

COURT FILE NUMBER      643 of 2016

COURT                      QUEEN'S BENCH FOR SASKATCHEWAN  
                                    IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE        SASKATOON

APPLICANTS              101133330 SASKATCHEWAN LTD. and  
                                    101149825 SASKATCHEWAN LTD.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.

**AFFIDAVIT OF JOHN ORR**

I, JOHN ORR, of the City of Saskatoon, in the Province of Saskatchewan, businessman,  
MAKE OATH AND SAY (or AFFIRM) THAT:

1. I am the sole director, a shareholder, and the president of each of the applicants, 101133330 Saskatchewan Ltd. ("33330") and 101149825 Saskatchewan Ltd. ("825"), such that I have personal knowledge of the facts and matters hereinafter deposed, except where stated to be on information and belief and, where so stated, I believe the same to be true.
2. Corporate profile reports for 33330 and 825 are attached as Exhibits "A" and "B," respectively.

**I. BACKGROUND TO 825**

**A. The Share Purchase Agreement**

3. 825 was incorporated in 2009 pursuant to the laws of Saskatchewan, with its registered office located at Regina, Saskatchewan.

4. I was not involved with the incorporation; rather, I was approached by one of 825's shareholders about purchasing 825 on or about November of 2014. It was explained to me that 825's primary asset was a 15.84 acre parcel of land located near the Willows Golf Course and legally described as Surface Parcel #136165091 Blk/Par A Plan No 101456197 Ext 76, as described on Certificate of Title 73S02684, description 76 (the "**825 Land**"). Attached and marked as Exhibit "C" to this affidavit is a copy of the title to the 825 Land obtained from the Land Titles Registry for Saskatchewan dated April 19, 2016.

5. In November of 2014, the 825 Land was part of the Rural Municipality of Corman Park No. 344; however, it was explained to me that the City of Saskatoon (the "**City**") was planning to annex the parcel on January 1, 2016, which, in my view, gave it potential to be rezoned and developed at a significant profit. With this information, I developed a plan to rezone the 825 Land, and then construct a series of seniors' residences adjacent to a golf course (the "**825 Development Plan**"). Once rezoned, it was estimated that the 825 Land could be worth as much as \$18 million.

6. I made an offer to purchase the shares in 825 in or about December of 2014 that was accepted in early January of 2015 (the "**Share Purchase Agreement**"). The purchase price was \$5.5 million, to be paid by way of an initial deposit of \$250,000.00, with the balance of to be paid on the January 30, 2015 closing date.

7. My attempts to secure financing for the balance of the purchase price fell through and I was unable to close on January 30, 2015 as planned. Negotiations ensued, and the closing date was extended to April 24, 2015. As a condition of the extension, the vendor required an additional \$50,000.00 deposit and that the purchase price be increased by \$250,000.00.

8. There were further delays in arranging for the financing of the purchase price such that the April 24, 2015 deadline was similarly unable to be met. I believe that a major reason for my inability to secure financing was the fact that the 825 Land had yet to be annexed by

the City.

9. Eventually, pursuant to a Commitment Letter dated June 23, 2015, Firm Capital Mortgage Fund Inc. (“**Firm Capital**”) committed to advancing \$3.5 million, and I was able to negotiate an additional \$2.1 million loan from Mr. Frank Pa (“**Pa**”). The particulars of the security for these loan arrangements are discussed in more detail below.

10. In order to proceed with the Share Purchase Agreement, the vendor insisted that the total purchase price be increased. In light of the state of the financing, however, it was understood that there would be a shortfall on the purchase price of approximately \$1,926,940.00 (the “**Shortfall**”). As a result of the annexation of the 825 Land, which occurred on September 1, 2015, the parties to the transaction were of the view that the 825 Land had already increased in value such that it was likely I would be able to obtain additional financing to pay the Shortfall within the nine month period following September 1, 2015.

11. In order to accommodate the Shortfall, I executed a separate document prepared by the vendor’s solicitor in which, among other things, the Shortfall was classified as a loan from the vendor, his business associate, and a numbered company controlled by said associate (the “**Lenders**”) that was payable on demand, with the demand not to be made before the expiration of nine months from the execution of the same (the “**Loan Agreement**”).

12. As part of the Loan Agreement, I was required to provide, among other things, certain items of collateral to the Lenders as security, including convertible debentures in 825 totaling the amount of the Shortfall, which debentures were to be convertible to shares in 825 in the event of default.

13. The Share Purchase Agreement finally closed in or about October of 2015. By that

time market conditions had changed considerably such that parties who had previously expressed interest in advancing additional funds to finance the 825 Development Plan were no longer willing to proceed. 825 does not have any employees or sources of income, and I have since been unable to secure any additional funds to retain the consultants and other professionals necessary to implement the 825 Development Plan.

**B. Assets of 825**

14. 825's sole assets are the 825 Land and the cash from the Pa Reserve Deposit (as that term is defined below).

15. Attached and marked as Exhibit "D" to this Affidavit is a copy of an appraisal of the 825 Land prepared by B.R. Gaffney & Associates dated August 25, 2015 (the "**825 Land Appraisal**"), which discloses an estimated value of \$19 million based on the premise that the 825 Land is annexed by the City, subdivided into two discrete parcels, and rezoned to accommodate medium-density multi-family development and urban institutional uses.

16. As described above, only the annexation has occurred such that the 825 Land Appraisal does not represent the present value of the 825 Land as is.

