

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

FAIRVIEW NURSING HOME LIMITED

Respondent

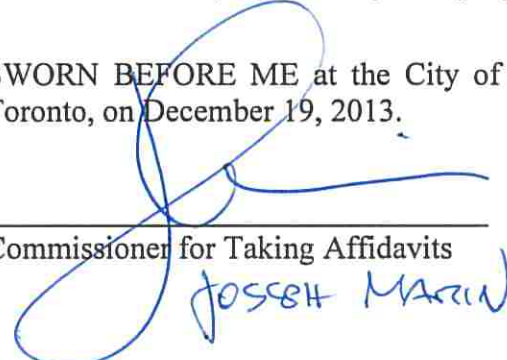
**AFFIDAVIT OF CRAIG A. MILLS
(sworn December 19, 2013)**

I, Craig A. Mills, of the City of Toronto, MAKE OATH AND SAY:

1. I am a partner of the firm Miller Thomson LLP, the lawyers retained by Fairview Nursing Home Limited (“**Fairview**”) in these proceedings.
2. Attached to this my affidavit as Exhibit “A” a copy of an executed letter agreement dated December 18, 2013 among Fairview Nursing Home Limited, The Estate of Herbert Washington Chambers, by its Estate Trustee, The Bank of Nova Scotia Trust Company, Agatha Chambers and Responsive Health Management Inc.
3. This affidavit is made in connection with the application of The Toronto-Dominion Bank for the appointment of BDO Canada Limited as Receiver in respect of a sales process of all of the assets, undertakings and properties of Fairview.

SWORN BEFORE ME at the City of
Toronto, on December 19, 2013.

Commissioner for Taking Affidavits



JOSEPH MARTIN



Craig A. Mills

**This is Exhibit "A" referred to in the affidavit
of CRAIG A. MILLS, SWORN BEFORE ME
this 19th day of December, 2013**

A COMMISSIONER FOR TAKING AFFIDAVITS

JOSEPH MARIN



December 18, 2013

Responsive Health Management Inc.
429 Walmer Road
Toronto, ON M5P 2X9

Attention: Bill Dillane

Dear Bill:

Re: Fairview Nursing Home Limited ("Fairview")

This letter will confirm our arrangements with you for your ongoing management of Fairview's 108 bed long-term care facility located at 14 Cross Street, Toronto, Ontario (the "**Facility**").

The arrangements between us are to reflect the following action steps that Fairview is taking for the sale of Fairview's Facility:

1. Agatha Chambers ("**Agatha**") and the Estate of Herbert Washington Chambers, the shareholders of Fairview (collectively, the "**Shareholders**"), have generated net sales proceeds from the sale of a property municipally known as 98 Concord Avenue, Toronto. The net sales proceeds are in the amount of approximately \$750,000.00 (the "**Concord Property Net Sales Proceeds**").
2. A sales process for the Facility (the "**Sales Process**") will be conducted by BDO Canada Limited. The Sales Process must be completed by June 15, 2015 (the "**Sales Process Termination Date**"). BDO Canada Limited will be appointed as a Court-appointed officer (the "**Sales Officer**") on the application of Fairview's secured lender, the Toronto-Dominion Bank (the "**Lender**"), with the consent of the Shareholders and Fairview.
3. Fairview, the Lender and the Shareholders have agreed that the Shareholders will, from the Concord Property Net Sales Proceeds:
 - (a) pay to the Lender the amount of \$358,000.00 to reduce the indebtedness of Fairview to the Lender in like amount (the "**Lender Indebtedness Paydown**");
 - (b) fund the costs of the Sales Process up to the amount of \$100,000.00 (the "**Sales Process Costs**");
 - (c) fund monthly operating deficits/cash shortfalls of Fairview up to an aggregate of \$242,000.00 during the Sales Process (the "**Monthly Cash Flow Shortfall Requirements**"). You have assisted us in preparing the estimates of the Monthly Cash Flow Shortfall Requirements and you have a copy of those estimates; and
 - (d) fund the costs of a Phase 2 environmental investigation of the Facility's real property up to the amount of \$50,000.00 (the "**Phase 2 ESA Costs**"),
(collectively, the "**Shareholder Advances**").
4. The agreement among Fairview, the Lender and the Shareholders is set out in a Second Forbearance Agreement made as of the 5th day of December, 2013, a copy of which has been provided to you.
5. Fairview has requested that the Ministry of Health and Long-Term Care (Ontario) (the "**MOH**") defer the payment by Fairview, until the earlier of Sales Process being completed and the Sales

Process Termination Date (i) the remaining instalments of \$368,458.30 that is due to the MOH as a result of the MOH's review of Fairview's 2011 audited annual report and (ii) any additional amounts that come due to the MOH as a result of annual reconciliations for 2012 and 2013 that will be filed with the MOH during the Sales Process (collectively, the "**Reconciliation Payable Amount Deferral**").

6. Fairview has agreed to provide you with security (the "**Responsive Security**") to secure the payment by Fairview of all outstanding and unpaid management fees payable to you under the terms of the Facility Management Agreement between us made as of the 30th day of November 2010 (the "**Facility Management Agreement**") for the period up to the date of the granting of the Responsive Security, together with:

- (a) interest on each overdue payment accruing from the payment dates to the date(s) of payment of those amounts at an annual rate of interest of 5% above the reference rate of interest published from time to time by the Lender as its prime rate (the "**Interest**"); and
- (b) up to \$15,000.00 for Responsive's legal fees and disbursements incurred in connection with preparing, negotiating the terms of, finalizing and registering the Responsive Security, such legal fees and disbursements to be payable by Fairview upon submission of all accounts with respect thereto to Fairview for its review.

