

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**MEMORANDUM OF LAW OF THE RESPONDENT  
(Application returnable October 29, 2021)**

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## **PART I - INTRODUCTION**

1. The Applicant, The Manufacturers Life Insurance Company ("**Manulife**"), commenced an application to appoint MNP Ltd., ("**MNP**") as the receiver and manager of the assets, undertaking and property of Riverside Professional Corporation Inc. ("**Riverside**").

2. All terms not otherwise defined in this memorandum of law shall have the meaning ascribed to them in the affidavit of Larry Bontje, sworn on September 18, 2021 (the "**Bontje Affidavit**")

3. On September 16, 2021 Manulife served an application to appoint MNP as Receiver of Riverside, returnable on September 20, 2021, or two business days after service (the "**Receivership Application**"). At the hearing before Justice Koehnen on September 20, 2021 (the "**September Hearing**") the court adjourned the Receivership Application to October 29, 2021 to permit Riverside to advance its negotiations on refinancing its indebtedness to Manulife.

4. The financing Riverside was pursuing at the September Hearing did not close, in significant part because its landlord, The Ottawa Hospital (the "**Landlord**"), made clear that it would not provide the new lender with an estoppel letter, or any form of comfort, that upon payment of the outstanding property tax arrears, the Ground Lease (as defined in the Bontje Affidavit) would be treated as in good standing. The legal basis for the Landlord's position is unclear, but unfortunately, there was insufficient time to address the issue to the satisfaction of the proposed lender.

5. At the September Hearing, the court advised the parties that if a refinancing had not been completed (or was imminent) by October 29, 2021, the Court would issue an Order in favour of Manulife. As such, this memorandum of law is simply to provide submissions on the form of written order granted. To that end, on October 28, 2021, counsel to Riverside provided counsel to Manulife with a proposed form of Order. This morning Riverside's proposed form of order was rejected by Manulife.

6. Riverside's proposed form of Order would appoint MNP as a court supervised sales agent. The draft form of order, substantially in the form provided to Manulife on October 28, 2021, is attached as **Schedule "C"** (the "**Sales Agent Order**").

## **PART II - LEGAL BASIS FOR SALES AGENT ORDER**

7. The Sales Agent Order, as drafted, would grant MNP full powers to market and sell the Property while compelling Riverside to fully cooperate with MNP.

8. Riverside is requesting that the court consider the Sales Agent Order as a means of preserving Riverside's ability to refinance and redeem Manulife's mortgage up until MNP receives an unconditional agreement of purchase and sale.

9. The Sales Agent Order, as proposed, is not unprecedented, and this Court has recognized the merits of such a process in the context of a receivership.<sup>1</sup>

10. Redemption rights for mortgagors in real property matters are codified under the *Mortgages Act*<sup>2</sup>. Specifically, section 22(1)(a) of the *Mortgages Act* states that:

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<sup>1</sup> See for example the Order of Justice Koehnen dated March 4, 2021, in *Bank of Montreal v. 2592931 Ontario Inc., et al.*, Court File No. CV-21-00658033-00CL

<sup>2</sup> R.S.O. 1990, c. M.40

Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage...

11. The courts have interpreted that the right to redeem “at any time before sale under the mortgage” to mean redemption is available at any time prior to the mortgagee entering into a binding agreement of purchase and sale.<sup>3</sup>

12. From a legal perspective, it is well established that a receiver is an officer of the court and acts in a fiduciary capacity with respect to all parties interested in the assets under the control of the receiver.<sup>4</sup>

13. Once appointed, a receiver cannot be discharged simply because a mortgagor is now in a position to redeem the mortgage. A receiver has fiduciary duties to all stakeholders such that, even a redemption of the mortgagee’s interest would not result in the Property being returned to the mortgagor (in this instance, Riverside). The fiduciary duties include an analysis of all stakeholders’ interests and if they are adequately protected. This process can take several months as some stakeholders (such as the CRA) require many months before they can assess their position. As a result, the legal right of redemption is extinguished on the appointment of the Receiver.