17. Prior to the execution of the Share Purchase Agreement there was a competing offer to purchase the shares of 825 for \$4.8 million, whereas I myself was willing to pay \$6.3 million for the same based on the potential to rezone and develop the 825 Land for a significant profit. Based on the foregoing, as well as my knowledge of the 825 Land, its location, and the current market, I believe that the 825 Land is presently worth approximately \$5 million.

18. As discussed above, my intention in purchasing 825 was to implement the 825 Development Plan; however, in the context and circumstances of these proceedings, 825 is

seeking to proceed with the rezoning and subdivision of the 825 Land, thereby increasing its value as estimated in the 825 Land Appraisal, with the 825 Land to then be liquidated under the court's supervision (the "**825 Land Plan**"). It is the applicants' belief that the 825 Land Plan would allow the affiliate applicants to "unlock" the equity in the 825 Land and utilize it for the benefit of the applicants' collective stakeholders, including their unsecured creditors.

19. 825 has had discussions with Stantec Engineering Inc. ("**Stantec**") with a view to initiating the 825 Land Plan. Attached and marked as Exhibit "E" to this affidavit is a copy of a proposal prepared by Stantec, detailing the milestones and attendant costs required to complete the 825 Land Plan (the "**825 Land Plan Costs**").

**C. Liabilities of 825**

**(i) Firm Capital**

20. Pursuant to a Commitment Letter dated June 23, 2015, and an Amendment to the Mortgage Loan Commitment dated August 4, 2015, Firm Capital advanced a joint loan of \$3.5 million to 33330 and me in my personal capacity (the "**Firm Capital Loan**"), which was applied to the purchase price under the Share Purchase Agreement.

21. The Firm Capital Loan is secured by, among other things:

- (a) a \$3.5 million first mortgage against the 825 Land dated September 1, 2015 (the "**825 Firm Capital Mortgage**");
- (b) a general security agreement dated September 23, 2015 granting Firm Capital a security interest in the 825 Land and all 825's present and after-acquired property;
- (c) a Cash Pledge Agreement dated September 23, 2015, pursuant to which 825 provided Firm Capital with a \$300,000.00 interest reserve deposit (the "**Firm Capital Reserve Deposit**");

- (d) an undated Assignment of Rents and Leases; and
- (e) an Assignment of Purchase and Sale Contracts dated September 23, 2015.

22. Since the date of the Firm Capital Loan, 825 has been making “interest only” payments in respect of the same from the Firm Capital Reserve Deposit.

(ii) **Pa**

23. Pa loaned an additional \$2.1 million to 33330 and 825, which funds were put towards the purchase price under the Share Purchase Agreement (the “**PA Loan**”). The PA Loan is secured by, among other things, a second mortgage against the 825 Land dated September 17, 2015 as well as the Orr Centre (as that term is defined below) (the “**PA Mortgage**”).

24. Since the date of the Pa Loan, interest only payments have been made from a reserve fund provided by 825 to Pa (the “**Frank Pa Reserve Deposit**”). Since the filing of the applicants’ Notices of Intention to Make a Proposal on April 20, 2016, Pa has voluntarily agreed to return the Frank Pa Reserve Deposit, and such funds in the amount of approximately \$119,000.00 have been received by 825’s legal counsel in trust, and are incorporated into its cash flows appended to this Affidavit.

(iii) **The Loan Agreement**

25. The Loan Agreement was executed in my personal capacity. The Shortfall is a personal obligation, but is secured by, among other things, convertible debentures in 825 totaling the amount of the Shortfall. The Shortfall has therefore been recorded in 825’s records as an obligation of the company.

(iv) **Property Taxes**

26. Property taxes in regard to the 825 Land have been paid up to and including December 31, 2015. 825 has yet to receive its Property Tax Notice from the City in relation to the 825 Lands; however, I spoke to a City official, and verily believe it to be true, that the 825 Land's annual tax has been assessed at \$4,975.72, which amounts to prorated payments of \$414.64 per month.

**D. Insolvency of 825**

27. A draft of 825's financial statement based on the most current information available is attached as Exhibit "F."

28. As stated therein, I believe the 825 Land to be worth \$5 million in its present state. Further, 825 has no income, and therefore no ability to meet its obligations in respect of the Firm Capital Loan, the Pa loan, or the 825 Land's property taxes as the same become due.

29. The 825 Firm Capital Mortgage will mature on June 23, 2016, at which time there will be no ability to repay the \$3.5 million that is owed. Firm Capital has indicated that it will not renew the mortgage when it matures.

30. Similarly, the Frank Pa Loan will go into default when the Frank Pa Mortgage matures on September 15, 2016, as neither of the applicants will be in a position to repay the \$2.1 million plus interest that will be owed at that time.

31. Pursuant to the terms of the Loan Agreement, the Lenders may demand the Shortfall on June 8, 2016. I will be unable to pay the Shortfall within the 15 day period that follows any such demand, and accordingly, the Lenders may seek to convert the debentures into

shares in 825 for the amount of the Shortfall.

32. On April 20, 2016, 825 filed a Notice of Intention to make a proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) (the “**825 NOI**”). To date none of the creditors of 825 have taken issue with the fact that it is insolvent in the context of the 825 NOI proceedings.

33. Attached and marked as Exhibit “G” to this Affidavit is a copy of Saskatchewan Personal Property Registry search results for 825.

