in this section, we must agree not to enforce our rights under the mortgage to disturb the tenant's possession or use of the real estate as tenant under the lease, as long as the tenant pays all rent and other money under the lease without set-off or deduction and is complying with all the tenant's other obligations under the lease. However we need enter into this agreement only if all of the following conditions are met. The tenant is at arm's length to the landlord. The lease conforms to all of the requirements of the mortgage. We have given our written approval to

the lease (and we may not withhold our approval unreasonably). The tenant has executed all documents that the tenant is obliged to execute. The landlord and the tenant have substantially completed all work required by the lease to make the premises ready for use. The landlord has done substantially everything else that the lease requires of the landlord at or around the beginning of the lease, for example, taking over other premises of the tenant or paying an inducement or improvement allowance. The tenant has taken possession of all of the leased premises, has started to carry on business in them and has started to pay rent. And we do not then have the right to enforce the security.

5.14 Proceedings affecting the property. You must immediately notify us in writing if you or anyone else takes or threatens any action under any law or encumbrance relating to the property. This includes anyone taking a step to enforce a claim for work on the real estate, a court action, a proceeding before an administrative body (such as a zoning hearing or environmental assessment), an official action (such as an expropriation or order to comply with a bylaw), or a notice of default under an encumbrance.

5.15 Our rights to inspect and get reports, including environmental. We may at any time, before or after we can enforce the security, inspect the real estate, make appraisals of it, make tests of it, take samples from it, conduct environmental testing of it, or monitor any activity on it. We may have another person do these things for us. Where a person has done any of the things for you, you consent to the person doing them for us or giving us any information. You must permit us and anyone we authorize to enter the real estate at reasonable times, before or after default and for any purpose we think is necessary. You must pay us our reasonable costs for exercising our powers under this section when we ask in writing for them. Exercising the powers in this section does not put us or our agent in possession, management or control of the real estate. Nor does it give you any rights against us or a person we have to do the things for us. This section does not limit any other right of ours under the mortgage.

5.16 Your giving us proof. Where the mortgage requires you to make a payment to anyone other than us, or comply with another obligation, you must if we ask give us proof that you have made the payment or complied. You must do so within a reasonable time, and in any event within 30 days.

5.17 Your giving us information. You must give us and anyone we authorize any financial, tax or other information that you have or can reasonably obtain and that we ask for in writing, about the following. About you, everyone who is responsible for payment obligations, every guarantor and, where property is held by a trustee, every beneficial owner. About the property. Or about how you are complying with your obligations. You authorize anyone else to give us that information. You must permit us and anyone we authorize to inspect the information at reasonable times and make a copy of it. You must if we ask in writing give us a budget for the real estate containing information we reasonably require.

5.18 Your keeping accounts and giving us statements and rent rolls. You must at all times keep records and accounts for the property in accordance with sound accounting practice. Within 120 days after

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the end of each financial year, you must give us a copy of the financial statements for you, everyone who is responsible for payment obligations, every guarantor and, where property is held by a trustee, every beneficial owner. A chartered accountant must prepare the statements in accordance with generally accepted accounting principles. If we reasonably ask in writing, an independent firm of chartered accountants must audit them. Within 120 days after the end of each financial year, you must also give us a separate operating statement for the real estate. It must at least show, by category, the income and operating expenses for the real estate, and the net income. Within 120 days after the end of each financial year, you must also give us a rent roll for the real estate as at the end of the year. It must at least show every tenant, and for each the rentable area in square feet; the annual, monthly and per square foot rent; the commencement and expiry dates of the lease; details of future rent increases; and whether rents are net or gross.

5.19 Your conduct of business. You must use, manage and operate the property in a reasonably prudent manner, in doing so you must comply with every law, and you must pay all expenses for doing so. If you are a corporation, you must maintain your corporate existence.

5.20 Your using professional management. If we decide that you have not complied with the previous section, we may give you a written notice requiring you to comply. If 30 days after the notice we decide that have still not complied, we may give you a notice requiring you to use a manager chosen by us. You must then employ and use that manager to manage the real estate. You must pay the manager's remuneration and expenses.

5.21 Use of income. Until you have paid all current expenses directly attributable to the ownership and operation of the real estate, including all payment obligations, that have become payable, you must not use any rent and other money payable under a lease, or any other income from the real estate, for any other purpose.

5.22 No change in use of real estate. You must not, without our prior written approval, make a major change in the use of the real estate. You must not abandon the real estate or leave a building on it vacant.

5.23 Indemnity and release. You agree to pay to the persons described below all loss that they suffer and that is caused by any of the causes listed below, and the persons are not liable to you for any loss so caused. The loss includes loss from a liability or from a cost relating to the liability. The causes are injury to or death of a person or loss of or damage to property on or about the real estate; a use, non-use or condition on or about the real estate; and a breach of any law relating to the real estate or its use. The persons are as follows. Us, a person for whom we hold the payment obligations, a person for whose benefit we or the person hold any of the payment obligations, and a receiver or receiver and manager appointed under the mortgage. A shareholder, director, officer, employee and agent of us, the person or the receiver or receiver and manager. And an heir, legal representative, successor or assignee of anyone listed in the previous two sentences. You agree to pay the loss to us, and we are not liable for the loss, even where it was caused by our negligence, but this sentence does not cover a loss while we were in possession of the real estate on or about which the loss was caused. This section does not

limit a right of us or a person who benefits under this section under any other term of the mortgage.

5.24 Other agreements. You must comply with your obligations to us under any other agreement that relates to payment obligations.

6 Enforcing security.

6.1 When we can enforce the security. We can enforce the security after any of the events listed below has occurred. We can do so even if the cause of the event is outside anyone's control. We can do so without presentment, protest, demand or notice, all of which you waive. If you are more than one person, an event for each person is an event of default for both or all of you. The events are:

6.1.1 A payment, or part of a payment, under any of the payment obligations is not made when it is due. This applies whether the amount is due on demand or a fixed date and by acceleration or otherwise.

6.1.2 Any other obligation to us under the mortgage is not complied with. Or where you are to do or not to do something, on or to the property, or as to its use, another person does the thing. This subsection is subject to the section headed Notice of default below.

6.1.3 Any of the promises made, or information given, to us under or in connection with the mortgage is materially incorrect or incomplete. A promise or information may have been limited to what the person who made or gave it knew. However, we can enforce the security if we find that the matters in the promise or information are materially incorrect, even though the person making the promise or giving the information did not know that it was incorrect, or had done what was reasonable to verify it.

6.1.4 Any obligation to us under any other agreement that relates to payment obligations is not complied with, or an event of default occurs under such an agreement.

6.1.5 At any time during the mortgage the property or its use does not comply substantially with every law. Or a part of the real estate (including water) is composed of a pollutant that causes or is likely to cause harm to the life or health of a human being.

6.1.6 You become insolvent (or, if you are more than one person, any of you does). Or anyone who is responsible for all or part of the payment obligations becomes insolvent, including a guarantor or indemnifier. A person becomes insolvent when any of the following happens. The person becomes a bankrupt or an insolvent, or is found in a legal process to be bankrupt or insolvent. The person makes an assignment for the benefit of creditors. Anyone enforces a judgment, distress or similar process against an asset of the person. A liquidator, receiver, trustee or similar officer is appointed for all or part of the person's assets or income. The person or anyone else starts a bankruptcy, arrangement or readjustment of debt, dissolution, liquidation or similar proceeding relating to the person under any law, including a proposal. And the person admits in writing the person's inability to pay the person's debts as they become due. Where anyone other than the person enforces the process or starts the proceeding,

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the person becomes insolvent only if the process or proceeding has not been dismissed, discharged or bonded within 60 days after it was enforced or started.

6.1.7 You fail to restore the real estate as required under the sections headed Proceeds under \$100,000 or Proceeds of \$100,000 or more and conditions met or you fail to make us an offer to prepay your payment obligations as required under the sections headed Proceeds over \$100,000 and conditions met or Proceeds of \$100,000 or more and conditions not met.

6.1.8 You fail to elect to pay tax on rents received (including municipal taxes paid by tenants directly to the taxing authority) for the real estate as a resident of Canada for tax purposes or you fail to file the appropriate income tax returns as required under the section headed Effect of an owner ceasing to be a resident.

6.1.9 There is a Transfer that we have not previously approved in writing. In this section, Transfer includes a transfer by law and, for a non-public corporation, a change of control (direct or indirect) or amalgamation of the corporation that results in a change of control (direct or indirect). This section applies to a transfer if it meets all of the following tests. It must be of an interest in all or a substantial part of the real estate. It must be of an interest of an owner (as defined in Part 8) that is subject to our security or, where the interest is subject to a bare trust, the interest of a beneficial owner. Where the interest is held by more than one person, it must be of 50% or more of the interests of both or all of the persons. And, for a partnership, it must be by the partnership or, for a transfer of interests in the partnership, it must be of 50% or more of the interests of the partners in a general partnership, or of the general partners in a limited partnership. If a transfer is part of a series of transfers, both or all are treated as one.

6.1.9.1 This section does not apply where we give our prior written approval to the transfer. We may not withhold approval to a transfer under this subsection unreasonably. We do not withhold approval unreasonably where we are not satisfied that a transferee is creditworthy or has the expertise needed to manage the real estate. We do not withhold approval unreasonably where we require a transferee to agree with us to comply with the mortgage or a major shareholder of a non-public corporate transferee to give us a guarantee or indemnity. We do not withhold approval unreasonably if we do so while we can enforce the security. Our approving a transfer does not impair or waive our right under this section on a future transfer. This subsection does not impair any other right that we may have to approve or consent to a transfer.

6.1.9.2 You must give us written notice of a transfer at least 30 days before it occurs, together with all information we might reasonably require to decide whether to approve the transfer. This must include a copy of every agreement for the transfer, a copy of the last financial statements for a business of every transferee, a net worth statement for every individual transferee and major shareholder of a non-public corporate transferee, a current operating statement and rent roll conforming to the requirements under the heading Your keeping

accounts and giving us statements and rent rolls, and a description of every business of every transferee.

6.1.10 A mortgage or charge is given on the interest in all or part of the real estate without our prior written approval. We may not withhold approval unreasonably. We do not withhold approval unreasonably if the mortgage or charge would rank prior to or *pari passu* with our mortgage. We do not withhold approval unreasonably if we do so while we can enforce the security. Our approving a mortgage or charge does not impair or waive our right under this section on a future mortgage or charge. You must give us written notice of a mortgage or charge at least 30 days before it occurs, together with all information we might reasonably require to decide whether to approve the mortgage or charge. This must include a copy of every agreement for the mortgage or charge; the amount, rate and terms of repayment of the obligations secured; details of the purpose for which the obligations are incurred; and the name, address and description of the intended holder of the mortgage or charge.

6.1.11 Any other event occurs after which the mortgage says we can enforce the security.

6.2 Notice of default. We cannot enforce the security under section 6.1.2 (that is, merely for a failure to comply with any obligation other than an obligation to pay money), unless we give you written notice of the failure and it is not cured 30 days after we give the notice. However, if you can cure the failure but it cannot be cured within 30 days, we cannot enforce the security for the failure if you start curing it within 7 business days after we give the notice, you proceed continuously with the cure as quickly as possible and you complete the cure within 60 days after we gave the notice. Despite the above, we may without notice use our powers to carry out any obligation with which you have failed to comply where we think an earlier remedy is necessary to protect the value of our security. And, wherever a term of the mortgage outside this part headed Enforcing security refers to our becoming entitled to enforce the security, it must be read as if the words like "or we would have become entitled to enforce the security had we not been required to give notice" had been added to it.

6.3 We may require obligations to be paid immediately. When we can enforce the security, we may require immediate payment of all payment obligations (including obligations that have not become payable). The obligation to make the payment is however subject to any provision of a law which applies despite what you and we have agreed to in this section and which gives you a right to avoid the consequences of this requirement.

6.4 We may take action. We may take legal action to collect the payment obligations.

6.5 We may take the monies in the cash collateral account. We may instruct the third party to pay any amounts remaining in the cash collateral account to us.

6.6 We may take possession. When we can enforce the security, we may take possession of the property.

6.7 We may collect income. When we can enforce the security, we may collect income from the property.

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6.8 **We may sell.** When we can enforce the security, we may sell or dispose of the interest in the property covered by our security, without going to court. We may also ask a court to order a sale of that interest.

6.9 **We may divide property.** When we are in a position to sell the interest in the property covered by our security, we may, if any other person also has an interest in the property, agree with that person to divide the property between persons who have interests in it or to acquire an interest of the person. We may pay or receive money for the purpose and money we pay is a cost that you must pay.

6.10 **We may exercise the powers of an owner.** When we take possession of or collect income from the property we may exercise all the powers of an owner of the interest in the property covered by our security and you are bound by our actions. These powers include the following. We may manage and operate the property and carry on a business relating to the property. We may make or continue a repair, alteration or addition to the property. We may take legal proceedings relating to the property. We may borrow money or advance money for the purpose of exercising our powers. We may enter into contracts for the purpose of exercising our powers.

6.11 **We may appoint a receiver (or receiver and manager).**

6.11.1 **Appointment and removal.** When we can enforce the security, we may in writing appoint anyone to be a receiver or a receiver and manager as to the property, on any terms, including remuneration, that we think are reasonable. References in the mortgage to a receiver include a receiver and manager. We need not obtain security from the receiver and are not limited by any law in our choice of the receiver. We may make the appointment even if we have taken possession of property and, when we do so, we will be treated as having gone out of possession. We may also in writing remove a receiver appointed by us. When we remove a receiver, we may appoint a new receiver. We may also ask a court to appoint a receiver.

6.11.2 **Effect of appointment.** A receiver appointed by us is considered to be your agent and not ours; the receiver's acts and defaults are considered your acts and defaults and not ours; and you alone are responsible for the receiver's acts and defaults. Neither the appointment nor anything done by the receiver puts us in possession of property or makes us accountable for money except money we actually receive. You release every receiver appointed by us from all claims against the receiver as receiver, unless they are caused by the receiver's dishonesty or gross neglect. You agree to pay every receiver all losses suffered by the receiver under liabilities the receiver incurs as receiver, except as far as they are caused by the receiver's dishonesty or gross neglect.

6.11.3 **Receiver's powers.** A receiver appointed by us has the following powers. The receiver may exercise any right or power that we can exercise, except where the appointment restricts the receiver from exercising a right or power. The receiver may use any legal right or remedy of yours or ours, in your name or ours, to collect income from the property. The receiver may borrow money on the security of the interest in the property covered by our security in priority to the mortgage for the purpose of

exercising the receiver's powers. We may require the receiver to pay money received to us, or we may direct the receiver to use it as follows. To pay the receiver's remuneration and expenses. To pay rents, property taxes, insurance premiums, costs of repair and other expenses relating to the property. To pay money owing under an encumbrance having priority over the mortgage. To pay or reduce any of the payment obligations. To pay any of the money that remains to the person who, if the receiver had not been appointed, would have been entitled to it.

6.12 **We may lease.** When we can enforce the security, we may do the following things. We may grant a lease. We may terminate a lease, accept a surrender of a lease or agree to amend a lease.

6.13 **We may become the owner.** When we can enforce the security, we may take proceedings to foreclose your right to redeem the real estate, and ourselves become the owner of the interest in the property covered by our security.

6.14 **We may ourselves carry out an obligation of yours.** When we can enforce the security, we may carry out any obligation with which you have failed to comply. We or anyone we authorize may enter the real estate for the purpose. We may pay an amount under an encumbrance on the property, if we decide it has priority over the mortgage, or a property tax. We may prepay the encumbrance and compensate its holder. We may settle with the holder the amount to be paid and any compensation. Nothing we do under this section puts us in possession of the interest in the property covered by our security. Anything we pay under this section is a cost that you must pay.

6.15 **We may distrain.** When we can enforce the security, we may distrain for arrears of payment obligations, as if they were rent and the real estate was leased to you. The arrears include, not only interest, but also principal, taxes and costs. The right to distrain is a right to take and dispose of goods. Our power is subject to any law that applies despite what you and we have agreed to, for example, where the real estate is a home. You waive any exemption from our right to distrain and any limit on it. Distraint does not put us in possession of the real estate and we need account only for money we actually receive. The right can be exercised by anyone who, after the mortgage is given, becomes the holder of the mortgage.

6.16 **We may consolidate another mortgage.** Where a principle of equity would give us a right to refuse a discharge of the mortgage, until another mortgage is paid (that is, to consolidate mortgages), you agree that we have the right despite any statute.

6.17 **We may recover costs.** You must pay us all our expenses and costs in collecting under the payment obligations and exercising our rights under the mortgage, and even if we do not completely do so.

6.18 **How we may exercise our powers.** When we exercise any of our powers under the mortgage, the following terms apply.

6.18.1 **We may exercise the power as to all or part of the property or as to any interest in all or part of the property.** We may exercise the power without obtaining any consent or cooperation from you. We may exercise the power in your name or ours. We may exercise the power even if we have not taken possession of the property. We may exercise the

power to enter into a sale, lease or other transaction in any way and on any terms that we think are reasonable. For example, we may do so by private contract as well as by public auction or tender, and we may sell on credit as well as for cash. If we sell on credit, we need not account for the proceeds until we receive them.

6.18.2 We may do everything that we think proper relating to a sale, lease or other transaction. For example, we may enter into an agreement to enter into the transaction, bring an agreement to an end, enter into a new agreement or amend an agreement. At an auction we may set a reserve price or buy in to prevent a sale that we think is inappropriate. We may give all documents that we think are necessary for the above purposes.