We agree that as of December 1, 2013, the aggregate amount of outstanding and unpaid management fees payable to you under the terms of the Facility Management Agreement was in the amount of \$654,329.00, exclusive of Interest.

7. You have agreed that the arrangement contemplated herein will satisfy any breach to date of paragraph 7.2(a) of the Facility Management Agreement. Without amending the terms of the Facility Management Agreement, you agree to continue to manage the Facility until the earliest of:

- (a) the sale of the Facility;
 - (b) the occurrence and the continuation for at least five (5) days after such occurrence of a future default in the funding of the Monthly Cash Flow Shortfall Requirements in accordance with the terms of the Second Forbearance Agreement (including any default in the payment to you of any monthly management fee to which you are entitled under the terms of the Facility Management Agreement);
 - (c) the termination of the Sales Process without a sale of the Facility;
 - (d) the Sales Process Termination Date; and
 - (e) a default by Fairview under the Second Forbearance Agreement and/or the enforcement, as a consequence of such default, by the Lender of the security granted to the Lender by Fairview (other than any actions by the Lender to appoint the Sales Officer).
- (each, a "**Termination Event**").

8. You agree that your purchase rights with respect to the Facility in Article 14 of the Facility Management Agreement ("**ROFR**") will be suspended during the Sales Process and with respect to the Lender. For greater certainty, you hereby irrevocably waive any rights under the ROFR with respect to any sale of the facility under the Sales Process or by the Lender in enforcing its security.

9. The Responsive Security shall be subordinate to:

- (a) the security granted by Fairview to the Lender;
- (b) the security to be granted to the Shareholders by the Sales Officer for the Shareholders Advances (the "Shareholders' Security");
- (c) the Court-ordered security in favour of the Sales Officer; and
- (d) leases and security interests in favour of ordinary course of business equipment suppliers of Fairview.

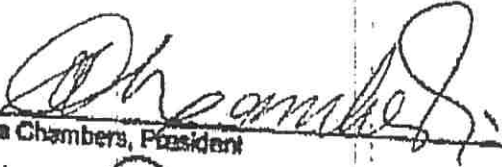
You will enter into such postponement and subordination arrangements with the Lender which the Lender may reasonably request with respect to the Responsive Security.

10. Our arrangements will be effective and operative on the latest of the dates on which:
 - (a) the Reconciliation Payable Amount Deferral is approved by the MOH;
 - (b) the Responsive Security is granted to you by Fairview;
 - (c) the Sales Officer is Court-appointed; and
 - (d) the payment to the Lender of the Lender Indebtedness Paydown is made(the "Effective Date"), provided that the Effective Date shall be a date on or before January 30, 2014.
11. You agree that upon a Termination Event you will not terminate the Facility Management Agreement and your management of the Facility after the Effective Date until the expiry of sixty (60) days after written notice of termination of the Facility Management Agreement has been given to Fairview and to the Shareholders (or such lesser time to which Fairview may agree to enable Fairview to engage the services of a replacement manager of the Facility and to obtain the consent of the MOH to such replacement management arrangements). You also agree that you will not terminate the Facility Management Agreement for any default of Fairview occurring prior to the date of this letter agreement.
12. Fairview agrees that you will manage the revenues and receipts of Fairview from its Operating Account in accordance with the terms of the Facility Management Agreement but subject to the terms of the Order appointing the Sales Officer.
13. The security granted to Agatha in the personal property of Fairview securing the repayment of her advances to Fairview aggregating the amount of \$165,000 will rank *pari passu* with the Responsive Security, and Agatha Chambers will, on or before the Effective Date, enter into an agreement with you confirming this *pari passu* ranking of her security.
14. Should Fairview require additional funds for operational or capital expenditure purposes that are not funded by the Shareholders' Advances, either you or the Shareholders may (but shall not be obligated to) advance the required funding for that purpose with the prior consent of Fairview, and repayment of any advances so made shall be secured by Fairview's assets under security to be granted by the Sales Officer ranking *pari passu* with the Shareholders' Security.



Please confirm your agreement to the foregoing arrangements

Yours very truly,



Agatha Chambers, President



Lisa Chambers, Treasurer Secretary



We agree to the foregoing arrangements, this 19 day of December, 2013.

The Estate of Herbert Washington
Chambers, by its Estate Trustee, The
Bank of Nova Scotia Trust Company

Per: _____
Name: _____
Title: _____

SIGNED, SEALED AND DELIVERED
in the presence of

Witness

Agatha Chambers
Agatha Chambers

We agree to the foregoing arrangements, this 19 day of December, 2013.

Responsive Health Management Inc.

Per: CW Dillon
Name: CW Dillon
Title: PRESIDENT
I/We have the authority to bind the corporation

THE TORONTO-DOMINION BANK
Applicant

FAIRVIEW NURSING HOME LIMITED
Respondent

And

Court File No: CV-13-10365-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF CRAIG A. MILLS
(SWORN DECEMBER 19, 2013)**

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