## **II. BACKGROUND TO 33330**

### **A. The Campus and Orr Centre**

#### **(i) Purchase**

34. 33330 was incorporated in November of 2008 pursuant to the laws of Saskatchewan, with its head office located at Regina, Saskatchewan. The purpose of 33330’s incorporation was to carry on business as an engineering and consulting firm specializing in land development.

35. Western Christian College was a bible school that served as the educational arm of the Churches of Christ of Western Canada (the “**College**”). My family was involved with College for many years. My grandfather, Wilfred Orr, was involved in establishing a College facility in Southern Saskatchewan, which later purchased and moved to a campus at 4400 4<sup>th</sup> Avenue, Regina, Saskatchewan in or about 2003 (the “**Campus**”). The Campus is located at the northwest corner of 4th Avenue and Lewvan Drive, a major north-south artery that connects to both Highway #11 and Highway #1, and its legal description is as follows:



- (a) Surface Parcel #164659517, Blk/Par A Plan No 75R32425 Ext 3 as shown on Plan 102009237;
- (b) Surface Parcel #153232691, Blk/Par E Plan No 75R32425 Ext 1 as shown on Plan 101830216;
- (c) Surface Parcel #109733946, Lot 7Blk/Par 28 Plan No 59R20949 Ext 0 as described on Certificate of Title 59R20949; and
- (d) Surface Parcel #161594129, Lot 9 Blk/Par 28 Plan No 101889344 Ext 0.

36. Attached and marked collectively as Exhibit “H” to this Affidavit are copies of the Land Titles Registry titles for the four parcels described in the preceding paragraph which comprise the Campus. The Campus includes eight buildings totaling 165,599 square feet on 10.39 acres of property zoned for institutional use.

37. In late 2011, the College was experiencing financial difficulties due to limited enrollment and high operating costs, and approached me about making a donation. These discussions evolved and resulted in 33330 entering an agreement for sale with the College in respect of the Campus. It was at this time that 33330 assumed control of the Campus and the largest building on the Campus was renamed the “Orr Centre.” As part of the transaction, the College remained as a tenant in the Orr Centre at a nominal rental fee; however, the College continued to struggle, and at a meeting in January of 2012, the members voted to close the College in the following June.

38. In February of 2012, I was approached by the University of Saskatchewan, which proposed executing a long-term lease of ten years with two five year renewal options (the “**U of S Lease**”) in favour of the Orr Centre for the purpose of housing the University’s Nursing Program in Regina commencing in September of 2012. The potential U of S Lease allowed 33330 to obtain the financing necessary to complete the purchase of the Campus from the College earlier than anticipated.

39. The ultimate business plan for the Orr Centre focused on running it solely as a business and attempting to attract a diverse group of long-term tenants, while the long-term plan for the overall campus was to repair and upgrade the dorm buildings, and, ultimately, to construct a seniors' home on a portion of the Campus.

(ii) **Improvements**

40. I have determined from my review of 33330 Financial Statements (as that term is defined below), and I believe it to be true that, upon acquiring the Orr Centre in 2012, 33330 had receivables of approximately \$50,000.00 per year from leases with its tenants. By 2013, however, 33330 had succeeded in increasing its rental income from the Orr Centre by over \$1 million.

41. The increase in revenue was not without a cost, however. Because of its distressed financial circumstances and declining enrollment, the College had let the Orr Centre and dormitories fall into disrepair. Consequently, at the outset, it was necessary for 33330 to spend a significant amount of capital on improvements, upgrades, and other maintenance to the facilities. While this work has allowed the Orr Centre to secure various non-profit, commercial, and institutional tenants, including the University of Saskatchewan Nursing Campus, the Queen City Collegiate High School, a daycare, office and retail space, a library, a light industrial shop, classrooms, a gymnasium, a restaurant, and a 1000-seat theatre, 33330 has spent approximately \$1 million per year addressing issues with the physical state of the facilities themselves.

42. In addition, the Campus as a whole remains underutilized. For example, 33330 invested significant capital to upgrade one of the five dormitory facilities, installing such amenities as in-room showers and bathrooms to replace the common showers and bathrooms in hopes more nursing students would rent rooms in the dormitories, which would have other effects such as increased business for the Orr Centre's restaurant. Unfortunately, the year-to-

year vacancy rate in the dormitories remains high and steps need to be taken to maximize the utilization of these facilities in order to increase the current revenue stream of the Orr Centre.

43. Other potential sources of revenue which were initially identified for the Orr Centre, but which have not been fully realized, include:

- (a) parking income derived from approximately 290 stalls located at the Orr Centre;
- (b) rental income derived from the theatre;
- (c) income from the Racquetball Courts (as that term is defined below); and
- (d) rental income from the lease of a significant amount of vacant office space.

(iii) **Revenue Loss and Operational Challenges**

44. In late 2014, the Provincial Government of Saskatchewan significantly cut grants to non-governmental organizations. The funding cuts affected various non-governmental organizations who were tenants of the Orr Centre at the time and, as a result of such funding cuts, several organizations were unable to afford the rent and therefore gave up their leases at the Orr Centre. Such organizations included Greystone Bereavement, Federation of Saskatchewan Indian Nations, Native Aboriginal Indigenous Games, and 3sHealth.

45. I have determined from my review of the 33330 Financial Statements, and I believe it to be true that, as a result of the lost tenancies described in the preceding paragraph, the rental income from the Orr Centre significantly decreased from 2013 to 2014 (the “**Revenue Loss**”).