6.18.3 We may transfer or deal in any other way with every interest in the property that you had the power to dispose of or deal with. You must at our request do everything that we think is necessary or advisable to transfer your interest in the property or deal in any other way with it and you must pay our costs for that. You irrevocably appoint us as your attorney to do at any time anything we decide is needed or desirable to exercise a right under the mortgage. Wherever you appoint us as your attorney, you also appoint anyone we authorize or substitute, as your attorney for the same purpose.

6.18.4 Where your interest in property is a right, or is affected by an obligation, we may decide or settle a question as to the right or obligation.

6.18.5 Where a receiver exercises a right or power, this section applies as if all references to us were to the receiver.

6.19 Other terms relating to our rights.

6.19.1 Legal powers. Where a power that the mortgage gives to us goes beyond what is permitted by a law that applies despite what you and we have agreed to, we have the power as far as that law permits.

6.19.2 Legal requirements apply. Our rights in the mortgage are subject to our giving any notice or taking any other step that is required by a law that applies despite what you and we have agreed to. Subject to this and to the other terms of the mortgage, we can enforce our security without giving any notice or taking any other step, except where the mortgage expressly gives you a right to notice.

6.19.3 Other rights. The rights set out in the mortgage are not exhaustive; we may exercise any other right given to us by the mortgage, any other agreement, or the law. We may exercise more than one of the rights given to us by the mortgage, any other agreement, or the law, at the same time, at different times and in any order we choose.

6.19.4 Use of proceeds. We may use money that we receive from enforcing the security to reduce or pay any of the payment obligations in whatever way we decide.

6.19.5 Shortfall. If money we receive from enforcing the security falls short of the total payment obligations owing, we retain the right to recover the shortfall.

6.20 Things left on the real estate. If, when we enforce the security over real estate, there is anything on it over which we do not have security, you must pay a reasonable charge for storing the thing. You must also pay any costs we incur for it. We may remove it from the real estate. We may sell it. We are not liable for loss of it or damage to it, however caused, even if intentionally or by gross negligence.

6.21 Protection of persons who deal with us or a receiver.

6.21.1 When we sell, grant a lease, collect income or enter into any other kind of transaction authorized by the mortgage with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered and that the transaction is of a kind that we have the power to enter. When a receiver appointed by us enters into any kind of transaction with another person, that person and any person deriving title under that person need only be satisfied that a discharge of the mortgage has not been registered, that we have entered a document purporting to appoint the receiver, that the transaction is of a kind that we have the power to enter and that the transaction is not of a kind that the document entered by us restricts the receiver from entering. A statutory declaration by us or an officer of ours as to any fact set out in this subsection is conclusive evidence in favour of every person referred to above. Every such person may assume without inquiry that we can enforce the security, that we are using our powers properly and that the receiver is using the receiver's powers properly. The person is not affected by the fact that a transaction is improper, even if the person actually knows of the fact. In particular, the person may do the following things. The person may assume that there are outstanding payment obligations under the mortgage. The person may assume that an event has occurred which gives us the right to enforce the security, that we have given any required notice and that any required time has passed. Where we or the receiver can enforce the security on terms that we or the receiver think are reasonable, the person may assume that the terms on which we or the receiver enforce the security are reasonable. The person may pay money to us or the receiver without being concerned about what we or the receiver do with it.

6.21.2 Any transaction that conforms to the previous subsection binds you. You must not make any claim against the person who deals with us or the receiver or that person's successors on the ground that the transaction does not conform to other terms of the mortgage. If you do have a claim for anything done by us, it is restricted to a claim for compensation against us, and is subject to all terms limiting our liability.

6.22 Our protection. We are not responsible for any loss arising in the course of our enforcing the security or exercising a right under any other term of the mortgage, even if it was caused by negligence, unless it results from our dishonesty or our gross neglect.

7 Other terms.

7.1 Effect of an owner ceasing to be a resident. If any of the following ceases to be resident in Canada for tax purposes: an owner (as defined in Part 8) of an interest that is subject to our security or, where the interest is subject to a bare trust, a beneficial owner,

that owner must elect to pay tax on rents received (including municipal taxes paid by tenants directly to the taxing authority) for the real estate as a resident of Canada for tax purposes and file appropriate income tax returns.

7.2 Effect of your selling or dealing with the property. If you sell or deal in any other way with your interest in the property or part of it, you continue to be liable for your obligations under the mortgage, and our rights against you or anyone else are not affected. Nothing that we do in connection with a sale or dealing (including our approving a transfer or having a person agree to assume a liability or give us a guarantee or indemnity) impairs those rights.

7.3 Your obligation to notify us after a transfer. After a transfer of the interest in the real estate or any part of it of an owner or beneficial owner, you must promptly notify us in writing of the date of the transfer. Except where we have already received the details, the notice must include the price or consideration, the full name and address of every transferee and where the transferee is a trustee, the same information for a beneficial owner.

7.4 Additional terms as to our obligation to lend (including terms as to liens). Our taking the mortgage, or our advancing money under it, does not put us under an obligation to lend money or to extend credit. Nor does it add to any such obligation that we may have. Despite any agreement, we need not lend money or extend credit while we can enforce the security. Or while we would have had the right to enforce the security if we had not been required to give notice or allow time to pass. Despite any agreement, we may reduce an amount we must lend, or for which we must extend credit, by what we think is needed to remove a prior encumbrance. We may do this only where our security is to have priority over the encumbrance and we think it may not, for example, where you are constructing a building and we think a lien may have priority.

7.5 Effect of law or other transactions, including any commitment. The mortgage adds to our rights. Nothing in the mortgage takes away or reduces our rights under any law or other transaction. Nothing in any other transaction between you and us takes away or reduces our rights under the mortgage. If there is a conflict between the mortgage and a law or another transaction, it must be resolved to give us the rights under both or, where there is a conflict, the better rights. Subject to the above, the terms of a commitment or other agreement for the mortgage continue in force (and do not merge into the mortgage).

7.6 Effect of subdivision of the real estate. If any of the real estate is divided into a lot, condominium unit or other part, every part of the property secures the total payment obligations. This section applies whether the division exists when the mortgage is given, or takes place after then. The obligations must not be apportioned to parts of the real estate. You cannot require us to discharge a part of the real estate for part of the payment obligations. You waive any right given to you by law that is inconsistent with this section.

7.7 Effect of our giving releases or discharges. If we release anyone from an obligation or if we release any security, our rights against anyone else or under any other security are not affected. This applies when we agree to extend the time for payment of any of the payment obligations or to change their terms in any

other way. It also applies when we discharge part of the property from the mortgage; if we do, the property not discharged secures the total payment obligations that remain owing. This section applies whatever are the terms on which we give the release or discharge and even if we receive nothing in return. We are not liable to you for the release or discharge, except to account to you for money that we both actually receive and accept to reduce the payment obligations.

7.8 Effect of our delaying enforcing the security or waiving rights. If we delay enforcing a right under the mortgage or any other agreement, or do not exercise the right, or do not exercise a right against anyone, we do not lose or impair the right or any other right. If we waive a breach of any obligation under the mortgage or any other agreement, we do not lose a right of ours in respect of any other breach of the obligation. If we waive a right, we do not lose or impair any other right of ours. We are not bound by an agreement that contains a waiver unless it is in writing and is signed by us.

7.9 Effect of our dealings with future owners. After the mortgage is given, a person may become an owner of the property and we may enter into an agreement with that person extending the time for payment of the payment obligations or changing the payment obligations in some other way. If so, we do not lose or impair our rights against anyone who had agreed to pay or had guaranteed the payment obligations or given an indemnity. The same applies if we deal in any other way with a new owner or deal in any way with any other person who has an interest in the property or part of it.

7.10 Effect of our obtaining a judgment. If we obtain a court judgment for a failure to pay any of the payment obligations or to perform any other obligation, the judgment does not supersede the obligation, or impair the obligation or our right to enforce our security. We continue to be entitled to interest under the payment obligations, calculated and payable as agreed, and the judgment may so provide.

7.11 Effect of our paying security. If we pay an amount under an encumbrance on the property, we not only have the rights given to us by the mortgage, but we are also entitled to the rights of the person paid. If a person paid gives a discharge, we may hold it, without registering it, for longer than any period during which any law might otherwise require us to register it.

7.12 Your liability. Where more than one of you are liable for an obligation under the mortgage, both or all of you are jointly and severally liable for the obligation.

7.13 Your spouse. While any existing or future law gives your spouse any right if we enforce the security, you must keep us informed in writing of the full name and address of the spouse. Spouse includes anyone whom the law treats like a spouse for the purpose of the security.

7.14 Effect of expropriation.

7.14.1 This section applies where all or part of your interest in all or part of the real estate is expropriated, that is, taken without your consent by a government or anyone else in the exercise of a statutory power. It also applies where there is "injurious affection" to all or part of your interest in all or part of the real estate,

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE
Filing No. 2004/0

that is where its value is reduced by an expropriation or other action under a statutory power.

7.14.2 Despite an expropriation or injurious affection, you remain liable under your obligations to us, and you must pay the payment obligations as agreed. Our security under the section headed **Other rights**, in the part headed **Our security**, also covers the benefit of your rights to compensation for the expropriation or injurious affection.

7.14.3 Compensation for an expropriation or injurious affection may be dealt with in the same way as insurance proceeds for loss to real estate. All of the terms of the section headed **When you may use insurance to restore property** that apply to those proceeds apply to the compensation. For this purpose, where the terms refer to the proceeds, they must be taken to refer to the compensation. Where they refer to restoring the real estate, they must be taken to refer to improving the real estate that remains subject to the mortgage. Where they refer to the loss, they must be taken to refer to the expropriation or injurious affection. Corresponding changes must be made to the rest of the terms. If we are to instruct the third party to pay any of the compensation to you, you must satisfy us as to two further matters. First, that the improvement will increase the value of the real estate by at least the amount of the compensation. And second that the expropriation or injurious affection has not caused a material adverse change in the nature of our security.

7.15 Events beyond your control. If any of the events listed below or other similar event beyond your control prevents you from complying with an obligation under the part headed **Your other responsibilities**, other than a payment obligation, and you could not by exercising a skill that we might reasonably have expected an owner of a similar property to have or by taking reasonable care have avoided the event, you are not be responsible for a delay in complying caused by the event. The events referred to above are a fire, an act of God, a strike, a war and an act or omission of a governmental authority. An inability to pay money is not an event referred to in this section. This section does not apply while we have the right to enforce the security.

7.16 How the mortgage is affected if a term is invalid or unenforceable. If a term of the mortgage is or becomes invalid or unenforceable, that does not make the mortgage or other terms invalid or unenforceable. If our security is invalid or unenforceable as to part of the property or an interest in property, it remains valid or enforceable as to the remaining part or interest. If the mortgage is or becomes invalid or unenforceable as to any payment obligations, that does not make the mortgage invalid or unenforceable as to other payment obligations.

7.17 Changes to the mortgage must be in writing. We are not bound by any change to the terms of the mortgage that detracts from our rights unless it is in writing and signed by us.

7.18 Your responsibility. A right of ours under the mortgage does not relieve you from a duty as to the property or put a duty on us. Nor does our exercising the right. In particular, the right or exercise does not mean that we take over a duty based on possession, management or control. This section does not limit our rights.

7.19 We assume no additional responsibility. Nothing we do relating to the mortgage puts us under a duty of care towards you. You should not rely, for example, on an appraisal we make as showing the value of property, on our requiring insurance as showing that it is appropriate, on an inspection as showing that property is without defect, or on our approving a lease as showing that it is advisable.

7.20 Notices or other communications.

7.20.1 How we may give notices. Where the mortgage requires or allows us to give a notice in writing to any person (including you) or to communicate in any other way in writing with any person (including you), we may give the notice or communication in any of the following ways. We may deliver it personally to the person. If the person is a corporation or partnership, we may deliver it personally to anyone we reasonably believe to be a director, officer, general partner or responsible employee or agent of the corporation or partnership. We may leave it at the person's address last known to us with a grown-up person there or in a place where it should reasonably be seen by anyone at that address. We may mail it by prepaid mail addressed to the person at the person's mailing address last known to us, and we may choose whether to send it by ordinary, certified or registered mail. Every party to the mortgage consents to our providing it in an electronic form (including fax) to any person or, if the person is a corporation or partnership, to a director or other person described above. We may advertise it in a newspaper published or generally read in the area where any part of the real estate is situated.

7.20.2 Time of receipt. A notice or communication delivered, left or advertised in any of the ways set out above is regarded as given to the person when it is so delivered, left or published. A notice or communication mailed as set out above is regarded as given on the third business day after it was mailed, whether the person actually receives it or not. If there is a mail strike on the day that it is mailed or before it would be regarded as given, the mailed notice is not given until it is delivered. A notice or communication sent by fax on a business day and before 3 p.m. in the place to which it is sent is regarded as given on that day; otherwise it is regarded as given on the next business day after it was sent. A notice or communication provided in another electronic form is given, if the person (including a director or other person) has designated an information system for the purpose of receiving information, or has used an information system for the purpose of sending us information, when it enters the system last so used and becomes capable of being retrieved and processed by the person.

7.20.3 Addressee. A notice or communication is valid even though it is not addressed to anyone by name or description. It is also valid even though the person affected by it is not known, has not been identified or is under a disability.

7.20.4 Who is entitled to a notice or communication. Where the mortgage requires or allows us to give a notice to you or communicate with you in any other way, the notice or communication is valid if we give or make it to a person last known to us to be an owner of your interest in the real estate, as defined under **Meaning of terms used**. This is so even though the expression

8.1.5 Lease means a lease of all or part of the real estate, an agreement to give a lease of all or part of the real estate and an agreement giving anyone a right to occupy or use all or part of the real estate (except a right of way or other easement). If there has been an agreement changing the terms of such a lease or agreement, it means the lease or agreement as so changed. Where lease refers to an agreement giving anyone a right to occupy or use all or part of the real estate, landlord means the person whose interest is subject to the right and tenant means the person who has the right. In all cases lease includes a sublease.

8.1.6 Owner of an interest in a property that is subject to our security means a person who would ordinarily be regarded as an owner or holder of the interest. Where there is a mortgage on the interest subsequent to ours, it excludes the holder of the mortgage, and means a person whose interest is subject to the mortgage (or last mortgage), or who holds the equity of redemption under that mortgage (or last mortgage). Where the interest is subject to a lease, it excludes the tenant. Where a person holds the interest in trust, it means the trustee, and excludes a beneficiary. When an owner or holder of an interest dies, it means the person who controls or represents the estate, and excludes a beneficiary, while the person does so. Where more than one person is an owner, it includes both or all (or either or any) of them.

8.1.7 Payment obligations are the obligations to pay money that are intended to be secured by the mortgage. Where the amount secured by the mortgage is limited, payment obligations are the obligations without regard to the limit.

8.1.8 Person includes corporation

8.1.9 Pollutant means a substance that can cause or probably could cause harm to the life or health of a human being. It may be a solid, liquid, gas, odour or radiation.

8.1.10 Property means any property an interest in which is intended to be subject to security under the mortgage. It includes real estate.

8.1.11 Property tax means every kind of tax, rate, duty, levy, charge, imposition, assessment and fee, general or special, on the property or any part of it or in respect of the property or any part of it, whether it is in favour of a federal, provincial or other government, a municipality, a church authority, or any other governmental body, and whether it is of a kind that exists when the mortgage is given or comes into existence after then. It does not include a tax on us in respect of our overall net income or gains or a tax in respect of a transfer by us of our interest in the mortgage or of the payment obligations.

8.1.12 Real estate means the land which, or an interest in which, is intended to be subject to security under the mortgage.

8.1.13 Work on real estate includes constructing anything that becomes part of the real estate, altering the real estate, adding to the real estate, repairing the real estate and demolishing a part of the real estate.

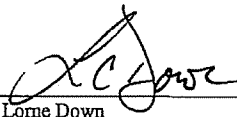
8.2 Interpretation generally. Where under the mortgage you or we promise, you or we must be taken to represent and warrant. Where under the mortgage you or we must do or not do anything, you or we agree and covenant to do or not do the thing. Your liability under your obligations in the mortgage continues after the payment obligations have been paid or the mortgage has been discharged.

Dated March 4th, 2004.

The Manufacturers Life Insurance Company,
its permitted successors, affiliates and assigns

By:

Corporate
Seal


Name: Lorne Down
Title: Vice President, Canadian Mortgage

STANDARD CHARGE TERMS
CLAUSES TYPES DE CHARGE
Filing No. 200410 Cots

**SCHEDULE "B"
TAX CERTIFICATE**

Attached.

