

COURT FILE NUMBER Q.B. of 2020

JUDICIAL CENTRE SASKATOON

PLAINTIFF CANADIAN MORTGAGE SERVICING CORPORATION

DEFENDANTS KORF PROPERTIES LTD

IN THE MATTER OF THE RECEIVERSHIP OF
KORF PROPERTIES LTD.

AFFIDAVIT OF MARIANNE DOBSLAW

I, **MARIANNE DOBSLAW**, of the City of Vancouver, in the Province of British Columbia, Managing Director, **MAKE OATH AND SAY AS FOLLOWS THAT:**

1. I am an authorized signing officer of the Plaintiff, Canadian Mortgage Servicing Corporation ("**CMSC**"), and the Managing Director, British Columbia for Canadian Mortgage Capital Corporation, the Manager of Atrium Mortgage Investment Corporation ("**Atrium**"), such that I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based upon information and belief, and where so stated, I believe the same to be true.

Background to Atrium and CMSC

2. Atrium is a mortgage investment corporation with its head office in the City of Toronto, Ontario. As more particularly described below, Atrium was the predecessor in title to CMSC in regard to the indebtedness owed by the Defendant, Korf Properties Ltd., which is the subject matter of this action.
3. CMSC is a mortgage servicing corporation with its head office in the City of Toronto, Ontario. CMSC is licensed to carry on business in the Province of Saskatchewan.

Background to KPL

4. Attached and marked as **Exhibit "A"** to this Affidavit is a true copy of the Corporate Profile for Korf Properties Ltd. ("**KPL**") obtained by counsel to CMSC from the Corporate Registry of the Department of Justice of the Government of

Saskatchewan on March 4, 2020. I have determined from my review of Exhibit "A", and I believe it to be true, that KPL is a corporation incorporated pursuant to the laws of Saskatchewan with its registered office located in Regina, Saskatchewan which was incorporated in 2008 and which carries on business as a real estate holding company.

Financing Advanced to KPL by Atrium

5. Pursuant to a mortgage granted by KPL in favour of Atrium originally dated December 1, 2014 and extended on February 23, 2017 to January 15, 2018 (the "**Mortgage**"), Atrium advanced to KPL financing in the original principal amount of \$18,500,000.00 (the "**Loan**"). Attached and marked as **Exhibit "B"** to this Affidavit is a true copy of the Mortgage.
6. Pursuant to the Mortgage, as security for the repayment of the Loan, KPL mortgaged to and in favour of Atrium all right, title and interest of KPL in or to twelve (12) real estate properties owned by KPL (collectively, the "**Properties**") and more particularly described as follows:
 - a) seventy-three (73) multi-family units contained within five (5) low rise apartment buildings located in the City of Estevan, Saskatchewan;
 - b) approximately 58,200 square feet of industrial warehouse space located within five (5) buildings located in the City of Estevan, Saskatchewan;
 - c) approximately six (6) acres of serviced heavy industrial zoned land located in the City of Estevan, Saskatchewan;
 - d) one light industrial building comprising approximately 33,000 square feet on a 3.5 acre property located outside the City of Regina in the Rural Municipality of Sherwood No. 159, Saskatchewan (the "**RM of Sherwood**"); and
 - e) one industrial building comprising approximately 17,600 square feet on a 20 acre property located in the County of Vermillion River, Alberta (the "**County of Vermillion River**").

7. Attached and marked as **Exhibit "C"** to this Affidavit is a true copy of a document setting out the legal descriptions of the Properties which information is the basis for the facts sworn to by me in the immediately preceding paragraph.
8. In order to further secure the repayment by KPL to Atrium of the amounts owing by KPL to Atrium pursuant to the Loan, KPL granted to Atrium the following additional security interests in the assets of KPL, namely:
- a) the Mortgage (as more particularly described above);
 - b) a General Assignment of Leases and Rents dated December 1, 2014 (the "**Assignment of Leases and Rents**"), whereby KPL assigned to Atrium as security for the Indebtedness all of the interests of KPL in certain leases and rents pertaining to the Properties;
 - c) a Security Agreement dated December 1, 2014 (the "**Security Agreement**"), whereby KPL granted to Atrium a security interest in all property of KPL described therein;
 - d) an Assignment of Insurance dated December 1, 2014 (the "**Assignment of Insurance**") executed by KPL in favour of Atrium; and
 - e) an Assignment and Postponement of Shareholder Loans made effective on December 1, 2014 (the "**Assignment and Postponement**") by Kordel Korf, Do All Industries Ltd., P & O Assets Ltd., P & O Assets XEG Ltd., Korf Aviation Ltd., Sightcutting and Forming Ltd., Korf Farms Ltd., Korf Holdings Ltd., Do All Industries USA Ltd., South East Electric Ltd., Korf Developments Ltd., Korf Family Trust, Korf Family Trust II and Metigoshe Recreational Holdings Ltd. in favour of Atrium as security for the Loan.
9. Attached and marked collectively as **Exhibit "D"** to this Affidavit are true copies of the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance and the Assignment and Postponement. The four documents described in this paragraph, together with the Mortgage, are hereinafter collectively described as the "**Security**" and are the basis for the facts sworn to by me in the immediately preceding paragraph.