46. After the Revenue Loss, 33330 attempted to attract new tenants to the building. For example, the company worked with a local racquetball club to obtain several racquetball courts (the “**Racquetball Courts**”) formerly used at the Pan Am Games by donation. 33330

attempted to do the same with a local squash club; however, we were unable to secure the squash courts by donation. The racquetball club remains a present tenant of the Orr Centre.

47. Also after the Revenue Loss, 33330 attempted to negotiate a deal with a contracting company for the use of a significant number of dormitory rooms for local workers. Unfortunately, the contractor with whom we were working lost its contract with the mining company and the opportunity did not come to fruition.

48. In exploring other options to capitalize on the campus I obtained conceptual designs and appraisals to determine whether the construction of the senior's centre on the Campus referred to above was feasible. Attached hereto and marked collectively as Exhibit "I" are true copies of a Conceptual Design of a Senior Apartment Project completed by Wisehub Designs and an Appraisal Report completed by Lawrek Johnson Bird Appraisals and Consulting Ltd. These documents estimate that the value of the property would be \$58.695 million if the improvements were complete. The project has been unable to proceed due to a lack of funding.

49. Since the Revenue Loss, 33330 has also identified a number of operational challenges (collectively, the "**Operational Challenges**"), including:

- (a) apparent theft of alcohol and/or cash profits from alcohol sales at the restaurant and Orr Centre events and potential theft of cash generally;
- (b) poor marketing, site, and event management; and
- (c) food waste.

50. In addition, it was recently discovered that the manager of the Orr Centre was not depositing all Orr Centre funds into 33330's bank accounts. This discovery has also led me to question whether there are other irregularities in the financial information presented by the manager, and whether there are other figures which have been misstated. The manager was

terminated effective Friday, May 6, 2016, and an investigation has commenced, along with a concerted effort to address the Operational Challenges and improve 33330's cash flows.

51. In May of 2015, 33330 employed approximately 21 total employees. As a result of the ongoing financial difficulties, 33330 has since terminated 12 employees for a cost savings of between \$15,000.00 and \$20,000.00 per month. There are currently only six full time employees of 33330.

(iv) *Stakeholders of the Orr Centre*

52. Under the U of S Lease, the University of Saskatchewan pays \$45,914.42 per month for the first five years of this lease, and \$47,700.98 for the next five years. There are approximately 300 nursing students, whose education would be severely disrupted and postponed by the closure of the Orr Centre. The University of Saskatchewan has made substantial leasehold improvements to its space, and 33330 expects it to be the "keystone" tenant moving forward.

53. In addition to the U of S Lease there are a number of other tenants whose operations would be similarly disrupted or terminated by the closure of the Orr Centre, namely:

- (a) Queen City Collegiate High School, which has between 15 and 30 students depending on the year, and leases approximately 4,000 square feet of space under a term of five years expiring July 31, 2016, at the rate of \$48,000.00 per year;
- (b) Northwest Church of Christ, which leases approximately 400 square feet of office space under on a month-to-month basis, at the rate of \$12,000.00 per year;
- (c) Saskatchewan Association Of Licensed Practical Nurses, which leases approximately 3,000 square feet of office space under a term of ten years expiring December 31, 2021, at the rate of \$60,000.00 per year;
- (d) Trent Wotherspoon, MLA, who leases approximately 605 square feet of office space under a term of five years expiring January 1, 2018, at the rate of \$15,125.00 per year;

- (e) the United Food Commercial Workers Local 1400, which leases approximately 536 square feet of space under a term of five years expiring March 31, 2016, which is now on a month to month basis at the rate of \$10,720.00 per year;
- (f) Darlene Tincher, who leases approximately 108 square feet of space on a month to month basis, at the rate of \$1,254.00 per year;
- (g) Arnie Davis, who leases approximately 100 square feet of space on a month to month basis, at the rate of \$975.00 per year;
- (h) Reiki Day Spa, which leases approximately 312 square feet of space on a month to month basis at the rate of \$4,680.00 per year;
- (i) Lynear Thinking, which leases approximately 605 square feet of space on a month to month basis at the rate of \$13,680.00 per year;
- (j) Fred Taylor, who leases approximately 277 square feet of space on a month to month basis at the rate of \$4,155.00 per year;
- (k) SaskTel, which leases space for a communications tower mounted on the Orr Centre under a term of five years expiring November 1, 2019, at the rate of \$19,200.00 per year;
- (l) Regina Racquetball and Sportplex, which leases approximately 9,000 square feet of space under a term of five years expiring December 31, 2020, at the rate of \$30,000.00 per year; and
- (m) Prometric Testing Centre, which leases approximately 864 square feet under a three year term expiring July 1, 2018, at the rate of \$22,680 per year.

54. It should be noted that our former manager was responsible for negotiating these leases, and therefore I am in the process of undergoing a review of all tenant leases and determining whether these figures are accurate and current.

55. The Orr Centre also hosts a 60-place daycare facility (operated by a non-profit company controlled by 33330 and me), which currently has 30 children who, along with their families, would be severely disrupted and inconvenienced by the closure of the Orr Centre. It is the Orr Centre's second biggest tenant, leasing approximately 5,500 square feet of office

space under a term of five years expiring August 1, 2019, at the rate of \$180,000.00 per year.

56. Other stakeholders who would be affected by the closure of the Orr Centre are various community and youth organizations which utilize the theatre for such events as dance competitions.