TAX CERTIFICATE / CERTIFICAT DE TAXES
CITY OF OTTAWA / VILLE D'OTTAWA



Roll Number / Numéro du Rôle: 0614.105.701.01001.0000

Street Address / Adress Municipale:
1919 RIVERSIDE DR

Owner(s) / Propriétaire(s)
RIVERSIDE PROFESSIONAL
CENTRE INC

Legal / Légale:
LEASEHOLD INTEREST PT FRT PT
LOT 16 JUNC GORE PTS 1 AND 2
R OF W PTS LOT 1 TO 16
RP5R10708 RIVERSIDE E
1.00AC FR D

Issued To / Envoyer à:	Certificate Number / Numéro de certificat:	330132
MILLER THOMSON LLP SCOTIA PLAZA 5800-40 KING ST W TORONTO ON M5H 3S1	Tax Certificate Fee / Frais de certificat de taxes:	\$ 72.50
	Certified as at / Certifié en date du:	SEP/SEPT 28, 2020
	Your Reference / Votre référence:	0255676.1

Remarks / Remarques

Pending Fees / Frais en suspens

STATEMENT OF TAX ARREARS / ÉTAT D'ARRÉRAGES DE TAXES

Year Année	Taxes Outstanding Taxes impayées	Interest Outstanding Intérêt impayé	Other Charges Autres frais	Balance Outstanding Solde dû
2019	\$219,079.46	\$42,551.66	\$24.00	\$261,655.12
2018	\$0.00	\$0.00	\$0.00	\$0.00
2017+	\$0.00	\$0.00	\$0.00	\$0.00
Prior Year Tax Levy / Taxes prélevées année précédente: \$219,079.46		Total Arrears / total des arrérages:		\$261,655.12

STATEMENT OF CURRENT TAXES / ÉTAT DES TAXES COURANTES

Taxes Levied Taxes prélevées	Penalty Added Pénalité imposée	Total including Penalty Total, pénalité comprise	Payments/Adjustments Paiements/Ajustements	Total Payable Montant total à payer
\$215,649.84	\$10,825.54	\$226,475.38	\$8.15	\$226,483.53
Due Dates and Instalment Amounts / Dates d'échéance et versements				
Interim Taxes / Provisoires		MAR/MARS 19, 2020		\$109,539.15
Final Taxes / Finales		JUN/JUIN 18, 2020		\$106,110.69

Local Improvements and Other Charges Levied / Améliorations locales et autres redevances prélevées

Local ID Code Code d'identification	Description	Year of Expiry Année d'expiration	Annual Charge Montant annuel

TOTAL PAYABLE AS AT DATE OF CERTIFICATE / SOLDE À LA DATE DU CERTIFICAT: \$488,138.65

The penalty / interest rate on past due taxes and arrears is **1.250 %** per month. La pénalité / le taux d'intérêt est de **1.250 %** par mois sur les taxes en souffrance et les arrérages.
(SEE BACK FOR IMPORTANT INFORMATION) (VOIR AU VERSO POUR RENSEIGNEMENTS IMPORTANTS)

FOR THE TREASURER OR TAX COLLECTOR
POUR LE TRÉSORIER OU LE PERCEPTEUR DES TAXES

City of Ottawa, Revenue Services
100 Constellation Drive, 4th Floor, East
Ottawa ON K2G 6J8
Tel: 613-580-2444 Fax: 613-580-2457
TTY: 613-580-2401
E-mail: revenue@ottawa.ca
Web site: ottawa.ca

Ville d'Ottawa, Services des recettes
100, promenade Constellation, 4e étage est
Ottawa ON K2G 6J8
Tél. : 613-580-2444 Téléc. : 613-580-2457
ATS: 613-580-2401
Courriel : revenue@ottawa.ca
Site web : ottawa.ca

Important Information

This certificate has been prepared in accordance with the provisions of Section 352 of the Municipal Act, 2001 R.S.O. 2001 c25 and may be subject to the following:

1. Penalty/Interest has been calculated to the date of issue of this certificate. Payments received after the end of the month or after the due dates may be subject to additional penalty/interest charges.
2. Adjustments authorized by statute not applied to the Collector's Roll at the date of certification may be added subsequently without further notice and may include:
 - a. Additional taxes and adjustments levied and made under the Assessment Act, R.S.O. 1990, c.A31; and
 - b. Tax adjustments, tax apportionments, local improvement charges, and any other charges made under the Municipal Act.
3. The information on this certificate is based on payments tendered being honoured by the bank upon which they are drawn.
4. Any credit balance appearing on this certificate is not verified and no adjustment should be made unless the credit balance is verified in writing as an overpayment.

I hereby certify this statement shows the current year's taxes and all arrears of taxes (prior years) against the above land.

Informations importantes

Ce certificat a été préparé conformément aux dispositions de l'article 352 de la Loi de 2001 sur les municipalités L.R.O. 2001, chapitre 25, et peut être assujéti aux dispositions suivantes :

1. Pénalité/intérêt a été calculé à la date de réception de ce certificat; les paiements reçus après la fin du mois ou après la date d'échéance peuvent être soumis à des pénalités/frais d'intérêt supplémentaires;
2. Les rajustements autorisés par la loi qui n'ont pas été appliqués au rôle du percepteur à la date de certification peuvent être ajoutés par la suite sans avis préalable et peuvent inclure :
 - a. des taxes et rajustements supplémentaires imposés et perçus en vertu de la Loi sur l'évaluation foncière, L.R.O. 1990, chapitre A31;
 - b. des rajustements fiscaux, répartitions fiscales, taxes d'améliorations locales et tous autres frais imposés en vertu de la Loi sur les municipalités.
3. Les informations figurant sur ce certificat reposent sur le principe que les paiements effectués seront honorés par la banque où se trouve le compte sur lequel ils sont tirés.
4. Tout solde créditeur figurant sur ce certificat n'est pas vérifié, et aucun rajustement ne devrait être fait à moins que le solde créditeur ne soit vérifié par écrit en tant que versement excédentaire.

J'atteste par la présente que ce relevé indique les impôts de l'année en cours et tous les arriérés d'impôt (années précédentes) pour le terrain indiqué ci-dessus.

**This is Exhibit "P" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

 **Manulife** Investment Management

November 11, 2020

SENT VIA EMAIL

Riverside Professional Centre Inc. c/o Glenn Solomon
1919 Riverside Drive
Ottawa, ON K1H 7W9

Attention: Lawrence Bontje

RE: Manulife Loan Number 862196:11 ("**Loan**")
Riverside Professional Centre Inc. ("**Borrower**")
The K Trust ("**Indemnifier**")
1919 Riverside Drive, Ottawa, Ontario ("**Property**")

Dear Mr. Bontje,

We are writing to you in reference to the above mentioned Loan advanced by The Manufacturers Life Insurance Company ("**Manulife**"). We note that the Loan is in default, as described in the letter sent to you by Miller Thomson LLP on October 22, 2020. We understand that you would like Manulife to consider a discussion and or modification of the Loan. As the first step in this process, we are sending you this notice to ensure that you are explicitly aware of the following:

1. By entering into discussions concerning a modification of the Loan, Manulife has not and does not waive any defaults or any of its rights and remedies under the documents evidencing and securing the Loan ("**Loan Documents**"). In addition, unless Manulife otherwise agrees in writing, Manulife may pursue any or all its legal rights and remedies under the Loan Documents while discussions are underway. Either party may terminate the discussions at any time, for any or no reason, by written notice to the other party.
2. The discussions and any correspondence between Manulife and Borrower and Indemnifier concerning a modification of the Loan shall be in the nature of settlement negotiations which neither party may use in connection with the exercise of any right, remedy or defense under the Loan Documents or in any subsequent bankruptcy or judicial proceeding.
3. The present principal balance of the Loan is \$5,764,671.28 with interest accruing at the rate set forth in the Loan Documents. The fact that discussions are proceeding shall not relieve Borrower or Indemnifier of the obligation to comply fully with the Loan Documents, each of which is in full force and effect.
4. Manulife's entering into discussions concerning a Loan modification is conditioned upon Borrower and Indemnifier and their officers, directors, employees and agents (a) keeping confidential any discussions, negotiations, correspondence or other exchange, whether oral or in any other medium, and (b) not disclosing the existence, occurrence, content or substance of (i) any proposed or eventual Loan modification or (ii) any discussions, negotiations, correspondence or other exchange with Manulife about a proposed or eventual Loan modification.
5. Neither party will be bound by any discussion or proposal to modify the Loan until: (a) the Loan modification proposal has been approved by the appropriate Manulife committees; (b) the terms of the proposal have been finalized in fully executed modification documents in form and substance satisfactory to Manulife and all payments then due under such documents, if any, are paid in full; and (c) the Borrower has paid all of Manulife's costs and expenses described in paragraph 7 below, if any.
6. Borrower shall promptly provide Manulife with all requested information in connection with the Property, the parties to the Loan Documents and the proposed modification. No Loan modification proposal can be considered by Manulife until Manulife has received all such requested information. As an initial request, please provide Manulife with the information listed in Schedule A to this notice.

1919 Riverside Drive, Ottawa, Ontario

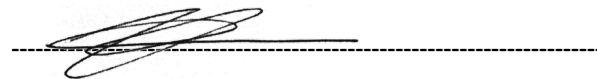
 **Manulife** Investment Management

7. Pursuant to the Loan Documents, regardless of whether a binding Loan modification agreement is executed, Borrower will be required to pay all of Manulife's costs and expenses (including, but not limited to, lawyer's fees, the costs of any environmental studies and reports, and all recording and title insurance expenses) incurred in connection with these discussions.
8. No other person or entity shall have any rights by reason of our discussions.
9. You are encouraged to seek advice from legal counsel of your choosing.
10. All rights under the Loan Documents, at law and in equity are expressly reserved.

Please indicate your acceptance of this letter's terms and conditions by having a duly authorized representative of Borrower and Indemnifier execute and promptly return it to the attention of the undersigned. Delivery of an executed counterpart of a signature page of this letter by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this agreement.

Yours very truly,

The Manufacturers Life Insurance Company



By: Robert Amos
Title: Investment Officer, Risk Management

cc: Ken Noronha

Acknowledged and agreed to by:

RIVERSIDE PROFESSIONAL CENTRE INC.

By: _____

Name:
Title:

THE K TRUST

By: _____

Name:
Title:

Schedule A

1. Property level information:
 - a. Current rent roll that provides:
 - i. Trade name of tenant and type of business
 - ii. Space leased
 - iii. SF/Rent basis (gross, net, NNN)
 - iv. Monthly payment
 1. Base rent
 2. CAM/RE Tax & other charges
 - v. identification of which tenant has asked for relief
 - vi. identification of which tenants are closed
 - b. Tenant arrears report
 - c. Monthly tenant sales for 60 months
 - d. Copies of correspondence from tenants seeking relief, and the borrower's response
 - e. Property level year to date financial statement
 - f. Proforma 2020 budget (adjusted accordingly)
 - g. Real Estate Tax status
 - h. Insurance status – business interruption
 - i. Business continuity plan
 - j. Capital Expenditures for the last 3 years
 - k. Distributions for the last 3 years
2. Entity level information:
 - a. Borrower:
 - i. Full financial statement of borrower entity – last 3 years
 1. Balance sheet
 2. income & expense statement
 3. sources and uses statement
 4. notes to financial statements
 5. Financial statements for each principal
 - ii. Tax returns for each principal
 - iii. Current net worth statement – last 3 years
 1. Complete listing of assets and liabilities, including contingent liabilities and guarantees
 2. Basis of accounting FMV or cost
 - iv. Evidence of application for available government (all levels) assistance
 - v. Evidence of insurance claim for business interruption
 - vi. Has borrower sought relief from other lenders?
 1. If yes, describe.....
 - vii. Particulars of any litigation that the Borrower is currently defending or prosecuting.
 - b. Guarantors/covenantors:
 - i. Financial statements for each principal – last 3 years
3. Details of name of current trustee for The K Trust, together with documentation evidencing the appointment.

**This is Exhibit "Q" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Craddock, Erin

From: Glenn Solomon <GSolomon@solgro.com>
Sent: Thursday, January 7, 2021 2:30 PM
To: Ward, David
Subject: **[**EXT**]** Riverside Professional Centre
Attachments: (1a) 1919r - Current Rent Roll.pdf; (1b) 1919r - Tenant Arrears Report 10.31.20.pdf; (1d) 1919r - Tenants Requesting CECRA and backups.pdf; (1e) 1919r - Oct 2020 YTD Operating Statements 11.26.20.pdf; (1f) 1919r - 2020 Proforma Budget.pdf; (1g) 1919r - (2019-2020) Property Tax Status.pdf; (1h) 1919r - Insurance Status (certificate).pdf

Importance: High

David:

In connection with this matter I am attaching copies of a number of the deliverables which should be self-explanatory. You should be aware that they are in the process of being updated as there have been a number of renewals and a potentially significant expansion.

I will provide further deliverables in due course.

As always I would be pleased to discuss this matter with you.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors
20 Toronto Street
Suite 410
Toronto, Ontario
M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com

Website: www.solgro.com

[EXTERNAL EMAIL / COURRIEL EXTERNE]

Please report any suspicious attachments, links, or requests for sensitive information.

Veuillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspects.

**This is Exhibit "R" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Craddock, Erin

From: Ward, David
Sent: Tuesday, January 26, 2021 10:51 AM
To: Glenn Solomon
Cc: Jason Kolarich; Robert Amos; Massie, Sam; Ward, David
Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

Glenn,

Thank you for your below email from Friday morning confirming that the requested information is in preparation.

I am reminded that the pre-negotiation letter with the schedule "A" information request dates back to November 11, 2020. Now two and a half months has passed, with the vast majority of the information having not yet been provided. As well, with the passage of time, new information (pertaining to 2021 and pending lease expiries) becomes relevant.

Please may we now have your client's comprehensive response including, additionally, the following information.

Additional Information Requested:

- 1) Particulars of current trustee of The K Trust, together with evidence of appointment;
- 2) 2021 budget for the property;
- 3) List of capital expenditures planned for the next 5-10 years;
- 4) List of historical capital expenditures with remaining amortization (item, date, amount, amort period, interest rate);
- 5) List of any outstanding TI's or LC/LLW for the property;
- 6) Update on litigation with the Ottawa Hospital (including status of motion for summary judgment argued last month);
- 7) Details on the following short term expiries:
 - Suite 205 - DR.JEAN C.SUK, DR.MIHN NGUYEN & DR.JANINA MILANSKA – Expires 01/31/2021
 - Suite 211 – Forma Luma Inc. – Expires 03/31/2021
 - Suite 212 Sound Diagnosis – Expires 12/31/2020
 - Suite 301 & 312 – The Ottawa Hospital Research Institute – Expires 09/30/2021
 - Suite 408 – The Ottawa Hospital Research Institute – Expires 08/31/2021
 - Suite 412 – Innomar Strategies Inc. – 01/31/2021

To the extent that any information is not now available, let us know when it will be available. If your client cannot or will not produce certain requested information kindly advise.

May we please hear from you?

Regards,

David

DAVID WARD

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.595.8625

Fax: +1 416.595.8695

Email: dward@millerthomson.com

millerthomson.com



Please consider the environment before printing this email.

[Our COVID-19 preparedness and support commitment](#)

From: Glenn Solomon [mailto:GSolomon@solgro.com]

Sent: Friday, January 22, 2021 11:59 AM

To: Ward, David <dward@millerthomson.com>

Cc: Jason Kolarich <Jason_Kolarich@manulife.com>; Robert Amos <Robert_Amos@manulife.com>; Massie, Sam <smassie@millerthomson.com>

Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

David:

I am advised that the up-dated statements are being finalized and I should have them for you early next week.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors

20 Toronto Street
Suite 410
Toronto, Ontario
M5C 2B8

Tel: (416) 366-7828 Ext. 202
Fax: (416) 366-3513

Email: gsolomon@solgro.com
Website: www.solgro.com

From: Ward, David <dward@millerthomson.com>
Sent: Friday, January 22, 2021 11:57 AM
To: Glenn Solomon <GSolomon@solgro.com>
Cc: Jason Kolarich <Jason_Kolarich@manulife.com>; Robert Amos <Robert_Amos@manulife.com>; Massie, Sam <smassie@millerthomson.com>
Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

Glenn,
It's been another week. Do you have anything for us?

DAVID WARD

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com
millerthomson.com



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From: Glenn Solomon [<mailto:GSolomon@solgro.com>]
Sent: Monday, January 18, 2021 4:32 PM
To: Ward, David <dward@millerthomson.com>
Cc: Jason Kolarich <Jason_Kolarich@manulife.com>; Robert Amos <Robert_Amos@manulife.com>; Massie, Sam <smassie@millerthomson.com>
Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

David:

I want to send you the most up-to-date information and documentation. I am advised that the current reports you have asked for are just about done. I will follow up and get back to you.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors
20 Toronto Street
Suite 410
Toronto, Ontario
M5C 2B8

Tel: (416) 366-7828 Ext. 202
Fax: (416) 366-3513

Email: gsolomon@solgro.com
Website: www.solgro.com

From: Ward, David <dward@millerthomson.com>
Sent: Monday, January 18, 2021 10:49 AM
To: Glenn Solomon <GSolomon@solgro.com>
Cc: Jason Kolarich <Jason_Kolarich@manulife.com>; Robert Amos <Robert_Amos@manulife.com>; Massie, Sam <smassie@millerthomson.com>; Ward, David <dward@millerthomson.com>
Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

Glenn,

May we please hear from you?

In addition to the below, kindly provide a complete and current rent roll. I understand that the rent roll provided is partial and is not reporting the vacant space.

Thanks,

DAVID WARD

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com
millerthomson.com



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[Our COVID-19 preparedness and support commitment](#)

From: Ward, David
Sent: Friday, January 8, 2021 12:30 PM
To: Glenn Solomon <GSolomon@solgro.com>
Cc: Jason Kolarich <Jason_Kolarich@manulife.com>; Robert Amos <Robert_Amos@manulife.com>; Massie, Sam <smassie@millerthomson.com>; Ward, David <dward@millerthomson.com>
Subject: RE: Riverside Professional Centre [MTDMS-Legal.FID9246173]

Glenn,

Thanks very much for this.

With the passage of time, the priority information items are now:

- 1) 2021 budget; and
- 2) 2020 year end operating statement/ financial reporting.

Please can this be provided as soon as possible?

In addition – and separately if necessary - we look forward to receiving the balance of the promised information.