10. Atrium registered financing statements in the Saskatchewan and Alberta Personal Property Registries in regard to the Security (the "**PPR Registrations**") and registered its interest under the Mortgage against titles to the Properties in the Land Titles Registries for the Provinces of Saskatchewan and Alberta (as the case may be). Attached and marked collectively as **Exhibit "E"** to this Affidavit are true copies of search results evidencing the PPR Registrations, together with true copies of the certificates of title to the Properties located in Saskatchewan and Alberta (on which Certificates of Title the registration of the Mortgage in favour of Atrium is evidenced) all of which are the basis for the facts sworn to by me in this paragraph.
11. In order further to secure the repayment by KPL to Atrium of the Indebtedness, Kordel Korf (the "**Guarantor**") unconditionally guaranteed the payment and performance of the obligations of KPL to Atrium in regard to the Loan by means of a Guarantee and Postponement of Claim dated and signed on December 1, 2014 (the "**Guarantee**"). Attached and marked as **Exhibit "F"** to this Affidavit is a true copy of the Guarantee which is the basis for the facts sworn to by me in this paragraph.
12. By means of a Mortgage and Security Assignment Agreement made effective as of February 26, 2020, Atrium irrevocably assigned and transferred to and in favour of CMSC all right, title and interest of Atrium in or to the Loan, the Indebtedness, the Properties, the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance, the Assignment and Postponement and the Security. Attached and marked as **Exhibit "G"** to this Affidavit is a true copy of the Mortgage and Security Assignment Agreement described in this paragraph which is the basis for the facts sworn to by me in this paragraph.

2017 Default by KPL on Its Obligations Under The Loan

13. By letters dated December 1, 2017 (the "**December 1, 2017 Letters**"), Atrium, by its counsel, the law firm of MLT Aikins LLP ("**MLT Aikins**"), demanded that KPL and the Guarantor make payment in full of the Indebtedness (plus additional interest accrued from and after November 17, 2017 at the per diem rate of \$4,004.70 and legal fees incurred to the date of payment) on or before January 2, 2018.

14. In addition to the December 1, 2017 Letters, Atrium, by its counsel, served upon KPL a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") on December 1, 2017 (the "**244 NOI**")
15. Attached and marked collectively as **Exhibit "H"** to this Affidavit are true copies of the December 1, 2017 Letters and the 244 NOI which Atrium served upon KPL and the Guarantor on December 1, 2017 and which are the basis for the facts sworn to by me in the two immediately preceding paragraphs.
16. I have determined from my review of Exhibit "H" to this Affidavit, and I believe it to be true, that:
 - a) KPL defaulted in its obligations under the Loan by failing to make the required monthly interest payments on the Loan which were due to be paid by KPL to Atrium on each of August 15, September 15, October 15 and November 15, 2017; and
 - b) as at November 16, 2017, KPL was indebted to Atrium in regard to the Loan in the total aggregate amount of \$18,992,368.90 (the "**2017 Indebtedness**"), plus interest on that amount accruing from and after that date, as well as additional legal fees incurred by Atrium from and after that date in regard to the Security and in regard to recovery of the 2017 Indebtedness.