57. Presently, there are six full-time and two part-time employees working at the Orr Centre who will lose their jobs if the Orr Centre closes.

**B. Assets of 33330**

**(i) The Campus and Orr Centre**

58. 33330's primary assets are the Campus and Orr Centre. Attached and marked as Exhibit "J" is a copy of a real estate appraisal of the Orr Centre, prepared by B.R. Gaffney & Associates and dated August 28, 2015 (the "**Orr Centre Appraisal**"). I have determined from my review of the Orr Centre Appraisal, and I believe it to be true, that the appraised value stated therein is \$23.57 million based on the assumptions that:

- (a) certain renovations have occurred;
- (b) the rental income is \$2,929,251.53 per annum; and
- (c) certain vacant spaces will be rented in the near future.

59. These assumptions have not currently been satisfied as many of the renovations have not been completed. For example, there are two dorm buildings which the Orr Centre Appraisal assumes are in use, but in reality have been shuttered and not operational since the College became unable to perform the necessary repairs. One building was not properly winterized by the College such that the pipes burst. The building has no value in its current state. The second building was stripped down to be renovated and used as dorms by the

University of Saskatchewan nursing students. There was not enough demand for these dorms, and therefore the renovation was suspended. This building is not currently in a rentable state.

60. I have had discussions with potential lenders with respect to the present value of the Campus and Orr Centre as is. One such lender estimated the current value at between \$5 million and \$6 million, whereas another went so far to say it could be as low as \$3 million based on the fact that there are only two significant long-term lease arrangements. Based on the foregoing, as well as my knowledge of the Campus and Orr Centre, their location, and the current market, I believe that the present value of the same is between \$3 million and \$6 million.

(ii) **The Prince Albert Condo Units**

61. In addition to the assets described thus far, 33330 is the registered owner of two condominium units:

- (a) Unit B – 201 10<sup>th</sup> Street East, Prince Albert, Saskatchewan, which is legally described as Unit #2 in Condo Plan #102042212 with 2511/10000 shares of common property in Condominium Parcel #165090281, Reference Land Description: Condo Plan No 102042212 Extension 0 (“**Unit B**”); and
- (b) Unit D – 201 10<sup>th</sup> Street East, Prince Albert, Saskatchewan, which is legally described as Unit #4 in Condo Plan #102042212 with 2489/10000 shares of common property in Condominium Parcel #165090281, Reference Land Description: Condo Plan No 102042212 Extension 0 (“**Unit D**”).

62. Attached and marked as Exhibits “K” and “L”, respectively, are land titles for the Unit B and Unit D obtained from the Land Titles Registry for Saskatchewan on May 8, 2016.

63. Attached and marked to this Affidavit as Exhibit “M” is a copy of an appraisal in regard to Unit B completed by Ring Appraisals Ltd. as of June 12, 2013 (the “**Unit B Condo Appraisal**”). Based on my review of the Unit B Condo Appraisal, I believe it to be true that



the value of Unit B is approximately \$230,000.00. While I do not have an appraisal for Unit D, it is part of the same complex as Unit B and nearly identical. I therefore believe that the value of Unit D is approximately \$230,000.00 as well.

64. Unit B is subject to a mortgage in favour of Canadian Western Trust Company in the principal amount of \$149,500.00, such that, based on the Unit B Condo Appraisal, the available equity for the benefit of the applicants' estate in these proceedings is approximately \$80,500.00.

65. Unit D is subject to builder's liens registered in favour of Sweeney Electric Ltd. and Able Contracting Ltd. in the aggregate amount of \$109,117.52, such that, based on the Unit B Condo Appraisal, the available equity for the benefit of the applicants' estate in these proceedings is approximately \$102,882.48.

66. I personally own a third condominium unit located at Unit A – 201 10<sup>th</sup> Street East, Prince Albert, which is legally described as Unit #1 in Condo Plan #102042212 with 2489/10000 shares of common property in Condominium Parcel #165090281, Reference Land Description: Condo Plan No 102042212 Extension 0 (“**Unit A**”). Attached and marked as Exhibit “N” is the land title for Unit A obtained from the Land Titles Registry for Saskatchewan on May 8, 2016. Unit A was originally owned by 33330, but was transferred into my name in order to secure a more reasonable interest rate on the mortgage in respect of the same.

67. Attached to this affidavit and marked as Exhibit “O” is a true copy of an appraisal in regard to Unit A completed by Ring Appraisals Ltd. as of June 12, 2013 (the “**Unit A Condo Appraisal**”). Based on my review of the Unit A Condo Appraisal, I believe it to be true that the value of Unit A is approximately \$240,000.00. There is a mortgage registered against title to Unit A with a balance owing of approximately \$148,983.58 as of February 20, 2016. My intention would be to somehow utilize Unit A in these proceedings, for the benefit of all

stakeholders in the event that the order sought in these proceedings (the “**Initial Order**”) is granted. The available equity in the event of the sale of Unit A is approximately \$90,000.00.

68. Presently, each of the condominium units generates approximately \$1,200.00 of rental income per month. The rental income from Unit B and Unit D has been added to the cash flow projections for 33330.

**C. Liabilities of 33330**

69. A complete list of 33330’s known creditors with claims of at least \$250 is attached to the 33330 NOI, a copy of which is attached as Exhibit “P,” and discloses total liabilities of \$19,596,957.00. A summary of the primary liabilities and the security given for the same follows.