Regards,

DAVID WARD

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com
millerthomson.com



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From: Glenn Solomon [<mailto:GSolomon@solgro.com>]
Sent: Thursday, January 7, 2021 2:30 PM

To: Ward, David <dward@millerthomson.com>
Subject: **[**EXT**]** Riverside Professional Centre
Importance: High

David:

In connection with this matter I am attaching copies of a number of the deliverables which should be self-explanatory. You should be aware that they are in the process of being updated as there have been a number of renewals and a potentially significant expansion.

I will provide further deliverables in due course.

As always I would be pleased to discuss this matter with you.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors
20 Toronto Street
Suite 410
Toronto, Ontario
M5C 2B8

Tel: (416) 366-7828 Ext. 202
Fax: (416) 366-3513

Email: gsolomon@solgro.com
Website: www.solgro.com

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**This is Exhibit "S" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Craddock, Erin

From: Ward, David
Sent: Thursday, February 11, 2021 9:14 AM
To: Glenn Solomon
Cc: Robert Amos; Jason Kolarich; Massie, Sam
Subject: RE: 1919r - Manulife Request (Final)

Glenn,

Thanks for your Jan 29 email below. I understand that Manulife is still awaiting the following priority items. They were first requested back in November. What is the status??

- 1) Capital Expenditures for the last 3 years;
- 2) Sources and uses statement;
- 3) Details of name of current trustee for The K Trust, together with documentation evidencing the appointment.

DAVID WARD

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com
millerthomson.com



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[Our COVID-19 preparedness and support commitment](#)

From: Glenn Solomon [mailto:GSolomon@solgro.com]
Sent: Friday, January 29, 2021 4:01 PM
To: Ward, David <dward@millerthomson.com>
Subject: [**EXT**] FW: 1919r - Manulife Request (Final)

David:

In connection with this matter please find attached a number of the documents and/or reports you had requested.

The Operating Statements should be considered draft only.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors
20 Toronto Street
Suite 410
Toronto, Ontario
M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com

Website: www.solgro.com

[EXTERNAL EMAIL / COURRIEL EXTERNE]

Please report any suspicious attachments, links, or requests for sensitive information.

Veillez rapporter la présence de pièces jointes, de liens ou de demandes d'information sensible qui vous semblent suspects.

**This is Exhibit "T" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA



March 30, 2021

By E-mail

Solomon Grosberg LLP
20 Toronto Street, Suite 410
Toronto, ON M5C 2B8

David Ward
Direct Line: 416.595.8625
dward@millerthomson.com

File: 0255676.0001

Attention: Glenn Solomon

Dear Mr. Solomon

Re: Loan No. 862196:11 (“Loan”) advanced by The Manufacturers Life Insurance Company (“Lender”) to Riverside Professional Centre Inc. (“RPCI”) pursuant to the commitment letter dated December 15, 2011 (as amended and extended, the “Commitment Letter”)

As you are aware, we are counsel for the Lender. We are writing to you in your capacity as counsel to RPCI.

RPCI remains in default of its obligations under the above referenced Commitment Letter by virtue of its failure to pay property taxes when due (“**Tax Default**”), which default has been continuing since June of 2018.

We sent a letter to RPCI to address the Tax Default on October 22, 2020 (“**Default Letter**”). At that time, the outstanding tax balance amounted to \$488,138.65. Property taxes have continued to accrue, without payment, and as of March 24, 2021, the total outstanding tax balance has increased to \$633,976.81 (“**Tax Arrears**”). In the circumstances, the Lender requires that RPCI present a detailed plan to address the Tax Arrears.

We provided you with a pre-negotiation letter on November 11, 2020 (“**PNL**”). Among other things, the PNL contained an information and document request (“**Document Request**”) that was intended to facilitate negotiations regarding modifications to the Loan. The Lender received only partial responses to the Document Request, and such responses were not received in a prompt manner. As of the date of this Letter, the Document Request has not been satisfied, and the following information remains outstanding:

1. Capital expenditures for the last three years;
2. Guarantor financial statements for each principal for the last three years;
3. Full name of the Settlor of The K Trust;
4. Full name of the Trustee of The K Trust;
5. Full name of the Beneficiary of The K Trust together with date of birth, home address, occupation and percent interest in The K Trust; and

6. Simple yes/no response to the following: Has Mortgagor, Controlling Interest(s), Beneficial Owner(s), Indemnifier(s), Guarantor(s), authorized signatories (if appropriate) or a close family member (parent, child, spouse, common law partner, in-law or sibling) ever held a senior position in a government, legislature, government agency, military, judiciary, political party or government owned corporation in a country other than Canada?

The Lender has been patient and has exercised forbearance in connection with the Tax Default. However, in light of the foregoing, the Lender is deeply concerned with RPCI's ability to cure the Tax Default, and satisfy its other obligations under the Commitment Letter. This concern has been exacerbated by the recent decision issued in RPCI's action against The Ottawa Hospital under Court No. 17-74085 ("**Judgment**"), whereby all of RPCI's claims were dismissed. The Lender is aware of pleadings submitted by RPCI advising that a judgment of this nature would cause RPCI to become insolvent.

The Lender is considering its options in relation to the Tax Default and the Judgment, and reserves the right to consider such notices and remedies as it may consider desirable. Nothing in this letter shall be construed as a consent to, or waiver of, the Tax Default or any other default that has occurred or may occur in connection with the Loan.

As an immediate first step, the Lender has decided to establish a tax escrow account for collection and application of funds to the payment of future property taxes, as contemplated by Section 5.3.2 of Standard Charge Terms 200410 ("**SCT**"). Accordingly, effective May 1, 2021, the monthly payments due to the Lender will increase to \$59,854.50 (an increase of \$18,510.64). The collection of funds described in this paragraph shall be applied to future property taxes at the Lender's discretion, and shall in no way affect or diminish the obligations and responsibilities of RPCI in relation to past, present or future property taxes. For certainty, RPCI shall remain solely responsible to ensure that property taxes are paid in full. The Lender explicitly reserves all of its rights in relation to Section 5.3.2 of the SCT and otherwise.

The Lender requires a response to this letter by no later than April 7, 2021. The response should include the information listed above, as well as RPCI's plan to address the Tax Default.

Yours truly,

MILLER THOMSON LLP

Per:



David Ward
/sm

cc: Manulife Financial Corporation



**This is Exhibit "U" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Craddock, Erin

From: Glenn Solomon <GSolomon@solgro.com>
Sent: Thursday, April 1, 2021 4:18 PM
To: Ward, David
Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

David:

This is further to your letter of March 30, 2021.

In response to the questions posed in your letter I am advised as follows:

1. Capex for last 3 years is zero;
2. I understand that the only guarantor may have been The K Trust which does not have financial statements;
3. Ruth and Robin Kingsmill;
4. Lawrence Bontje;
5. Katherine Bontje, May 11, 1998 currently a student living in Washington DC;
6. No.

My client is working on a plan to deal with taxes and all issue related to this property and I will advise in due course.. I am advised that my client has Appealed to decision which apart from anything else will have the effect of staying any judgement.

As always I would be pleased to discuss this matter with you.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors

20 Toronto Street

Suite 410

Toronto, Ontario

M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Glenn Solomon

Sent: Friday, February 19, 2021 11:49 AM

To: Ward, David <dward@millerthomson.com>; Robert Amos <Robert_Amos@manulife.com>

Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

David:

I agree. He was only copied on my previous so that he would know that Rob would be contacting him and so that he understood the parameters.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors

20 Toronto Street

Suite 410

Toronto, Ontario

M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Ward, David <dward@millერთhompson.com<<mailto:dward@millერთhompson.com>>>
Sent: Friday, February 19, 2021 10:54 AM
To: Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>; Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>
Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

Yes, but please drop Andrew Palin from chain.

DAVID WARD<<mailto:dward@millერთhompson.com>>
Providing services on behalf of a Professional Corporation Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millერთhompson.com<<mailto:dward@millერთhompson.com>>
[millერთhompson.com](https://www.millერთhompson.com)<<https://www.millერთhompson.com>>

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From: Glenn Solomon [<mailto:GSolomon@solgro.com>]
Sent: Friday, February 19, 2021 10:52 AM
To: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>; Ward, David <dward@millერთhompson.com<<mailto:dward@millერთhompson.com>>>
Cc: Andrew Palin <apalin@par-med.com<<mailto:apalin@par-med.com>>>
Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

Rob:

I agree that lawyers are not necessary. I think it is in everyone's interest that you and Drew have a full and frank discussion. With a view to that end, and subject to David's counsel, I think we should agree that (i) no lawyers will be on the call; (ii) your discussion be off the record and without prejudice; and (iii) it not be recorded.

Subject to David's agreement you and Drew should speak and he is available at 1:00.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

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20 Toronto Street

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Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>

Sent: Thursday, February 18, 2021 5:18 PM

To: Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>; Ward, David <dward@millertomson.com<<mailto:dward@millertomson.com>>>

Cc: Andrew Palin <apalin@par-med.com<<mailto:apalin@par-med.com>>>

Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

Thank you Glenn. I don't believe we will need to have counsel on this call, unless it's Larry's preference, as Andrew and I can clearly speak given the signed pre-negotiation letter that was signed.

If Andrew finds it acceptable I can send a meeting notice to him and we can speak, if possible for him, at 1pm tomorrow.

Regards,

Robert G. Amos

Senior Associate, Commercial Mortgages, Credit Manulife Investment Management

E • Robert_Amos@Manulife.com<mailto:Robert_Amos@Manulife.com>

•416-852-1067

M. 416-271-5558

• 200 Bloor Street East, Toronto, ON M4W 1E5 | NT6-A47

From: Glenn Solomon <GSolomon@solgro.com<mailto:GSolomon@solgro.com>>

Sent: Thursday, February 18, 2021 3:56 PM

To: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>; Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>

Cc: Andrew Palin <apalin@par-med.com<mailto:apalin@par-med.com>>

Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

David:

I cannot get ahold of Drew. I see that Rob is available for 1:00 tomorrow. Why don't we shoot for then.

Not sure what format you would like to use. I will be working from home so if you want to set up a Zoom or conference call I am copying Drew on this so you will have his e-mail.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors

20 Toronto Street

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Toronto, Ontario

M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>

Sent: Thursday, February 18, 2021 2:40 PM

To: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>; Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>

Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

Glenn – can you set that up?

DAVID WARD<<mailto:dward@millerthomson.com>>

Providing services on behalf of a Professional Corporation Partner

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.595.8625

Fax: +1 416.595.8695

Email: dward@millerthomson.com<<mailto:dward@millerthomson.com>>

[millerthomson.com](https://www.millerthomson.com)<<https://www.millerthomson.com>>

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Our COVID-19 preparedness and support commitment<<https://www.millerthomson.com/en/our-covid-19-preparedness-and-support-commitment/>>

From: Robert Amos [mailto:Robert_Amos@manulife.com]

Sent: Thursday, February 18, 2021 2:30 PM

To: Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>; Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>

Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

Thanks David – works for me. I have time tomorrow at 1pm to speak with Drew.

Regards,

Robert G. Amos

Senior Associate, Commercial Mortgages, Credit Manulife Investment Management

E • Robert_Amos@Manulife.com<mailto:Robert_Amos@Manulife.com>
•416-852-1067
M. 416-271-5558

• 200 Bloor Street East, Toronto, ON M4W 1E5 | NT6-A47

From: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>
Sent: Thursday, February 18, 2021 2:29 PM
To: Glenn Solomon <GSolomon@solgro.com<mailto:GSolomon@solgro.com>>
Cc: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>
Subject: [EXTERNAL] RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

CAUTION This email is from an external sender, be cautious with links and attachments.

Dropping Jason Marks from this email chain. Rob does this work for you?

DAVID WARD<mailto:dward@millerthomson.com>
Providing services on behalf of a Professional Corporation Partner

Miller Thomson LLP
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P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8625

Fax: +1 416.595.8695
Email: dward@millerthomson.com<<mailto:dward@millerthomson.com>>
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From: Glenn Solomon [<mailto:GSolomon@solgro.com>]
Sent: Thursday, February 18, 2021 1:58 PM
To: Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>
Cc: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>; Jason Marks <jmarks@terrascend.com<<mailto:jmarks@terrascend.com>>>
Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]

David:

Sorry for not getting back sooner. I have been in the Court of Appeal (well by Zoom at least). If you like I can try and set up a call with Drew Palin for later on if that works. Otherwise tomorrow.

Regards

Glenn

Glenn R. Solomon

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Toronto, Ontario

M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>
Sent: Thursday, February 18, 2021 8:56 AM
To: Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>
Cc: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>; Jason Marks <jmarks@terrascend.com<<mailto:jmarks@terrascend.com>>>; Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>
Subject: RE: 1919r - Manulife Request (Final) [MTDMS-Legal.FID9246173]
Importance: High

Glenn

Larry is the person that Manulife would like to speak with. Please let us know when he may be free.

In the interests of time, a call with Andrew makes sense. Can you set this up today? Copying in Rob Amos as he will be on the call.

Please advise,

thanks

DAVID WARD<<mailto:dward@millerthomson.com>>
Providing services on behalf of a Professional Corporation Partner

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P.O. Box 1011
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Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com<<mailto:dward@millerthomson.com>>
[millerthomson.com](https://www.millerthomson.com)<<https://www.millerthomson.com>>

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Our COVID-19 preparedness and support commitment<<https://www.millerthomson.com/en/our-covid-19-preparedness-and-support-commitment/>>

From: Glenn Solomon [mailto:GSolomon@solgro.com]
Sent: Wednesday, February 17, 2021 1:28 PM
To: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>
Subject: RE: 1919r - Manulife Request (Final)

David:

Sorry for not getting back to you sooner. Larry is constantly on the road and it is difficult to tie him down. He does want to get you and you client whatever information you need. Would it help if a call was set up with Andrew Palin from Par-Med which manages the building and who I think your client may know. He likely is better able to answer your client's questions in any event.

Please let me know.

Regards

Glenn

Glenn R. Solomon

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M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Ward, David <dward@millerthomson.com<<mailto:dward@millerthomson.com>>>

Sent: Friday, February 12, 2021 2:46 PM

To: Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>

Subject: Re: 1919r - Manulife Request (Final)

Glenn

Can we put something in the diary for call with Larry next week Wednesday at 2pm?

DAVID WARD<<mailto:dward@millerthomson.com>>

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Fax: +1 416.595.8695

Email: dward@millerthomson.com<<mailto:dward@millerthomson.com>>

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On Feb 11, 2021, at 5:59 PM, Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>> wrote:

I am on my cell now if you like. 416 399 2068. Or tomorrow afternoon 11:30.

Get Outlook for Android<<https://aka.ms/ghei36>>

From: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>
Sent: Thursday, February 11, 2021 5:56:57 PM
To: Glenn Solomon <GSolomon@solgro.com<mailto:GSolomon@solgro.com>>
Subject: RE: 1919r - Manulife Request (Final)

Glenn

Are you free for a quick call? I can speak tonight or tomorrow. Please let me know.

DAVID WARD<mailto:dward@millerthomson.com>
Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
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P.O. Box 1011
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Direct Line: +1 416.595.8625
Fax: +1 416.595.8695
Email: dward@millerthomson.com<mailto:dward@millerthomson.com>
millerthomson.com<https://www.millerthomson.com>

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From: Glenn Solomon [mailto:GSolomon@solgro.com]
Sent: Thursday, February 11, 2021 2:22 PM
To: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>
Subject: RE: 1919r - Manulife Request (Final)

David:

My client is working of the reports that you have requested. In the meantime I am attaching copies of the Trust documents you have requested.

Regards

Glenn

Glenn R. Solomon

SOLOMON•GROSBERG LLP

Barristers & Solicitors

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M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

From: Ward, David <dward@millertthomson.com<<mailto:dward@millertthomson.com>>>
Sent: Thursday, February 11, 2021 9:14 AM
To: Glenn Solomon <GSolomon@solgro.com<<mailto:GSolomon@solgro.com>>>
Cc: Robert Amos <Robert_Amos@manulife.com<mailto:Robert_Amos@manulife.com>>; Jason Kolarich <Jason_Kolarich@manulife.com<mailto:Jason_Kolarich@manulife.com>>; Massie, Sam <smassie@millertthomson.com<<mailto:smassie@millertthomson.com>>>
Subject: RE: 1919r - Manulife Request (Final)

Glenn,

Thanks for your Jan 29 email below. I understand that Manulife is still awaiting the following priority items. They were first requested back in November. What is the status??

- 1) Capital Expenditures for the last 3 years;
- 2) Sources and uses statement;
- 3) Details of name of current trustee for The K Trust, together with documentation evidencing the appointment.

DAVID WARD<mailto:dward@millerthomson.com>
Providing services on behalf of a Professional Corporation
Partner

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Fax: +1 416.595.8695
Email: dward@millerthomson.com<mailto:dward@millerthomson.com>
millerthomson.com<https://www.millerthomson.com>

<image001.png>

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From: Glenn Solomon [mailto:GSolomon@solgro.com]
Sent: Friday, January 29, 2021 4:01 PM
To: Ward, David <dward@millerthomson.com<mailto:dward@millerthomson.com>>
Subject: **[**EXT**]** FW: 1919r - Manulife Request (Final)

David:

In connection with this matter please find attached a number of the documents and/or reports you had requested.

The Operating Statements should be considered draft only.

