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CANADIAN COMMERCIAL REAL ESTATE MANUAL McDermott Release No. 4, December 2024
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Publisher's Special Release Note 2024

The pages in this work were reissued in February 2024 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the February 2024 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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The *Canadian Commercial Real Estate Manual* addresses the unique requirements of the commercial real estate industry. It covers the critical stages of development from acquisition through property management. The primary tabs are: Remedies (Mortgage), Financing, Taxation and Investment Analysis, Development and Conveyancing, Agreements, Precedents and Checklists.

This release features updates to the case law and commentary in Chapter 26 (Development Agreements), Chapter 31 (Acquisitions and Dispositions), and Chapter 47 (An Analysis of Ground Lease Provisions).

Highlights

Acquisitions and Dispositions — Zoning — Development Permit — Condition for Upgrading Water Supply — Developer Applying to Delete Condition — Development Authority and Development Appeal Board Dismissing Application — Tribunals Relying on Fire Underwriters Survey — Whether Survey Constituting Municipal “Policy” — Survey Not Posted on Municipal Website — Leave to Appeal Granted — Issue of Scope of Definition of “Policy” in Municipal Government Act (Alberta) — Where the developer obtained a development permit with the municipality, and later sought to delete the condition requiring an upgrading of the water supply, and the developer’s application to the development authority, and appeal to the Subdivision and Development Appeal Board were dismissed, the developer was granted leave to appeal to the court, as the reliance by the authority and the Board on a Fire Underwriters Survey might constitute a municipal “policy” under s. 638.2 of the Municipal Government Act, R.S.A. 2000, c. M-26, that had not been posted on the municipality’s website. In this case, the developer obtained a development permit for the construction of an apartment complex. One condition of the permit was the upgrading of the water supply to ensure adequate water for fire suppression. After construction commenced, the developer applied for a variation of the permit to delete this condition. The developer relied on the minimum standard set out in the Building Code. The development authority denied the application, and the Subdivision and Development Appeal Board (Board) dismissed the developer’s appeal. The Board agreed with development authority that the upgrade was necessary to serve the development. The Board also agreed with the development authority’s reliance on the 1999 Fire Underwriters Survey as the reasonable standard in determining whether the water supply upgrade was necessary. The Board concluded that the road agreement did not deal with the supply of water, and gave it no weight. The developer asserted the 1999 Fire Underwriters Survey did not meet test for “policy” in s. 638.2 of the Municipal Government Act, R.S.A. 2000, c. M-26, as it was not posted on the municipality’s website. The developer brought an application

for leave to appeal. The developer's application was granted in part: *Glamorgan Landing Estates GP Inc. v. Calgary (City of)*, 2022 CarswellAlta 3109, 2022 ABCA 348, 32 C.L.R. (5th) 187 (Alta. C.A.).

Special Agreements — Leases — Drafting Considerations — Term — Option to Purchase - Exercise of Option — Explicit and Unequivocal Notice Required — Strict Compliance With Terms of Lease — In order for a tenant's option to purchase to be enforceable, the exercise of the contractual option in the lease had to be clear, explicit, unequivocal and in strict conformity with its terms. In this case, the tenant and the landlord signed two commercial leases for the landlord's two properties. The amendments to the leases extended their terms to November 30, 2023, and gave the tenant an option to purchase the properties, which options would expire on October 2, 2023. It was further specified that if the option was exercised, the parties would enter into an OREA Agreement of Purchase and Sale form within 10 days of the date of notice. In May 2022, the Tenant sent an email message stating that they were still good for the purchase/closing on September 1, 2022. In January 2023, the tenant sent a letter to the landlord giving notice that it was exercising the option to purchase both properties with the closing to be in 60 days pursuant. The landlord responded that the notice was invalid as the tenant failed to comply with the commitment confirmed in May 2022. On January 21, 2023, the tenant sent the landlord signed offers to purchase the properties on OREA Agreement of Purchase and Sale forms. The parties did not execute an OREA form for either of the properties. The tenant brought an application for declaration that it exercised option to purchase properties. The tenant's application was granted: *Roof Tile Management v. Pieternick Properties*, 2023 CarswellOnt 15173, 2023 ONSC 5586, 54 R.P.R. (6th) 268 (Ont. S.C.J.).