**(i) Affinity Credit Union 2013**

70. In January of 2015, the Affinity Credit Union 2013 (“**Affinity**”) loaned 33330 \$11.5 million, which amount is secured by:

- (a) an \$11.5 million first mortgage against the parcels comprising the Campus dated January 30, 2015 that matured on February 5, 2016 (the “**Affinity Mortgage**”);
- (b) an Assignment of Leases and Rents in respect of the Campus and Orr Centre dated January 30, 2015;
- (c) a general security agreement in all 33330’s present and after-acquired property dated January 30, 2015; and
- (d) a security agreement in respect of all of 33330’s personal property located at the Campus and Orr Centre.

71. As of April 15, 2016, 33330’s indebtedness to Affinity was \$11,307,653.75, which

amount is calculated as follows:

Principal Balance:	\$11,296,154.19
Accrued Interest:	\$ 11,499.56
	<u>\$11,307,653.75</u>

Arrears:	\$ 100,854.96
Per Diem:	\$ 1,145.09

(the “**Affinity Indebtedness**”)

(ii) **Firm Capital**

72. In addition to the Affinity Indebtedness, the \$3.5 million Firm Capital Loan is a joint obligation of me personally and 33330, for which 825 provided the security detailed in Part I of this Affidavit. As further security for the Firm Capital Loan, 33330 provided, among other things, a \$3.5 million second mortgage on the Campus dated September 2015 (the “**33330 Firm Capital Mortgage**”). Like the 825 Firm Capital Mortgage, the 33330 Firm Capital Mortgage will mature on June 23, 2016, and Firm Capital has indicated that it will not renew it.

73. Firm Capital’s Amendment to the Mortgage Loan Commitment Letter dated August 4, 2015 references additional security, but I do not possess any documents in respect of the same. For example, the Personal Property Registry search results for 33330 dated April 19, 2016 and attached as Exhibit “Q” disclose that Firm Capital registered a financing statement for a general security agreement in all of 33330’s present and after-acquired personal property.

74. As explained in Part I to this Affidavit, interest only payments against the Firm Capital Loan have been made out of the Firm Capital Reserve Deposit. No less than the full \$3.5 million is therefore owing at any given time.

(iii) Pa

75. As explained in Part I of this Affidavit, the \$2.1 million PA Loan is a joint obligation of 825 and 33330. In addition to the security provided by 825, 33330 granted Pa a \$2.1 million mortgage against the Campus and Orr Centre dated September 17, 2015 (the “**33330 PA Mortgage**”). Like the 825 Pa Mortgage, the 33330 Pa Mortgage matures on September 15, 2016.

(iv) Additional Mortgage Debts

76. In respect of the condo units located in Prince Albert, Saskatchewan:

- (a) Unit B is subject to a mortgage in favour of Canadian Western Trust Company in the principal amount of \$149,500.00; and
- (b) Unit D is subject to builder’s liens registered in favour of Sweeney Electric Ltd. and Able Contracting Ltd. in the aggregate amount of \$109,117.52.

(v) Property Taxes

77. 33330 is enrolled in the City of Regina’s Tax Installment Payment Plan Service (“**TIPPS**”) in respect of the Campus. 33330 defaulted on multiple TIPPS payments in 2016, which resulted in the City of Regina canceling its participation in the same.

(vi) Canada Revenue Agency

78. 33330 is liable to the Canada Revenue Agency (“**CRA**”) for approximately \$128,433.88, which amount is calculated as follows:

- (a) \$60,245.01 for unremitted GST; and

(b) \$68,188.87 for unremitted payroll source deductions.

(vii) **Momentum HVAC Services**

79. As disclosed by the Personal Property Search results for 33330, Momentum HVAC Services (“**Momentum**”) has a financing statement registered alleging a security interest in all of 33330’s present and after-acquired property. 33330’s indebtedness to Momentum is estimated to be \$23,647.00.

(viii) **Cobra Mortgage Services Ltd.**

80. I am sole director of Third Avenue Christian Centre Inc. (the “**Christian Centre**”), a non-profit corporation originally incorporated as 101238105 Saskatchewan Ltd. pursuant to the laws of Saskatchewan in 2013 with its registered office located at Regina, Saskatchewan.

81. The Christian Centre owns a single asset, namely, the Third Avenue Christian Centre located at 304 3<sup>rd</sup> Avenue in the City of Saskatoon, legally described as Surface Parcel #120282522, Lot 25, Blk/Par 174, Plan No 99SA32572 Ext 0 as described on Certificate of Title 99SA32572W (the “**Church**”).

82. The \$5.2 million purchase price for the Church was financed by Cobra Mortgage Services Ltd. (“**Cobra**”). In addition to the mortgage against the Church and other security provided to Cobra by the Christian Centre, 33330 provided a guarantee for \$5.2 million plus interest dated October 29, 2013 (the “**33330 Cobra Guarantee**”) supported by:

(a) a \$5.2 million collateral mortgage against the Campus dated October 29, 2013 (the “**33330 Cobra Mortgage**”); and

(b) a general security agreement dated October 29, 2013.

83. Although a contingent liability of 33330 under the 33330 Cobra Guarantee, the \$5.2

million was nevertheless recorded as a long-term debt of 33330 in its financial statements.

84. When 33330 refinanced its operations with Affinity in 2015, a portion of the \$11.5 million loan was paid to Cobra to substantially reduce the Christian Centre's overall indebtedness to Cobra, and discharge the 33330 Cobra Mortgage from title to the Campus. As of March 31, 2016, there remained \$351,210.56 owing to Cobra.