Regards

Glenn

Glenn R. Solomon

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Barristers & Solicitors

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Toronto, Ontario

M5C 2B8

Tel: (416) 366-7828 Ext. 202

Fax: (416) 366-3513

Email: gsolomon@solgro.com<<mailto:gsolomon@solgro.com>>

Website: www.solgro.com<<http://www.solgro.com/>>

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**This is Exhibit "V" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Date: May 6, 2021

Riverside Professional Centre Inc.
181 Bay Street, Suite 1800, Toronto, Ontario M5J 2T9

Attention:

Dear Sir/Madame:

Re: **Loan No. 862196:11**
Riverside Professional Centre Inc.
1919 Riverside Dr., Ottawa, ON

As you know, the mortgage on the above-referenced property matures on February 01, 2022, at which time the principal balance will be approximately \$5,496,388.18 after application of the monthly installment due at maturity.

In view of our current underwriting criteria and demand for this type of business, we regret to inform you that we will put the property on the market and conduct a loan sale of the mortgage .


Please confirm at your earliest convenience that alternative financing has been arranged and advise as to when you will require a formal discharge statement so that we may order same from our Head Office on your behalf.

We trust in your understanding and cooperation in this matter.

Yours truly,

THE MANUFACTURERS LIFE INSURANCE COMPANY

By:



Robert Amos
Director, Commercial Mortgages, Credit – Special Assets
Manulife Investment Management

(E&OE)

cc: INVMTGSVCMGT@manulife.com, Manulife Financial

**This is Exhibit "W" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

Andrew Palin

From: Andrew Palin
Sent: May 17, 2021 12:39 PM
To: 'labontje416'
Cc: Glenn Solomon
Subject: RE: The Ottawa Hospital Demand Letter, 1919 Riverside Drive, Ottawa
Attachments: 2021-05-04 - Letter to Glenn Solomon re Notice of Default of Lease(121551699.1).pdf, c44218d2-20200106-a2be1.pdf; Riverside Tax Statement and Proof of Utility Payments; 1919r - 2019 - 2020 Tax Adjustment Letter from City of Ottawa.pdf; CERTIFICATE OF INSURANCE.pdf

Larry,

I refer to Demand Letter from Borden Ladner Gervais on behalf of The Ottawa Hospital (TOH) dated May 4, 2021 (copy attached).

With respect to the realty taxes I attach the most recent correspondence from the City of Ottawa dated May 7, 2021 in connection with a 2019 and 2020 tax adjustment as well as an e-mail from Nicole Cumming's, PAR-Med's Property Accountant, detailing the current tax arrears.

Regarding utilities, electricity, water and sewer are all up-to-date (see proof of payment in Nicole's e-mail attached). There is no natural gas service at this property.

As for the state of repair we have continued to spend on repairs and maintenance as we have done in the past. The elevators are under a comprehensive service contract with Thyssen Krupp Elevator (TKE). We retain Solucore Engineering to periodically inspect TKE's work. The last Solucore inspection was done in December 2019 and they concluded that the quality of maintenance was "very good" (report is attached). Preventive maintenance for HVAC is provided by Maximum HVAC and done on a quarterly basis. Maximum also attends to any necessary repairs and at this point in time there is no deferred maintenance. Naxos Property Maintenance have been retained for the 2021 summer season to maintain the grounds and spring clean-up has been done. The annual fire safety inspections are done by General Fire Protection with the most recent being October 2020. There are currently no outstanding fire & life safety issues. Roof repairs and maintenance are done by Devine Roofing and there are no active leaks. The tenant and common areas are cleaned nightly by Alco Janitorial Services. Other repairs and maintenance are dealt with as required. For example concrete work was done last week to repair a section of sidewalk that had experienced winter damage. There is a fulltime on site Building Operator and this individual has been looking after the property for the past 30-years. In our opinion the property is well maintained and in good condition.

A current certificate of insurance is attached.

As for the property's leasing prospects the building is very well positioned relative to its competition to attract new tenants. These prospects have recently improved with the TOH having segregated 250 parking spaces for the professional building. 1919 Riverside is comparatively new and has direct indoor access to TOH Riverside campus and OC Transpo which is unique in the City of Ottawa. PAR-Med manages over 40 medical buildings in southern Ontario and campus medical buildings consistently have the highest rents and the lowest vacancy rates. Colliers has just been retained as exclusive listing agent and will be actively targeting new tenants. In addition PAR-Med through its Realty group will be networking with the many corporate tenants across its portfolio to augment Colliers concentration on the local market.

I trust this addresses questions raised in TOH Demand but if you have additional questions let me know. Regards,

Andrew Pain
Broker of Record
PAR-Med Realty Limited
370 Queens Quay West, Suite 301
Toronto, ON M5V 3J3
Tel: 416-364-5959 ext. 402
Fax: 416-364-2233
<http://www.par-med.com>

**This is Exhibit "X" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to read 'Alina Stoica', is positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA



Colliers

1919 Riverside Drive | Ottawa, ON

Medical Office Space for Lease

Located on The Ottawa Hospital Riverside Campus – surrounded by premier amenities.

Jeff Brown

Vice President, Broker
+1 613 683 2230
jeff.brown@colliers.com

Jessica Whiting

Senior Sales Representative
+1 613 683 2208
jessica.whiting@colliers.com

Brendan Kuffner

Sales Representative
+1 613 683 2205
brendan.kuffner@colliers.com

Accelerating success.

Property Overview

Civic Address 1919 Riverside Drive, Ottawa ON

Location The property is located on The Ottawa Hospital Riverside Campus with indoor access to the hospital.

Year Built 1991

Building Area 48,582 SF

Parking Ample on-site

	101	2,173 SF
	104	918 SF
	202	1,256 SF
	207	1,103 SF
	210	1,055 SF
	302	2,152 SF
Rentable Area	303	982 SF
	305	1,557 SF
	306	735 SF
	401	858 SF
	402	2,113 SF
	407	495 SF
	409	1,064 SF
	410	748 SF

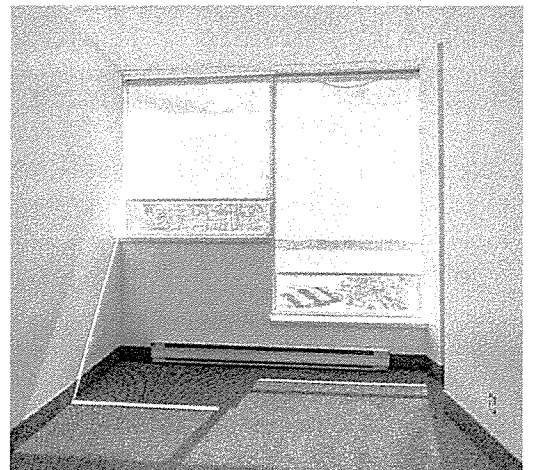
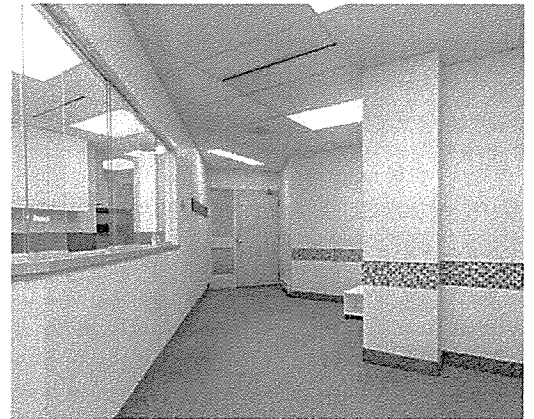
Net Rent \$17.00 PSF (Retail Rate TBD)

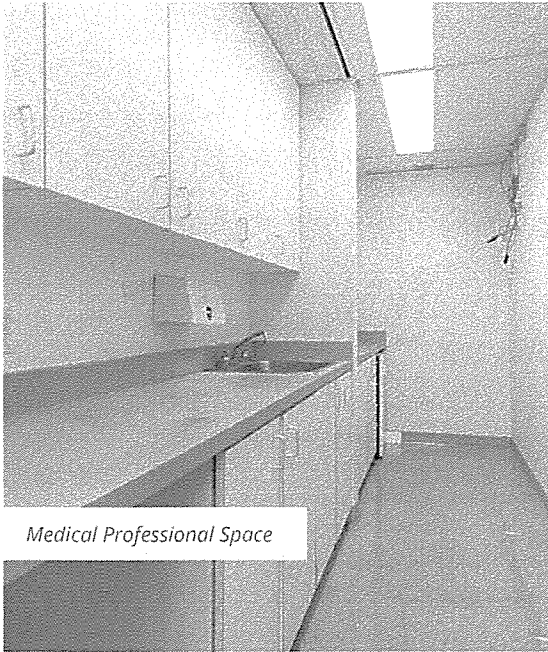
Additional Rent \$18.15 PSF

Available Immediately

- Onsite medical service such as pharmacy, medical laboratory and ultrasound

Comments • Fully accessible and direct connection to public transit via OC Transpo Transitway