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<sup>3</sup> *Logozzo v Toronto Dominion Bank*, 1999 CanLII 9313 (ON CA) at paras. 22-23

<sup>4</sup> *2027707 Ont. Ltd. v Richard Burnside & Associates et al.*, 2017 ONSC 4022 at para. 22

14. The inability to discharge a court-appointed receiver immediately upon redemption of a mortgage means that Riverside's legal right to redeem is extinguished prematurely by virtue of the Receivership.

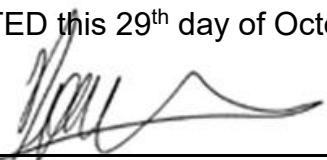
15. From a practical perspective, the appointment of a receiver over Riverside will chill any market available for refinancing the Riverside business. This is because a lender is highly unlikely to provide mortgage financing if Riverside cannot obtain a discharge of the receiver on closing.

16. It is respectfully submitted that the Sales Agent Order balances Manulife's right to proceed with enforcement on its security, while preserving Riverside's right to redeem the mortgage at any point prior to entering into an agreement of purchase and sale. Further, the Sales Agent Order compels Riverside to cooperate with MNP as Sales Agent, and provides immediate and irrevocable powers to return to this court if cooperation is not given.

### **PART III - ORDER REQUESTED**

17. The Respondent respectfully requests that the Court grant the Sales Agent Order, substantially in the form attached hereto at Schedule "C".

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of October, 2021.



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Domenico Magisano and Spencer Jones  
Lerners LLP

Lawyer for the Respondent

**SCHEDULE "A"**  
**RELEVANT STATUTES**

**Mortgages Act, RSO 1990, c. M.40**

**Relief before action**

22 (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee,

the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon the mortgagor is relieved from the consequences of such default.



**SCHEDULE "B"**  
**CASE LAW**

1. *Logozzo v Toronto Dominion Bank*, 1999 CanLII 9313 (ON CA)
2. *2027707 Ont. Ltd. v Richard Burnside & Associates et al.*, 2017 ONSC 4022
3. Order of Justice Koehnen dated March 4, 2021, in *Bank of Montreal v. 2592931 Ontario Inc., et al.*, Court File No. CV-21-00658033-00CL

**SCHEDULE "C"**  
**PROPOSED SALES AGENT ORDER**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE ) FRIDAY, THE 29<sup>th</sup>  
 )  
JUSTICE ) DAY OF OCTOBER, 2021  
 )

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 Sales Agent)**

**THIS APPLICATION** made by the 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**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the "**CJA**") appointing MNP Ltd. as sales agent (in such capacities, the "**Sales Agent**") of all of the assets, undertakings and properties 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 via judicial videoconference at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Robert Amos sworn September 14, 2021, the affidavit of Lawrence Bontje sworn September 18, 2021, the supplementary affidavit of Lawrence Bontje, sworn September 27, 2021, and the respective Exhibits thereto, and on hearing the submissions of counsel for the Applicant, the Debtor, and The Ottawa Hospital, 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 Sales Agent,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Application and the Application Record is hereby abridged and service hereof validated, as necessary, so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that the application to appoint a receiver pursuant to section 243(1) of the BIA and section 101 of the CJA is adjourned *sine die*, returnable on two business days notice, or such earlier time as required in the event of urgency.

3. **THIS COURT ORDERS** that MNP Ltd. is hereby appointed Sales Agent, 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 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**").

## **SALES AGENT NOT IN POSSESSION**

4. **THIS COURT ORDERS** that the Sales Agent shall not operate the Debtor's business or take possession or control of the Property without further Order of the Court.

5. **THIS COURT ORDERS** that the Debtor shall remain in possession of the Property and shall carry on business in the ordinary course and shall not take steps outside of the ordinary course of business to dissipate the Property.