(ix) Unsecured Creditors

85. As a result of the Revenue Loss and lack of new capital, the Orr Centre ceased being able to pay its liabilities to SaskPower and SaskEnergy as they became due, resulting in approximately \$177,812.000 in outstanding debt to SaskPower and approximately \$74,801.00 in outstanding liability to SaskEnergy.

86. In mid-April of 2016, 33330 received a demand letter from SaskPower, threatening to discontinue the power to the Orr Centre in the event that all or substantially all of the arrears were not paid. My counsel, McDougall Gauley LLP, attempted to negotiate additional time from SaskPower. However, SaskPower was not willing to extend any further services beyond April 21, 2016. In order to ensure that power continued to be delivered to the Orr Centre and the interests of the current tenants were not irrevocably compromised without any notice whatsoever it was necessary to file a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA, which was filed on April 20, 2016 (the "33330 NOI"). Had 33330 not filed the 33330 NOI, the stakeholders of the Orr Centre identified above would not have been able to continue operating and would not have had any opportunity to make any alternate arrangements in the interim.

87. In addition to these utility providers, 33330 has:

- (a) a \$9,042.99 judgment in favour of Dawn Darlene Hanis registered against it in the judgment registry;

- (b) in excess of \$50,000.00 in outstanding service and trade payables; and
- (c) shareholder loans payable totaling \$611,405.71 as of the 2014 year-end, and which are presently estimated to be in excess of \$400,000.00, but not greater than \$600,000.00, although my wife and I will not be pursuing any claim in respect of the same in these proceedings.

88. Although I am presently drawing a salary from 33330, I did not draw a salary in the years 2013, 2014, and 2015 due to the significant financial difficulties facing 33330. Attached hereto and marked as Exhibit "R" to this Affidavit is a true copy of my personal Income Tax Return for 2014.

**D. Insolvency of 33330**

89. Attached and marked collectively as Exhibit "S" to this affidavit is a copy of 33330's unaudited 2014 financial statement, as well as drafts of the 2015 financial statement and 2016 financial statement based on the information available at April 30, 2016 (collectively, the "**33330 Financial Statements**").

90. The Affinity Mortgage matured on February 5, 2016, and in a demand letter dated April 15, 2016, Affinity's legal counsel demanded payment of Affinity Indebtedness (plus per diem interest) within 10 days and served the s. 244 BIA Notice.

91. As explained above, 33330 was unable to meet its obligations to SaskPower and SaskEnergy as they generally became due, and ceased making payments to those entities in the ordinary course of business. SasPower and SaskEnergy threatened to cease providing services to the Orr Centre in mid-April, which necessitated the filing of the 33330 NOI on April 20, 2016 to prevent irreparable damage to the Orr Centre's tenants.

92. The Firm Capital Mortgage will mature on June 23, 2016, Firm Capital will not renew the mortgage once it matures, and neither 33330 nor I possess have sufficient funds to repay the \$3.5 Firm Capital Loan, such that default is imminent.

93. Similarly, the Frank Pa Loan, which is a joint obligation of 852 and 3330, will go into default when the Frank Pa Mortgage matures on September 15, 2016, as neither applicant will be in a position to repay the \$2.1 million plus interest that is owed.

94. I believe the Campus and Orr Centre to be currently worth between \$5 and \$6 million, while 33330's other landholdings are only worth approximately \$460,000.00 based on the appraised value of Unit B and Unit D. For this reason, I do not believe the aggregate value of 33330's property, if sold in a liquidation scenario, would be sufficient to pay all of 33330's obligations that are due and accruing due.

### **III. EFFORTS BY THE APPLICANTS SINCE APRIL 20, 2016**

95. Since the filing of the NOIs, I and the applicants have been acting in good faith and with due diligence to prepare to present a proposal to the applicants' creditors. Among other things, I have:

- (a) held regular consultations with my counsel, McDougall Gauley LLP, and Deloitte;
- (b) continued my efforts to attract new tenants to the Orr Centre to bolster the projected receivables in the CCAA Cash Flows;
- (c) taken inventory of personal assets and assets of other companies that I control, with the potential to convert any equity in such assets into funds that can ultimately be used by the applicants for the benefit of the stakeholders in these proceedings;
- (d) attempted to reduce operating costs and otherwise address the Operational Challenges of the Orr Centre by:



- (i) reducing employee hours;
  - (ii) terminating the manager of the Orr Centre, whose management services were deemed not to be in the best interest of 33330 or its stakeholders;
  - (iii) implementing tighter cash and spending controls, including by imposing a restriction on spending whereby all purchases must be approved by me before they are made;
  - (iv) identifying and discontinuing auto-debits from the operating account of 33330 in regard to the Orr Centre;
  - (v) freezing the operating account of 33330 in regard to the Orr Centre and opening a new account (to avoid any further unexpected account activity from pre-NOI commitments);
  - (vi) implementing a new policy whereby cash proceeds from operations (e.g., events) are couriered to the bank as soon as possible (e.g., in the case of event proceeds, no later than the morning after);
  - (vii) imposing new liquor control policies, whereby liquor inventory must be counted and weighed before and after events and accounted for by a designated employee; and
  - (viii) imposing tighter controls on petty cash;
- (e) instructed my counsel to communicate with certain key stakeholders, including Affinity, Firm Capital, and Pa in advance of the filing of these materials in an attempt to gain support from such stakeholders for these proceedings;
  - (f) met onsite at the Orr Centre with Affinity representatives to review the present state of the property, and by telephone with Firm Capital;
  - (g) secured the return of the Frank Pa Reserve;
  - (h) furthered discussions regarding increased use of dormitory rooms in the Orr Centre by Queen City College; and
  - (i) approached Stantec to assist with the potential implementation of the 825 Land Plan (or some variation thereof).