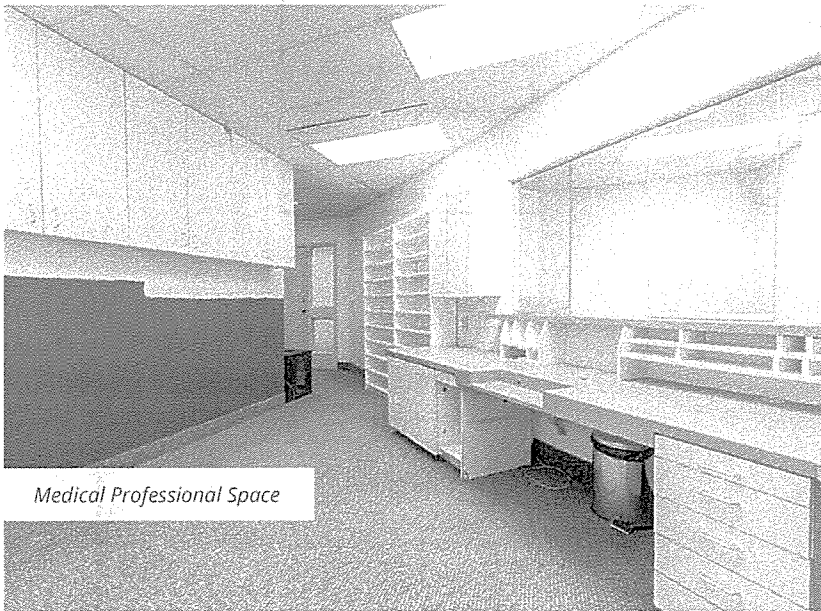




Medical Professional Space



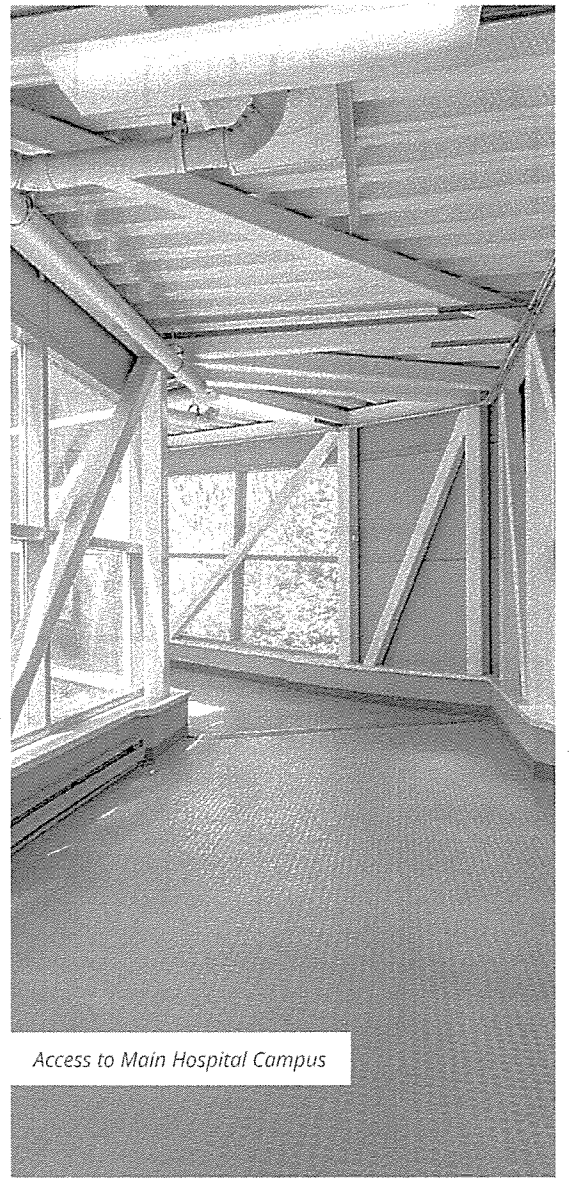
Medical Professional Space



Medical Professional Space



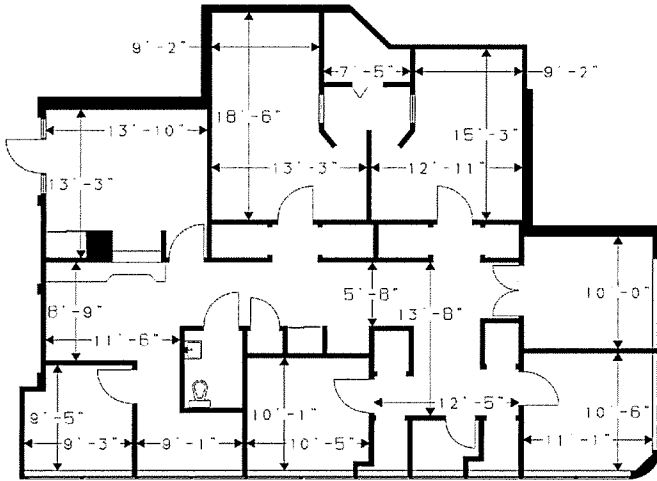
Private Workspace



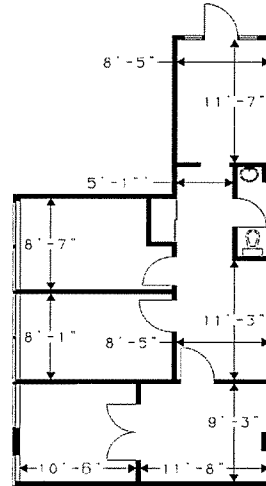
Access to Main Hospital Campus

Floor Plans

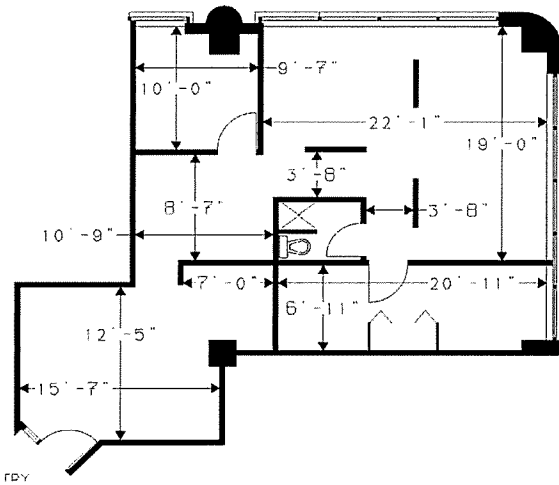
Unit 101



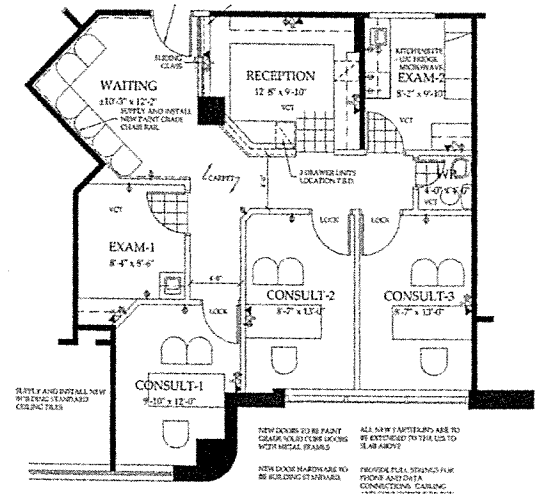
Unit 104



Unit 202

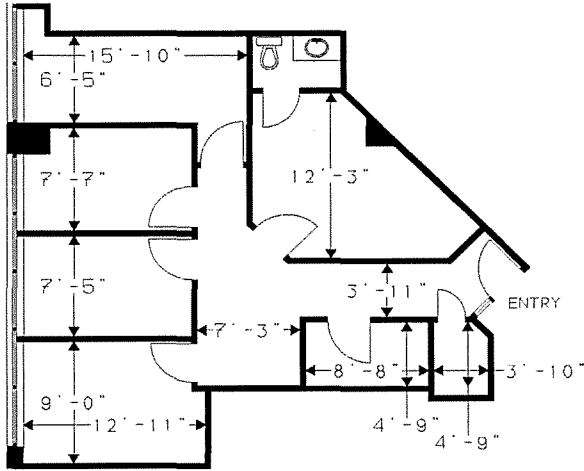


Unit 207

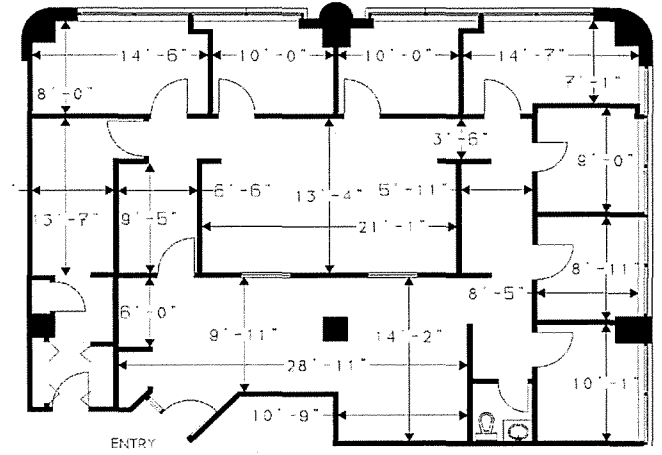


Floor Plans

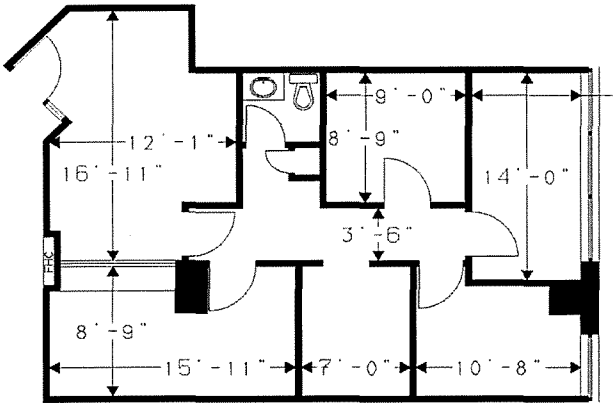
Unit 210



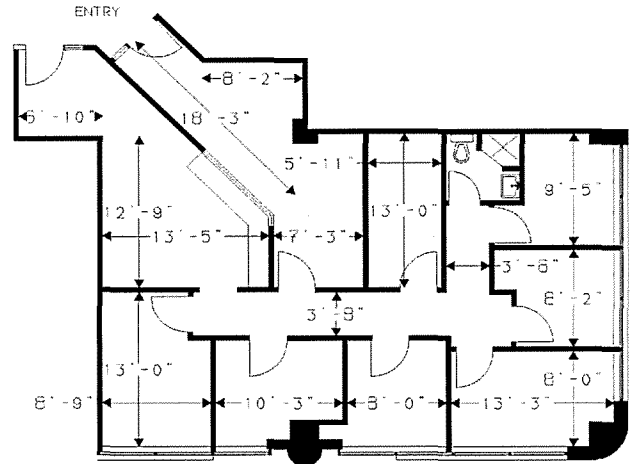
Unit 302



Unit 303

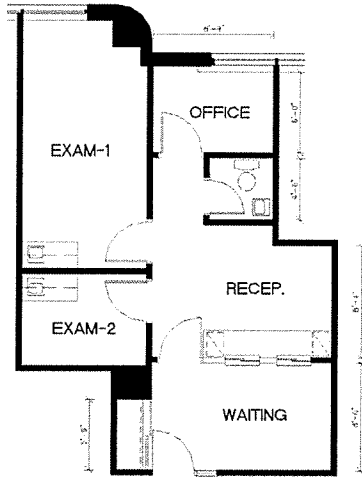


Unit 305

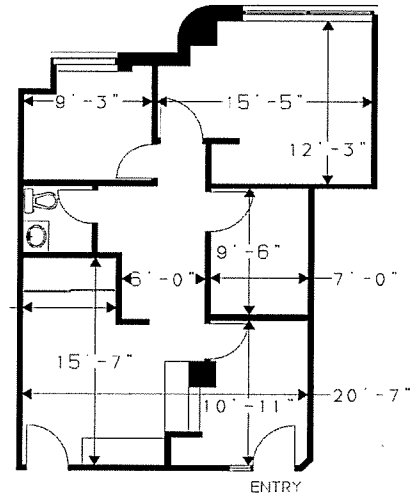


Floor Plans

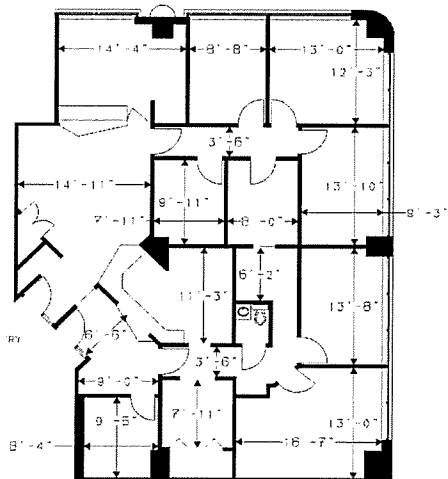
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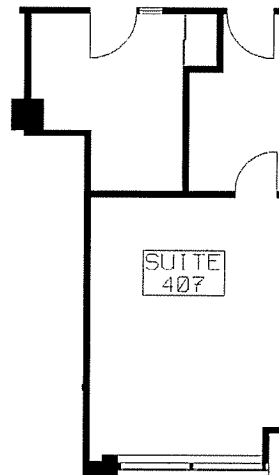
Unit 401



Unit 402

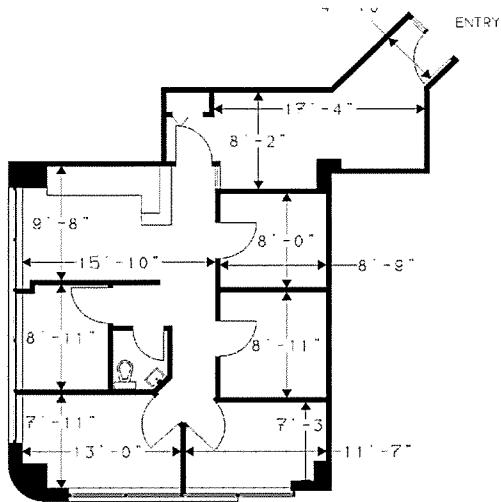


Unit 407

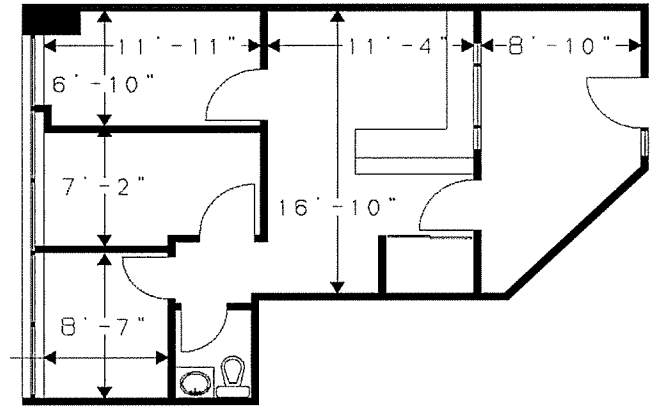


Floor Plans

Unit 409



Unit 410



Surrounding Amenities



Colliers



1919 Riverside Drive, Ottawa ON

Jeff Brown

Vice President, Broker
+1 613 683 2230
jeff.brown@colliers.com

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Accelerating success.

**This is Exhibit "Y" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA

May 4, 2021

DELIVERED BY EMAIL

WITHOUT PREJUDICE

Glenn Solomon
SOLOMON, GROSBURG LLP
Barristers & Solicitors
20 Toronto Street, Suite 410
Toronto, Ontario M5C 2B8
GSolomon@solgro.com

Dear Sir

Re: Notice of default of Lease at 1919 Riverside Drive

Reference is made to (i) the Lease between the City of Ottawa, as predecessor in title to The Ottawa Hospital/L'Hopital d'Ottawa (the "**Landlord**") and Riverside Professional Centre Inc. (the "**Tenant**"), dated as of September 1, 1989, as amended from time to time (the "**Lease**"), for the premises municipally known as 1919 Riverside Drive (the "**Premises**").

On behalf of our client, the Landlord, take notice that your client, the Tenant under the Lease, is in default of the Lease under the following covenants contained in the Lease and set out in the following provisions of the Lease:

1. Section 5.02 of the Lease provides that the Tenant is responsible for the payment of realty taxes in respect of the Premises. A tax certificate for the Premises confirms arrears in the amount of \$520,754.30.

We require evidence, as soon as possible, that the realty tax account for the Premises has been brought into good standing.

The foregoing notice of default shall not be construed as a waiver of any other default which may be presently occurring. To that end, kindly provide evidence of compliance with the following other provisions of the Lease:

1. Section 5.03 of the Lease provides that the Tenant is responsible for the payment of all utilities used on or in respect of the Premises. Kindly provide evidence that accounts in respect of all utilities for the Premises are in good standing.
2. Section 6.01 of the Lease requires the Tenant to keep improvements upon the Premises in good order and condition and promptly make repairs and replacements of any kind. Kindly provide copies of any routine building condition assessments that have been performed by the Tenant in connection with this requirement.

3. Article VII of the Lease sets out the Tenant's obligations in respect of the carriage of insurance. Kindly provide evidence of the required insurance in accordance with Section 7.01 of the Lease.

To permit your client time to consider these issues and to further any discussion your client may wish to have with TOH, our client will forebear on its rights and remedies in respect of the subject default, until we provide you with further written notice. Our client reserves its rights and remedies as set out in the Lease, at law, or equity.

However, in accordance with Section 14.01 of the Lease, this notice is also required to be delivered concurrently to the Tenant's mortgagee, the Manufacturers Life Insurance Company, and their counsel. Accordingly, a copy of this letter is being sent to them.

Yours truly,



David Sherriff-Scott

cc.

The Manufacturer's Life Insurance Company
200 Bloor Street East
Toronto, Ontario
M4W 15E
Attention: Mortgage Administration
Mortgage #862196.11

David Ward, Miller Thomson LLP: dward@millerthomson.com

**This is Exhibit "Z" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVIT

ALINA STOICA



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

June 11, 2021

Riverside Professional Centre Inc.
1919 Riverside Drive
Ottawa, ON K1H 7W9

Larry Ellis
Direct Line: 416.595.8639
lellis@millerthomson.com

Attention: Lawrence Bontje

Dear Mr. Bontje:

Re: Loan No. 862196:11 advanced by The Manufacturers Life Insurance Company (the “Lender”) to Riverside Professional Centre Inc. (the “Borrower”) pursuant to the commitment letter dated December 15, 2011 (as amended, renewed, extended, supplemented, replaced or otherwise modified from time to time, the “Loan Agreement”)

As you are aware, we are counsel to the Lender in the above noted matter.

As of June 8, 2021, the Borrower is indebted to the Lender under the Loan Agreement in the amount of CAD\$5,622,301.78, which amount is inclusive of principal, interest, fees and costs, but exclusive of professional fees, all of which continue to accrue (the “**Indebtedness**”).

As security for the Indebtedness, the Borrower granted to the Lender a leasehold charge / mortgage of the property municipally known as 1919 Riverside Drive, Ottawa, Ontario (the “**Property**”) dated February 16, 2012 and registered against title to the Property as Registration No. OC1332366 (the “**Mortgage**”).

As additional security for the Indebtedness, the Borrower granted to the Lender a general and continuing security interest in all of the Borrower’s right, title and interest in and to, *inter alia*, all present and after-acquired personal property, assets and undertaking of the Borrower of every kind and nature whatsoever, present and future, relating only to or used only in connection with the Property (the “**GSA Security**” and together with the Mortgage, the “**Security**”), pursuant to the general security agreement dated February 16, 2012 (the “**GSA**”).

The Borrower is in default under the Loan Agreement, the Mortgage and the GSA by virtue of its failure to pay property taxes when due. On behalf of the Lender, we hereby demand immediate payment of the Indebtedness and declare that, pursuant to the terms of the Loan Agreement, the Mortgage and the GSA, all of the Borrower's indebtedness to the Lender is now immediately due and payable, including any part thereof which is not, by its terms, payable upon demand. Furthermore, all commitments are hereby terminated.

Please be advised that unless payment or arrangements satisfactory to the Lender for payment are made forthwith, the Lender will take such further steps as it deems necessary to recover the Indebtedness. Those steps may include, without limitation, the enforcement of the Security held by the Lender by way of the appointment of a receiver, receiver and manager, interim-receiver or trustee.

We enclose herewith a Notice of Intention to Enforce Security issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*. The Lender reserves the right to proceed with the enforcement of its security at any time prior to the time specified in the enclosed Notice in those circumstances where such earlier enforcement may be permitted by law.

The Lender specifically reserves the right to take such proceedings as may be necessary to protect its interest in the collateral subject to the Security.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, appearing to read 'Larry Ellis', written over a light grey horizontal line.

Larry Ellis
SM/



**NOTICE OF INTENTION TO ENFORCE SECURITY
(SUBSECTION 244(1) OF THE BANKRUPTCY AND INSOLVENCY ACT)**

To: **RIVERSIDE PROFESSIONAL CENTRE INC.** (the “**Debtor**”) (an insolvent person)

TAKE NOTICE THAT:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the *Personal Property Security Act* (Ontario).
2. **THE MANUFACTURERS LIFE INSURANCE COMPANY** (the “**Secured Party**”), a secured creditor, intends to enforce its security on the Debtor’s property, being:
 - (a) the Debtor’s leasehold interest in the property municipally known as 1919 Riverside Drive, Ottawa, Ontario (the “**Property**”); and
 - (b) all of the Debtor's present and after-acquired assets, property and undertaking (other than Consumer Goods) including, without limitation, Goods (including Inventory and Equipment), accounts, Chattel Paper, Documents of Title, Instruments, Intangibles, Money, Securities and Proceeds now owned or hereafter acquired by or on behalf of the Debtor (and all rights and interests now or hereafter held by or on behalf of the Debtor with respect to any of the foregoing) relating only to or used only in connection with the Property.
3. The security that is to be enforced is further described in the leasehold charge / mortgage of land dated February 16, 2012 and registered against title to the Property as Registration No. OC1332366, and the general security agreement dated February 16, 2012, each executed by the Debtor in favour of the Secured Party (collectively, the “**Security**”).
4. The total amount of indebtedness secured by the Security as at the present time is CAD\$5,622,301.78, which amount is inclusive of principal, interest, fees and costs, but exclusive of professional fees, all of which continue to accrue.
5. The Secured Party will not have the right to enforce the Security until after the expiry of the ten-day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

[Signature Page Follows]

DATED at Toronto this 11th day of June, 2021.

**THE MANUFACTURER'S LIFE
INSURANCE COMPANY**

By its Solicitors
Miller Thomson LLP
40 King Street West, Suite 5800
Toronto, ON M5H 3S1

Per:



Larry Ellis

**This is Exhibit "AA" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**

A handwritten signature in blue ink, appearing to be 'Alina Stoica', written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

Craddock, Erin

From: Massie, Sam <smassie@millerthomson.com>
Sent: Wednesday, July 7, 2021 10:46 AM
To: Glenn Solomon
Cc: Ellis, Larry; Ward, David
Subject: Manulife / RPCI [MTDMS-Legal.FID9246173]
Attachments: Forbearance Agreement (July 7, 2021) MT DRAFT.DOC

Glenn,

Please find attached a draft forbearance agreement, as discussed.

We would like to coordinate a call once you have had a chance to review. Is there a time on Monday that works well?

Thanks,
Sam

SAM MASSIE
Associate

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.8641
Fax: +1 416.595.8695
Email: smassie@millerthomson.com
millerthomson.com



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FORBEARANCE AGREEMENT

This Forbearance Agreement (this “**Agreement**”), dated as of July ___, 2021, is made by and among Riverside Professional Centre Inc. (the “**Borrower**”) The K Trust, by its trustee, Lawrence Bontje (the “**Indemnifier**”), and The Manufacturers Life Insurance Company (the “**Lender**”).

RECITALS

A. The Borrower, the Indemnifier and the Lender are parties to a certain commitment letter dated as of December 15, 2011 (as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with its provisions, the “**Loan Agreement**”) pursuant to which the Lender made loans available to the Borrower in the maximum principal amount of \$7,500,000.

B. As security for all of the indebtedness and obligations due to the Lender under the Loan Agreement (collectively, the “**Obligations**”), the Borrower granted to the Lender a leasehold charge / mortgage of the property municipally known as 1919 Riverside Drive, Ottawa, Ontario (the “**Property**”) dated February 16, 2012 and registered against the Property as Registration No. OC1332366 (the “**Mortgage**”).

C. As additional security for the Obligations, the Borrower executed and delivered to the Lender a general security agreement dated as of February 16, 2012 (the “**Security Agreement**” and together with the Mortgage, the “**Security**”), granting to the Lender a security interest in the collateral, as defined in the Security Agreement (the “**Collateral**”).

D. The Obligations are due on February 1, 2022. The Lender has advised the Borrower that the maturity of the Obligations will not be extended.

E. The Borrower is in default under the Loan Agreement. The Borrower has requested that the Lender forbear from exercising its rights and remedies under the Loan Agreement and the Security.

F. The Lender is willing to forbear from exercising such rights and remedies for a limited period of time, provided that the Borrower complies with the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Borrower Acknowledgments

The Borrower acknowledges and agrees that:

Section 1.01 Recitals. The foregoing recitals are true and accurate in all respects.

Section 1.02 Defaults. The Borrower is in default under the Loan Agreement and the Security by virtue of, *inter alia*: (i) being in breach of the ground lease dated September 1, 1989 between, among others, the Borrower and The Ottawa Hospital (the “**Ground Lease**”); and (ii) failure to pay property taxes as they come due (the “**Existing Defaults**”).

Section 1.03 Loan Documents. The Loan Agreement, Mortgage, Security Agreement and all other agreements, instruments and other documents executed in connection with or relating to the Obligations, the Property or the Collateral (the “**Loan Documents**”) are legal, valid, binding and enforceable against

the Borrower in accordance with their terms, and the Borrower is hereby estopped from asserting or causing to be asserted on its behalf, any rights of defence, dispute, counterclaims, set-off, deduction or other rights, claims, demands, challenges, objections or appeals of any kind whatsoever existing as of the date of this Agreement, whether in respect of the obligations of the Borrower thereunder or the enforceability of same. The terms of the Loan Documents remain unchanged except as expressly modified herein.