## **SALES AGENT POWERS**

6. **THIS COURT ORDERS** that the Sales Agent is hereby expressly empowered and authorized to do any of the following:

- (a) monitor, but not control, the receipts and disbursements arising out of or from the Property;
- (b) act as Sales Agent for the purposes of undertaking a sales process (the "**Sales Process**") for the Property;

- (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other person from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Sales Agent's powers and duties, including without limitation those conferred by this Order;
- (d) report to, meet with, and discuss with such affected Persons (as defined below) as the Sales Agent deems appropriate on all matters relating to the Property and the exercise of its powers and duties hereunder, and to share information, subject to such terms as to confidentiality as the Sales Agent deems advisable; and
- (e) 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 Sales Agent 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 SALES AGENT**

7. **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 Sales Agent of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Sales Agent.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Sales Agent 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 Sales Agent or permit the Sales Agent to make, retain and take away copies thereof and grant to the Sales Agent access to and

use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 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 Sales Agent due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **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 access to the Sales Agent for the purpose of allowing the Sales Agent 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 Sales Agent in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Sales Agent. Further, for the purposes of this paragraph, all Persons shall provide the Sales Agent with all such assistance in gaining immediate access to the information in the Records as the Sales Agent may in its discretion require.

10. **THIS COURT ORDERS** that the Debtor, all of the Debtor's directors, officers, employees, agents, and shareholders shall cooperate with the Sales Agent in carrying out the Sales Process.

11. **THIS COURT ORDERS** that the Sales Agent shall have access to the Debtor's premises and the Debtor's books and records, and the Debtor's shall take all reasonable steps to ensure that the Sales Agent will have such access, provided however that the Sales Agent shall exercise its right to such access in such a manner to minimally interfere with the Debtor's business.

12. **THIS COURT ORDERS** that the Sales Agent shall be permitted to disclose any information which it obtains with respect to the Debtor or the Property (i) to the Applicant, and (ii) for the purpose of undertaking the Sales Process, but only provided to third parties in the Sales Process after said parties have entered into a suitable non-disclosure agreement, but otherwise shall not disclose such information, except with leave of this Court or as permitted by this Order.

### **NO PROCEEDINGS AGAINST THE SALES AGENT**

13. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Sales Agent except with the written consent of the Sales Agent or with leave of this Court.

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

14. **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 Sales Agent 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**

15. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Sales Agent, or affecting the Property, are hereby stayed and suspended except with the written consent of the Sales Agent 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 Sales Agent or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Sales Agent 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 SALES AGENT**

16. **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 Sales Agent or leave of this Court.

### **CONTINUATION OF SERVICES**

17. **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 leave of this Court.

18. **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 Sales Agent.

#### **PIPEDA**

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Sales Agent 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 Sales Agent, 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 Sales Agent, or ensure that all other personal information is destroyed.

#### **LIMITATION ON THE SALES AGENT'S LIABILITY**

20. **THIS COURT ORDERS** that the Sales Agent 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.

#### **SALES AGENT'S ACCOUNTS**

21. **THIS COURT ORDERS** that the Sales Agent and counsel to the Sales Agent 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 Sales Agent and counsel to the Sales Agent shall be entitled to and are hereby granted a charge (the "**Sales Agent 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 Sales Agent'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.

22. **THIS COURT ORDERS** that the Sales Agent and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Sales Agent and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

### **SERVICE AND NOTICE**

23. **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/>) 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.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sales Agent 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**

25. **THIS COURT ORDERS** that the Sales Agent may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Sales Agent from acting as a receiver or trustee in bankruptcy of the Debtor.

27. **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 Sales Agent 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 Sales Agent, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Sales Agent and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Sales Agent 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 Sales Agent 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.

29. **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 Applicant's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis.

30. **THIS COURT ORDERS** that subject to paragraph 2 of this Order, any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Sales Agent 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.

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*Justice, Superior Court of Justice*

**Schedule "A"**

**SALES AGENT'S CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that MNP Ltd., the Sales Agent (the "**Sales Agent**") of the assets, undertakings and properties of Grand Bend Produce Co. Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Order**") made in an action having Court file number \_\_\_\_\_, has received as such Sales Agent from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Sales Agent 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 Sales Agent 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 Sales Agent 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 London, 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 Sales Agent 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 Sales Agent to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Sales Agent 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 Sales Agent of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

THE MANUFACTURERS LIFE  
INSURANCE COMPANY  
Applicant

RIVERSIDE PROFESSIONAL CENTRE  
and INC.  
Respondent

Court File No.: CV-21-00668726-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**SUPPLEMENTARY RESPONDING  
FACTUM OF THE RESPONDENT**  
(Application returnable  
October 29, 2021)

LERNERS LLP  
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