96. In addition, 33330 intends on arranging meetings with certain tenants to apprise them of

the situation and assure them, to the extent possible, that their operations will continue so long as the proceedings are progressing favourably.

97. At a meeting of the board of directors of the applicants on May 5, 2016, directors' resolutions were passed which authorized each of the applicants to:

- (a) apply to the Court on or before May 20, 2016 under section 11.6(a) of the CCAA for an Order authorizing and directing that the proceedings commenced by the applicants pursuant to section 50.4(1) of the BIA be taken up and continued as proceedings under the CCAA; and
- (b) seek to have Deloitte appointed as monitor under the CCAA proceedings.

98. Copies of the aforementioned resolutions are attached collectively as Exhibit "T," and a copy of Deloitte's consent to act as monitor is attached as Exhibit "U."

99. I have been informed by Brent Warga of Deloitte, and I believe it to be true that, in the event that Deloitte is appointed as Monitor of the applicants, Deloitte proposes to engage Jeffrey M. Lee, Q.C. of the law firm of MacPherson Leslie & Tyerman LLP as legal counsel to the monitor.

#### **IV. PROJECTED CASH FLOWS FOR 852 AND 33330**

100. The cash flows for 33330 and 825 for the period between April 26, 2016 and May 24, 2016, which were previously filed in support of the NOI (the "**NOI Cash Flows**"), are attached as Exhibit "V."

101. The Cash Flows for 825 and 33330 for the 13-week period from May 9, 2016, to August 7, 2016 filed in support of an Initial Order pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") are attached as Exhibit "W" (the "**CCAA Cash Flows**"). On behalf of the applicants and with respect to the CCAA Cash Flows, I make the following

representations:

- (a) the hypothetical assumptions are reasonable and consistent with the purpose of the projections described in Notes 1-16;
- (b) since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material; and
- (c) the projections have been prepared solely for the purpose described in Notes 1-16, using the probable and hypothetical assumptions set out in Notes 1-16. Consequently, readers are cautioned that they may not be appropriate for other purposes.

102. My Representation Letter to the proposed monitor (and current trustee under the proposals of each of the applicants), Deloitte Restructuring Inc. ("**Deloitte**"), in respect of the preparation of the CCAA Cash flows is attached as Exhibit "X."

#### **V. DEBTOR IN POSSESSION FINANCING**

103. As outlined in the CCAA Cash Flows, the applicants are projecting a shortfall for the costs to be incurred during the 13 week period referenced therein based on the anticipated costs of professional fees, payroll, utilities, and other basic expenses associated with keeping the Orr Centre operational and ensuring the tenants (and any other potentially affected party) are not prejudiced by the grant of the order sought in these proceedings along with the development costs associated with the improvement of the 825 Lands that will need to be incurred regardless of any decisions that may be made in relation to the approach that is finally adopted to enhance the value of the Orr Centre (the "**Initial CCAA Costs**"). Accordingly, it will be necessary for the applicants to pursue debtor-in-possession financing ("**DIP Financing**").

104. The applicants have secured a term sheet (the "**Pillar Term Sheet**") for DIP Financing from Pillar Capital Corp. ("**Pillar**") which, if accepted and ultimately approved by the Court, would provide sufficient funding to cover the Initial CCAA Costs. While the applicants would

not consider accepting the Pillar Term Sheet without first canvassing the same with the secured creditors (and there has not yet been the opportunity to do so given time constraints), the fact that Pillar is prepared to provide DIP Financing at this stage of the process is evidence that there is outside interest in supporting a potential restructuring.

105. Once the Initial Order is granted and DIP Financing has been secured and approved by the Courts such that the Initial CCAA Costs have been addressed and the short term financial situation has stabilized, then the applicants' focus will turn immediately to reviewing the 825 Land Plan and any further plans with respect to addressing the Orr Centre's Operational Challenges with the various stakeholders, including consultants, legal counsel, the monitor, and the secured creditors, with a view to arriving at a strategy that will unlock additional value in the 825 Lands, increase revenue from the Orr Centre, and permit any other additional steps to be taken to maximize the value of the applicants' collective assets for the benefit of all stakeholders. Additional time will be required to complete this review.

106. It is important to note that Pillar has specifically referenced a willingness to increase the value of any DIP Financing to a maximum availability of \$5 million and noted that it is familiar with the Orr Centre. This is significant in that again an independent third party is prepared to provide significant financial support, to assist not only in paying the basic ongoing expenses associated with running the applicants' businesses, but also to fund improvements which will generate increased value to stakeholders. The Pillar Term Sheet is proposed to be secured only against the assets of 33330 such that there would be no direct impact upon creditors of 825. Again, the applicants would not consider formally accepting the Pillar Term Sheet without first canvassing those that would be directly impacted by the granting of an order approving any such financing, and intends to do so immediately in the event the Initial Order is granted.

## **VI. PROPOSED ADMINISTRATION CHARGE**

107. Finally, in light of the exceptionally difficult financial circumstances presently faced by



**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

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