Section 1.04 Obligations. The Obligations as of close of business on July 1, 2021, were equal to \$5,601,662.59. The Obligations are not subject to any set-off, deduction, claim, counterclaim or defences of any kind or character whatsoever.

Section 1.05 Collateral. The Lender has valid, enforceable and perfected security interests in the Property and the Collateral, as to which there are no set-offs, deductions, claims, counterclaims or defences of any kind or character whatsoever.

Section 1.06 No Lending Obligation. As a result of the Existing Defaults, the Lender has no obligation to make loans or otherwise extend credit to the Borrower under the Loan Documents.

Section 1.07 Right to Accelerate Obligations. As a result of the Existing Defaults, the Lender has the right to accelerate the maturity and demand immediate payment of the Obligations.

Section 1.08 Default Notice. To the extent required by the Loan Agreement and Security, the Borrower has received timely and proper notice of the Existing Defaults and the opportunity to cure (if any), in accordance with the Loan Agreement and Security and applicable law, and hereby waives any rights to receive further notice thereof. All applicable cure periods relating to the Existing Defaults have lapsed. For certainty, the Borrower acknowledges receipt of the demand letter and Notice of Intention to Enforce Security, each dated June 11, 2021.

Section 1.09 No Waiver of Defaults. Neither this Agreement, nor any actions taken in accordance with this Agreement or the Loan Documents, shall be construed as a waiver of or consent to the Existing Defaults or any other existing or future defaults under the Loan Documents, as to which the Lender's rights shall remain reserved.

Section 1.10 Preservation of Rights and Remedies. Upon expiration of the Forbearance Period (as defined in Section Section 2.01), all of the Lender's rights and remedies under the Loan Documents, and at law and in equity, shall be available without restriction or modification, as if the forbearance had not occurred.

Section 1.11 Lender Conduct. The Lender has fully and timely performed all of its obligations and duties in compliance with the Loan Documents and applicable law and has acted reasonably, in good faith and appropriately under the circumstances.

Section 1.12 Purpose of Forbearance. The purpose of this Agreement is to provide the Borrower with a period of time to cure the Existing Defaults and to find financing to repay the Obligations.

Section 1.13 Request to Forbear. The Borrower has requested the Lender's forbearance as provided herein, which shall enure to its direct and substantial benefit.

ARTICLE II Lender Forbearance

Section 2.01 Forbearance Period. Subject to compliance by the Borrower with the terms and conditions of this Agreement, the Lender hereby agree to forbear from exercising its rights and remedies against the Borrower under the Loan Documents with respect to the Existing Defaults during the period (the “**Forbearance Period** “), commencing on the Effective Date and ending on the earlier to occur of: (i) December 15, 2021; and (ii) the date that any Forbearance Default (as defined in Article ARTICLE IX) occurs. The Lender's forbearance, as provided herein, shall immediately and automatically cease without notice or further action on the earlier to occur of (i) or (ii) (the “**Termination Date** “). On and from the Termination Date, the Lender may, in its sole discretion, exercise any and all remedies available to it under the Loan Documents by reason of the occurrence of any default or event of default thereunder, or the continuation of the Existing Defaults.

Section 2.02 Extension of Forbearance Period. In the sole discretion of the Lender and without obligation, after the Termination Date, the Lender may renew or extend the Forbearance Period or grant additional forbearance periods.

Section 2.03 Scope of Forbearance. During the Forbearance Period, the Lender will not: (i) accelerate the maturity of the Obligations or initiate proceedings to collect or enforce the Obligations; (ii) make an assignment into bankruptcy or join in filing, or support, any involuntary bankruptcy petition with respect to the Borrower under the *Bankruptcy and Insolvency Act* (the “**BIA**”), or otherwise file or participate in any insolvency, bankruptcy, reorganization, moratorium, receivership or other similar proceedings against the Borrower under the *Companies' Creditors Arrangement Act* (the “**CCAA**”), *BIA* and *Canada Business Corporations Act* (the “**CBCA**”), or similar statute; (iii) repossess, foreclose upon, or dispose of, the Property or any of the Collateral, through judicial proceedings or otherwise.

ARTICLE III Conditions Precedent

This Agreement shall not become effective unless and until the date (the “**Effective Date**”) that each of the following conditions shall have been satisfied in the Agent's sole discretion, unless waived in writing by the Agent:

Section 3.01 Delivery of Certain Documents. The Borrower shall deliver, or cause to be delivered, a copy of this Agreement, duly executed by the Borrower and the Indemnifier.

Section 3.02 Forbearance Fee. As partial consideration for the Lender's agreement to forbear as set forth herein, the Borrower shall pay to the Lender a forbearance fee in the amount of \$50,000, earned and payable upon execution of this Agreement.

Section 3.03 Professional Fees and Other Expenses. As partial consideration for the Lender's agreement to forbear as set forth herein, the Borrower shall have paid all of the Lender's reasonable costs and expenses (including legal fees) incurred in connection with the preparation and negotiation of this Agreement.

Section 3.04 Retention of Financial Advisor. The Borrower shall have engaged and continued to engage, at its own expense, the services of MNP Ltd. as financial advisor (the “**Financial Advisor**”), on terms and conditions satisfactory to the Lender.

Section 3.05 Retention of Leasing Agent. The Borrower shall have engaged and continued to engage, at its own expense, the services of Colliers Macaulay Nicholls Inc. (“**Colliers**”) to act as leasing agent for the purpose of filling vacancies at the Property.

ARTICLE IV Payments during Forbearance Period

Section 4.01 Payments during Forbearance Period. During the Forbearance Period, the Borrower shall make monthly payments to the Lender in the amount of \$109,584.50, which amount shall be comprised of the following:

- (a) \$41,073.86 on account of principal and interest, in accordance with the terms of the Loan Agreement;
- (b) \$18,510.64 on account of the escrow tax account established by the Lender in the letter to the Borrower dated March 30, 2021; and
- (c) \$50,000 (the “**Cost Award Escrow Amount**”), which amount shall accumulate monthly and be used by the Lender, if necessary, to pay cost awards stemming from the ongoing litigation with The Ottawa Hospital (the “**Hospital**”) bearing Court No. 17-7408 (the “**Hospital Litigation**”). If no such cost award becomes due and payable within the Forbearance Period, the Cost Award Escrow Amount will be applied at the sole discretion of the Lender: (i) to reduce outstanding property taxes; or (ii) to reduce the outstanding Obligations.

ARTICLE V Representations and Warranties

The Borrower represents and warrants that all representations and warranties contained in the Loan Documents are true and correct as of the Effective Date, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date. The Borrower further represents and warrants to the Lender as follows:

Section 5.01 Authorization. The execution, delivery and performance of this Agreement are within its corporate power and authority and have been duly authorized by all necessary corporate action.

Section 5.02 Enforceability. This Agreement constitutes a valid and legally binding Agreement enforceable against the Borrower in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance and similar laws affecting creditors' rights generally and to general principles of equity.

Section 5.03 No Violation. The execution, delivery and performance of this Agreement do not and will not: (i) violate any law, regulation or court order to which the Borrower is subject; (ii) conflict with the Borrower’s constating documents; or (iii) result in the creation or imposition of any lien, security interest or encumbrance on any property of the Borrower, whether now owned or hereafter acquired.

Section 5.04 No Litigation. No action, suit, litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Borrower, threatened by or against or affecting the Borrower or against any of its property or assets with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby.

Section 5.05 Financial Condition. The financial statements, dated October 31, 2020, as delivered by the Borrower to the Lender, are complete and correct and, present fairly in accordance with GAAP the financial condition of the Borrower at such date and the results of its operations and changes in financial position for the fiscal period then ended.

Section 5.06 No Change. Except as previously disclosed to the Lender in writing, since October 31, 2020, there has been no material adverse change in the business, operations, assets or financial or other condition of the Borrower.

Section 5.07 Accuracy of Information. All information provided by the Borrower or any of its respective agents, is true, correct, and complete in all material respects, as of the date provided and does not contain any untrue statements of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

Section 5.08 Advice of Counsel. The Borrower has freely and voluntarily entered into this Agreement with the advice of legal counsel of their choosing, or have knowingly waived the right to do so.

ARTICLE VI Covenants

To induce the Lender to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby covenants and agrees that at all times during the Forbearance Period, unless the Lender otherwise consents in writing, as follows:

Section 6.01 Weekly Cash Flow Projections. On or before 5 p.m. Eastern Standard Time on July 12, 2021, the Borrower shall deliver to the Lender a weekly cash flow projection for the 13-week period commencing on July 12, 2021, in form, content and detail satisfactory to the Lender (the “**Cash Flow Projections**”). The Cash Flow Projections shall reflect the projected cash flow requirements of the Borrower for the 13-week period, calculated on a weekly basis. On or before 5 p.m. Eastern Standard Time on each Monday, the Cash Flow Projections shall be: (i) rolled forward on a weekly basis; (ii) updated to reflect actual receipts and disbursements of the prior week; and (iii) accompanied by a variance report which shall outline and explain, to the reasonable satisfaction of the Lender, variances in the prior one week period of 20% or more between the actual and projected cash receipts and disbursements and variances of 20% or more between the actual cumulative cash receipts and disbursements to the monthly forecasts. The Cash Flow Projections shall be certified by a director or officer of the Borrower to be complete, true and accurate.

Section 6.02 Hospital Litigation. The Cash Flow Projections shall not include payments to fund the Hospital Litigation and the Borrower explicitly covenants and agrees that it shall not use company funds to pay for the Hospital Litigation.

Section 6.03 Payment of Property Taxes. The Borrower shall repay all outstanding property taxes owing in relation to the Property within ten (10) days of the Effective Date.

Section 6.04 Repayment Plan. Within five (5) days of the effective date, the Borrower shall deliver to the Lender a detailed report, including milestones, describing the Borrower's plan to repay the Obligations, in full, on or before February 1, 2022;

Section 6.05 Compliance with Loan Documents. The Borrower shall continue to perform and observe all covenants, terms and conditions and other obligations contained in all of the Loan Documents and this Agreement, except with respect to the Existing Defaults.

Section 6.06 Financial Advisor. The Borrower shall engage, and continue to engage, at its own expense, the services of the Financial Advisor on terms and conditions satisfactory to the Lender.

Section 6.07 Sale of Assets. The Borrower shall not sell, convey, transfer, assign, lease, abandon or otherwise dispose of any of its assets, tangible or intangible (including but not limited to sale, assignment, discount or other disposition of accounts, contract rights, chattel paper or general intangibles with or without recourse), without the Lender's prior written consent. If the Lender grants its written consent, the Borrower shall cause buyer or other transferee to pay all proceeds of such disposition directly to the Lender for application to the Obligations.

Section 6.08 Perfection of Lender's Security Interests. The Borrower shall execute and deliver to the Lender such documents and take such actions as the Lender deems necessary or advisable to perfect or protect the Lender's security interests, Mortgage or liens granted by the Borrower to the Lender.

Section 6.09 Monthly Financial Statements. In addition to any monthly reports required under the Loan Documents, within 15 days after the end of each calendar month, the Borrower shall deliver to the Lender unaudited balance sheets of the Borrower as at the end of such month and the related unaudited statements of income and cash flows, certificated by a director or officer of the Borrower to be complete, true and accurate.

Section 6.10 Other Financial Information. The Borrower shall promptly provide to the Lender such other financial information as the Lender may reasonably request.

Section 6.11 Obligations to Third Parties. The Borrower shall: (i) continue to pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of its liabilities and obligations arising in the ordinary course of business during the Forbearance Period as contemplated by the Weekly Cash Flow; and (ii) without duplication of (i), not default on any of its obligations to any third party.

Section 6.12 Communication with Agents. The Borrower shall allow and facilitate communications between the Lender and Colliers. For certainty, the Lender shall have direct access to Colliers and shall be entitled to deal directly with Colliers in all respects.

Section 6.13 Notice of Adverse Claims. If the Borrower shall become aware that any person or entity is asserting any lien, encumbrance, security interest or adverse claim (including any writ of seizure and sale, garnishment, judgment, execution, civil enforcement order, or similar process or any claim of control) against it or any of its property (each, an "Adverse Claim"), they shall promptly notify the Lender in writing thereof and provide to the Lender all documentation and other information it may request regarding such Adverse Claim.

Section 6.14 Further Assurances. Promptly upon the request of Lender, the Borrower shall take any and all actions, of any kind or nature whatsoever, and execute and deliver additional documents that relate to this Agreement and the transactions contemplated herein.

ARTICLE VII
Indemnification

Section 7.01 Indemnification. The Borrower and the Indemnifier hereby expressly acknowledge, agree and reaffirm their indemnification obligations to the Lender set forth in Section 10 of the Loan Agreement. The Borrower and Indemnifier further acknowledge, agree and reaffirm that all such indemnification obligations set forth in Section 10 of the Loan Agreement shall survive the expiration of the Forbearance Period and the termination of this Agreement, the Loan Agreement, the other Loan Documents and the payment in full of the Obligations. Notwithstanding the foregoing, such indemnity shall not be available to the extent that such claims, damages, losses, liabilities or related expenses result solely from a Lender's or other Indemnified Party's gross negligence or wilful misconduct.

ARTICLE VIII
Release of Claims and Waiver of Defences

Section 8.01 Release of Claims and Waiver of Defences. In further consideration of the Lender's execution of this Agreement, the Borrower and Indemnifier, on behalf of themselves and their successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, and agents, hereby forever, fully, unconditionally and irrevocably waive and release the Lender and its successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, and agents (collectively, the "**Releasees**") from any and all claims, liabilities, obligations, debts, causes of action (whether at law, in equity or otherwise), defences, counterclaims, set-offs, of any kind, whether known or unknown, whether liquidated or unliquidated, matured or unmatured, fixed or contingent, directly or indirectly arising out of, connected with, resulting from or related to any act or omission by any Lender or any other Releasee with respect to the Loan Documents, the Property and any Collateral (collectively, the "**Claims**"). The Borrower further covenants and agrees that it shall not commence, institute or prosecute any lawsuit, action or other proceeding, whether judicial, administrative or otherwise, to collect or enforce any Claim.

ARTICLE IX
Events of Default

Section 9.01 Events of Default. The occurrence of one or more of the following shall constitute a "**Forbearance Default**" under this Agreement:

- (a) The Borrower shall fail to abide by or observe any term, condition, covenant or other provision contained in this Agreement or any document related to or executed in connection with this Agreement.
- (b) The Borrower shall fail to abide by or observe any term, condition, covenant or other provisions contained in the Loan Documents or the Ground Lease.
- (c) A default or event of default shall occur under any Loan Document or any document related to or executed in connection with this Agreement or any of the Loan Documents including, for certainty, the Ground Lease (other than the Existing Defaults).
- (d) The Borrower:
 - (i) becomes insolvent;

- (ii) is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due;
- (iii) (x) commences any proceeding or other action under any existing or future laws relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking: (A) to have an order for relief entered with respect to it; or (B) to adjudicate it as bankrupt or insolvent; or (C) reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (D) appointment of a receiver, receiver manager, interim receiver, trustee, custodian, conservator, or other similar official for it or for all or any part of its assets; or (y) makes a general assignment for the benefit of its creditors;
- (iv) has commenced against it in a court of competent jurisdiction any case, proceeding or other action of a nature referred to in Section Section 9.01(d)(iii) above which (x) results in the entry of an order for relief or any such adjudication or appointment; or (y) remains undismitted, undischarged, unstayed or unbonded for 30 days; or
- (v) ceases to conduct business in the ordinary course.
- (e) A tax lien, warrant or levy is imposed on the Borrower, the Property or any Collateral.
- (f) The Borrower or any of its respective creditors commences a proceeding or other action against the Lender relating to any of the Obligations, Property, Collateral, Loan Documents, this Agreement, or any action or omission by the Lender or its agents in connection with any of the foregoing.
- (g) Any other creditor of the Borrower commences an action against the Borrower seeking to collect any debt, obligation or liability.
- (h) Any representation or warranty of the Borrower made herein shall be false, misleading or incorrect in any material respect when made.
- (i) The Borrower takes an action, or any event or condition occurs or exists, which the Lender reasonably believes in good faith is inconsistent in any material respect with any provision of this Agreement, or impairs, or is likely to impair, the prospect of payment or performance by the Borrower of its obligations under this Agreement or any of the Loan Documents.

ARTICLE X Remedies

Section 10.01 Remedies. Immediately upon the occurrence of a Forbearance Default:

- (a) The Forbearance Period shall immediately and automatically cease, without notice to, or action by, any party.
- (b) The Lender shall be entitled to exercise any or all of its rights and remedies under the Loan Documents, this Agreement, or any stipulations or other documents executed in

connection with or related to this Agreement or any of the Loan Documents, or applicable law, including, without limitation, the appointment of a receiver, receiver manager, interim receiver, trustee, custodian, conservator, or other similar official for the Borrower or for all or any part of the Borrower's assets.

- (c) The Borrower shall cooperate with the Lender's repossession of all personal property Collateral, which the Borrower shall immediately surrender to the Lender upon the Lender's request, at the time and place designated by the Lender.
- (d) The Lender may set off or apply to the payment of any or all of the Obligations, any deposit balances, any or all of the Collateral or proceeds thereof, or other money which the Lender now or hereafter owe to the Borrower.

ARTICLE XI Bankruptcy

Section 11.01 Waiver of Right to File for Bankruptcy Protection. Without the prior written consent of the Lender, the Borrower agrees that it will not institute, or cause to be instituted, against the Borrower, any proceedings under any bankruptcy and insolvency laws, including under the CCAA, the BIA and the *Personal Property Security Act* (Ontario).

Section 11.02 Waiver of Automatic Stay. In the event that the Borrower is the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, the CCAA and the CBCA, the Borrower hereby unconditionally and irrevocably agrees that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on its Collateral and enforce its other rights and remedies under the Loan Documents, or at law and in equity under applicable provincial and federal laws. The Borrower hereby consents to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agrees that it shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy courts.

ARTICLE XII Miscellaneous

Section 12.01 Notices. Any notices with respect to this Agreement shall be given in the manner provided for in the Loan Agreement.

Section 12.02 Entire Agreement. This Agreement and the Loan Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

Section 12.03 Amendments. The terms of this Agreement may only be waived, amended, modified or supplemented by an agreement in writing signed by all the parties hereto.

Section 12.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other

term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 12.05 Full Force and Effect. The Loan Documents shall remain unchanged, in full force and effect, and continue to govern and control the relationship between the parties hereto, except to the extent they are inconsistent with, superseded or expressly modified herein. To the extent of any inconsistency, amendment or superseding provision, this Agreement shall govern and control.

Section 12.06 Successors and Assigns. This Agreement is binding upon and shall enure to the benefit of the parties hereto and their respective heirs, successors and assigns; provided that the Borrower may not assign any rights or delegate any obligations arising herein without the prior written consent of the Lender, and any prohibited assignment shall be absolutely void. The Lender may assign its rights and interests in this Agreement, the Loan Documents and all documents executed in connection with or related to this Agreement or the Loan Documents, at any time, without the consent of or notice to the Borrower.

Section 12.07 Governing Law. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction).

Section 12.08 Submission to Jurisdiction. Any action or proceeding arising out of this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby will be instituted in the courts of the Province of Ontario and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.

Section 12.09 No Waiver. No failure to exercise and no delay in exercising, on the part of the Lender, any right, remedy, power or privilege hereunder or under the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Further, the Lender's acceptance of payment on account of the Obligations or other performance by the Borrower after the occurrence of a default or event of default shall not be construed as a waiver of such default or event of default, or any of the Lender's rights or remedies.

Section 12.10 Cumulative Rights. The rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available by law, in equity or otherwise.

Section 12.11 Reimbursement of Costs and Expenses. The Borrower agrees to pay all costs, fees and expenses of the Lender (including legal fees on a solicitor-and-client basis), expended or incurred by the Lender in connection with the negotiation, preparation, administration and enforcement of this Agreement, the Loan Documents, the Obligations, the Property, any of the Collateral and all fees, costs and expenses incurred in connection with any bankruptcy or insolvency proceeding (including, without limitation, any contested matter or motion brought by Agent or any other person). Without in any way limiting the foregoing, the Borrower hereby reaffirms its agreement under the applicable Loan Documents to pay or reimburse the Lender for certain costs and expenses incurred by the Lender.

Section 12.12 Headings. The Section headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 12.13 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission (that is, .pdf or .tiff) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

**RIVERSIDE PROFESSIONAL CENTRE
INC.**

By: _____
Name:
Title:

**THE K TRUST, BY ITS TRUSTEE,
LAWRENCE BONTJE**

By: _____
Name:
Title:

**THE MANUFACTURERS LIFE
INSURANCE COMPANY**

By: _____
Name:
Title:

**This is Exhibit “BB” referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

STANDSTILL AGREEMENT

This standstill agreement (this "Agreement"), dated as of July 28, 2021, is made by and among Riverside Professional Centre Inc. (the "Borrower") and The Manufacturers Life Insurance Company (the "Lender") and The K Trust, by its Trustee, Lawrence Bontje (the "Indemnifier").

RECITALS

A. The Borrower, the Indemnifier and the Lender are parties to a commitment letter dated December 15, 2011 (as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with its provisions, the "Loan Agreement") pursuant to which the Lender made loans available to the Borrower in the maximum principal amount of \$7,500,000.

B. As security for all of the indebtedness and obligations due to the Lender under the Loan Agreement (collectively, the "Obligations"), the Borrower granted to the Lender a leasehold charge / mortgage of the property municipally known as 1919 Riverside Drive, Ottawa, Ontario (the "Property") dated February 16, 2012 and registered against the Property as Registration No. OC1332366 (the "Mortgage").

C. As additional security for the Obligations, the Borrower executed and delivered to the Lender a general security agreement dated as of February 16, 2012 (the "Security Agreement" and together with the Mortgage, the "Security").

D. The Lender issued a demand for payment and a notice of intention to enforce security on June 16, 2021.

E. The Lender has advised that it intends to proceed with a Court application (the "Application") for the appointment of a receiver in respect of the Collateral, if the parties do not finalize the terms and conditions of a forbearance agreement (a "Forbearance Agreement") on or before August 17, 2021 (the "Standstill Period").

F. The Parties agree to enter into this Standstill Agreement for the purposes set out herein.

G. The Lender has agreed that it will refrain from proceeding with the Application and from otherwise exercising its rights and remedies, provided that the Borrower executes and delivers this Agreement.

NOW THEREFORE in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I Borrower Acknowledgments

The Borrower acknowledges and agrees that:

Section 1.01 Recitals. The foregoing recitals are true and accurate in all respects.

Section 1.02 Loan Documents. The Borrower acknowledges that it executed and delivered the Loan Agreement, Mortgage, Security Agreement and all other agreements, instruments and other documents executed in connection with or relating to the Obligations, the Property or the Collateral (the "Loan Documents").

Section 1.03 Obligations. The Obligations as of close of business on July 1, 2021, were equal to \$5,601,662.59.

Section 1.04 Collateral. The Lender has valid, enforceable and a first ranking perfected security interest in the Property and the Collateral (as defined below). For certainty the Parties agree that the Lender's security interest is a security interest in, and assigns, transfers, sets over, mortgages, charges, hypothecates and pledges to the Lender, all of the personal property of the Borrower now owned or hereafter acquired and all of the personal property in which the Borrower now has or hereafter acquires any right, title and interest (collectively, the "Collateral") including, without limitation, any and all of the:

- (a) inventory of the Borrower;
- (b) equipment, machinery, furniture, fixtures, vehicles and other tangible personal property of every kind and description of the Borrower;
- (c) accounts due, owing or accruing due to the Borrower;
- (d) money, documents of title, chattel paper, instruments, securities and all other financial assets of the Borrower;
- (e) securities accounts of the Borrower;
- (f) intangibles of the Borrower;
- (g) trademarks, trademark registrations and pending trademark applications, patents and pending patent applications, copyrights, proprietary and non-public business information, trade and business names, web names and worldwide web addresses and other intellectual property and industrial property of the Borrower (collectively, the "Intellectual Property");
- (h) authorizations, permits, approvals, grants, licenses, consents, rights, franchises, privileges, orders, decrees and similar entitlements issued or granted to the Borrower by law or by rule or regulation of any public body;
- (i) books, records, files, correspondence, invoices, documents, papers, computer programs, disks and other repositories of data recording or storage in any form or medium, evidencing or relating to the Collateral;
- (j) substitutions and replacements of, and increases, additions and, where applicable, accessions to, the Collateral; and
- (k) proceeds in any form derived directly or indirectly from any dealing with all or any part of the Collateral.

Section 1.05 Purpose of Standstill. The purpose of this Agreement is to provide the parties with a reasonable period of time to negotiate, execute and deliver a Forbearance Agreement.

ARTICLE II
Standstill

Section 2.01 During the Standstill Period, the Lender will not: (i) accelerate the maturity of the Obligations or initiate proceedings to collect or enforce the Obligations; (ii) make an assignment into bankruptcy or join in filing, or support, any involuntary bankruptcy application with respect to the Borrower under the *Bankruptcy and Insolvency Act* (the "BIA"), or otherwise file or participate in any insolvency, bankruptcy, reorganization, moratorium, receivership or other similar proceedings against the Borrower or the Indemnifier under the *Companies' Creditors Arrangement Act* (the "CCAA"), BIA and *Business Corporations Act* (Ontario) (the "OBCA"), or similar statute; (iii) repossess, foreclose upon, or dispose of, the Property or any of the Collateral, through judicial proceedings or otherwise.

ARTICLE III
Miscellaneous

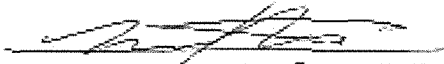
Section 3.01 **Amendments.** The terms of this Agreement may only be waived, amended, modified or supplemented by an agreement in writing signed by all the parties hereto.

Section 3.02 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission (that is, .pdf or .tiff) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.


[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.


RIVERSIDE PROFESSIONAL CENTRE
INC.

By: 
Name: LAWRENCE BONTJE
Title: DIRECTOR

THE K TRUST, BY ITS TRUSTEE,
LAWRENCE BONTJE

By: 
Name: LAWRENCE BONTJE
Title: TRUSTEE

THE MANUFACTURERS LIFE
INSURANCE COMPANY

By: 
Name: Robert Amos
Title: Director, Commercial Mortgages, Credit - Special Assets

**This is Exhibit "CC" referred to in the affidavit
of ROBERT AMOS, SWORN BEFORE ME
this 14th day of September 2021**



A COMMISSIONER FOR TAKING AFFIDAVITS

ALINA STOICA

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

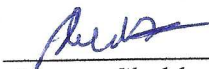
CONSENT

MNP LTD. hereby consents to act as receiver in the above-captioned proceeding.

September 13, 2021

MNP LTD.

Per:



Name: Sheldon Title

Title: Senior Vice-President

I have authority to bind the corporation

THE MANUFACTURERS LIFE
INSURANCE COMPANY

and

RIVERSIDE PROFESSIONAL CENTRE INC.

Applicant

Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

CONSENT

FASKEN MARTINEAU DUMOULIN LLP

333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Dylan Chochla (LSO# 621371)

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Tel: 416 868 3425

Lawyers for the proposed receiver, MNP Ltd.

THE MANUFACTURERS LIFE
INSURANCE COMPANY and
Applicant

RIVERSIDE PROFESSIONAL CENTRE INC.
Respondent

Court File No:CV-21-00668726-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceeding commenced at Toronto

AFFIDAVIT OF ROBERT AMOS
(sworn September 14, 2021)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

David S. Ward LSO#: 33541W
Tel: 416.595.8625
dward@millerthomson.com

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Tel: 416.595.8631
ecraddock@millerthomson.com

Lawyers for the Applicant

Served by Email:

TAB 3

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE) MONDAY, THE 20TH
)
JUSTICE) DAY OF SEPTEMBER, 2021

B E T W E E N:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**ORDER
(appointing Receiver)**

THIS MOTION made by The Manufacturers Life Insurance Company (“**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (“**CJA**”), appointing MNP Ltd. as receiver (in such capacity, “**Receiver**”) without security, of the Property (as defined below) of Riverside Professional Centre Inc. (“**Debtor**”), was heard this day by video conference due to the COVID-19 pandemic.

ON READING the affidavit of Robert Amos sworn September 14, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Debtor, no one else appearing although duly served as appears from the affidavit of service, filed, and on reading the consent of MNP Ltd. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, which property includes, without limitation, the leasehold interest in real property municipally known as 1919 Riverside Drive, Ottawa, Ontario, and legally described as PT LT 16, CON JG, PTS 1 & 2, 5R12853, Ottawa, being all of PIN 04201-0147 (LT), together with the freehold interest in the building located on such real property (collectively, "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby 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 hereby 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 proceeds, 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, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (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, listing 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 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;
- (f) 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 such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) 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;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture, or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its 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 (all of the foregoing, collectively, being “**Persons**” and each being 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 to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons 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 (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 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 the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by 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 onto paper 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 in its discretion require including 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.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that 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

9. **THIS COURT ORDERS** that 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 hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that 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.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that 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 hereby 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 that 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.

13. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that 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 the sale of 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 ("**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

15. **THIS COURT ORDERS** that 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, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained 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 respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (“**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that 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 for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge ("**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that 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.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that 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, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such

amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge ("**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto ("**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (“**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘●’.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United

States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby 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.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that 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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (in such capacity, "**Receiver**") of the assets, undertakings and properties of Riverside Professional Centre Inc. ("**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, which property includes, without limitation, the leasehold interest in real property municipally known as 1919 Riverside Drive, Ottawa, Ontario, and legally described as PT LT 16, CON JG, PTS 1 & 2, 5R12853, Ottawa, being all of PIN 04201-0147 (LT), together with the freehold interest in the building located on such real property (collectively, "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated the ___ day of September, 2021 ("**Order**") made in an application having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate ("**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MNP Ltd. solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

THE MANUFACTURERS LIFE
INSURANCE COMPANY
Applicant

and

RIVERSIDE PROFESSIONAL CENTRE INC.
Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**ORDER
(Appointing Receiver)**

MILLER THOMSON LLP

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Lawyers for the Applicant

TAB 4

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
~~COMMERCIAL LIST~~

(Commercial List)

THE HONOURABLE _____)
JUSTICE _____ )
WEEKDAY MONDAY, THE # 20TH
DAY OF MONTH SEPTEMBER, 20YR
2021

~~PLAINTIFF[†]~~

Plaintiff

BETWEEN:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

~~DEFENDANT~~

Defendant

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

[†]The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

**ORDER
(appointing Receiver)**

THIS MOTION made by ~~the Plaintiff~~² The Manufacturers Life Insurance Company ("**Applicant**") 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**"~~)₂ and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (~~the "**CJA**"~~)₂, appointing ~~[RECEIVER'S NAME]~~ MNP Ltd. as receiver ~~[and manager]~~ (in such ~~capacities~~ capacity, ~~the "**Receiver**"~~) without security, of ~~all of the assets, undertakings and properties of~~ ~~[DEBTOR'S NAME]~~ Property (as defined below) of Riverside Professional Centre Inc. (~~the "**Debtor**"~~) ~~acquired for, or used in relation to a business carried on by the Debtor~~, was heard this day at 330 University Avenue, Toronto, Ontario by video conference due to the COVID-19 pandemic.

ON READING the affidavit of ~~[NAME]~~ Robert Amos sworn ~~[DATE]~~ ●, 2021 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant and the Debtor, no one else appearing ~~for [NAME]~~ although duly served as appears from the affidavit of service ~~of [NAME] sworn [DATE], filed~~, and on reading the consent of ~~[RECEIVER'S NAME]~~ MNP Ltd. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~ notice of ~~Motion~~ application and the ~~Motion~~ application record is hereby abridged and validated³ so that this ~~motion~~ application is properly returnable today and hereby dispenses with further service thereof.

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof ~~(the~~ "_which property includes, without limitation, the leasehold interest in real property municipally known as 1919 Riverside Drive, Ottawa, Ontario, and legally described as PT LT 16, CON JG, PTS 1 & 2, 5R12853, Ottawa, being all of PIN 04201-0147 (LT), together with the freehold interest in the building located on such real property (collectively, "Property"_)".

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby 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 hereby 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 proceeds, 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, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

- (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, [listing 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 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;
- (f) 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 such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) 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;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver,

and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$ ~~_____~~ 50,000, provided that the aggregate consideration for all such transactions does not exceed \$ ~~_____~~ 100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, for section 31 of the Ontario

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

Mortgages Act, as the case may be,⁵ shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture, or other rights which the Debtor may have; and

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its 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 (all of the foregoing, collectively, being "Persons" and each being 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 to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons 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 (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 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 the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by 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 onto paper 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 in its discretion require including 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.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that 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

9. **THIS COURT ORDERS** that 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 hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that 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.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that 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 hereby 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 that 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.

13. THIS COURT ORDERS that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

RECEIVER TO HOLD FUNDS

14. ~~13.~~ **THIS COURT ORDERS** that 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 the sale of 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

15. ~~14.~~ **THIS COURT ORDERS** that 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, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a **"Sale"**). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained 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 respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (~~the~~ **"Environmental Legislation"**), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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 it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. ~~17.~~ **THIS COURT ORDERS** that 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 for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (~~the~~ **"Receiver's Charge"**) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that 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.⁶

20. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

21. ~~20.~~ **THIS COURT ORDERS** that 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, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~ 500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (~~the~~ "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (~~the~~ "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (~~the~~ "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05₃, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>•'.

27. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery₃ or facsimile transmission to the Debtor's₃ creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery₃ or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby 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.

31. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that 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.

32. ~~31.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

33. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ MNP Ltd., the receiver (~~the~~ "in such capacity, "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of Riverside Professional Centre Inc. ("Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, which property includes, without limitation, the leasehold interest in real property municipally known as 1919 Riverside Drive, Ottawa, Ontario, and legally described as PT LT 16, CON JG, PTS 1 & 2, 5R12853, Ottawa, being all of PIN 04201-0147 (LT), together with the freehold interest in the building located on such real property (collectively, ~~the~~ "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (~~the~~ "Court") dated the ___ day of ~~_____~~ September, 20__2021 (~~the~~ "Order") made in an ~~action~~ application having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (~~the~~ "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right

of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~, MNP Ltd. solely in its
capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

THE MANUFACTURERS LIFE
INSURANCE COMPANY
Applicant

and

RIVERSIDE PROFESSIONAL CENTRE INC.
Respondent

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER
(Appointing Receiver)

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Description	#114209007v5<CANADA_EAST> - DRAFT Receivership Order (Riverside) - FMD Comments
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Moved to	0
Style changes	0
Format changes	0
Total changes	318

THE MANUFACTURERS LIFE
INSURANCE COMPANY and
Applicant

RIVERSIDE PROFESSIONAL CENTRE INC.
Respondent

Court File No.:CV-21-00668726-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

APPLICATION RECORD

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