Failure of KPL to Pay Municipal Taxes on the Properties

17. Attached and marked collectively as **Exhibit "I"** to this Affidavit is a true copy of a spreadsheet prepared by Atrium on or about December 8, 2017 describing the outstanding municipal property tax arrears then owed by KPL to the County of Vermillion River, the RM of Sherwood and the City of Estevan (collectively, the "**Municipalities**").
18. Daniel Stewart of Calgary, Alberta ("**Mr. Stewart**") is an individual formerly employed by Canadian Mortgage Capital Corporation who had primary responsibility for administration of the Loan advanced by Atrium to KPL.
19. I have been informed by Mr. Stewart, and I believe it to be true, that in late December of 2017, Atrium became concerned that KPL would default on the

municipal property tax payments due on January 1, 2018 and that, in the event of such default by KPL, the Municipalities would have been in a position to initiate tax enforcement proceedings to take title to the Properties or to charge very significant penalties and interest on municipal property tax arrears described above. I have further been informed by Mr. Stewart, and I believe it to be true, that in order to avoid such an outcome, in late December of 2017, Atrium exercised its contractual rights under the Security to arrange for payment of the municipal property tax arrears owing by KPL to the County of Vermillion River, the RM of Sherwood and the City of Estevan.

20. I have been informed by Mr. Stewart, and I believe it to be true, that on December 22, 2017, after further inquiry of the Municipalities by Atrium as to the amounts of municipal property tax arrears owing to them by KPL, Atrium caused the following amounts to be paid to the Municipalities to satisfy all outstanding municipal property taxes owing by KPL to the Municipalities:
- a) Atrium caused the sum of \$230,883.38 to be paid to the City of Estevan to satisfy all outstanding municipal property taxes on the Properties owing by KPL to the City of Estevan;
 - b) Atrium caused the sum of \$75,810.60 to be paid to the RM of Sherwood to satisfy all outstanding municipal property taxes on the Properties owing by KPL to the RM of Sherwood; and
 - c) Atrium caused the sum of \$69,085.41 to be paid to the County of Vermillion River to satisfy all outstanding municipal property taxes on the Properties owing by KPL to the County of Vermillion River.
21. Attached and marked collectively as **Exhibit "J"** to this Affidavit are true copies of:
- a) a three-page "Receipt Record" from the City of Estevan evidencing the receipt by the City of Estevan of the payment of \$230,883.38 from counsel to Atrium on December 27, 2017 on account of municipal property tax arrears owing by KPL to the City of Estevan;
 - b) a one-page "Official Receipt" from the County of Vermillion River evidencing its receipt of \$69,085.41 from counsel for Atrium on January 2,

2018 on account of municipal property tax arrears owing by KPL to the County of Vermillion River; and

- c) a one-page Ledger Report from the RM of Sherwood evidencing its receipt on December 31, 2017 of payments of \$6,7650.00; \$2,929.97 and \$66,130.63, respectively (totaling \$75,810.60) plus a one-page letter from counsel to Atrium to the RM of Sherwood evidencing payment by counsel to Atrium of \$75,810.60 to the RM of Sherwood on account of municipal property tax arrears owing by KPL to the RM of Sherwood.

- 22. I have been further informed by Mr. Stewart, and I believe it to be true, that Atrium exercised its contractual right under the Security to add to the Indebtedness these three amounts of municipal property taxes paid by it on behalf of KPL to the Municipalities in December of 2017.

Unsatisfactory Management of The Properties By KPL

- 23. As more particularly described in Exhibit "A" to this Affidavit, Mr. Kordel Korf is the sole director of KPL.
- 24. I have been informed by Mr. Stewart, and I believe it to be true, that Mr. Kordel Korf is the controlling mind of KPL and is the individual who makes all significant decisions regarding the Properties and the business and financial affairs of KPL.
- 25. As described in Exhibit "B" to this Affidavit, on the date that Mr. Korf executed the Mortgage on behalf of KPL, Mr. Kordel Korf was a resident of the City of Fort Lauderdale, in the State of Florida, United States of America.
- 26. I have been informed by Mr. Stewart, and I believe it to be true, that at all times material throughout the term of the Loan, Mr. Kordel Korf was (and still is) a resident in various locations outside Saskatchewan (including Fort Lauderdale, Florida) and that he is not ordinarily resident in Estevan, Saskatchewan nor any of the other locations in which the Properties are situated.
- 27. I have been informed by Mr. Stewart, and I believe it to be true, that the primary person that was engaged by KPL to manage the Properties is a resident of

Estevan, Saskatchewan named Andrea Leatherdale ("**Ms. Leatherdale**") who is an employee of Mr. Kordel Korf.

28. I have been informed by Mr. Stewart, and I believe it to be true, that on March 22, 2017, Mr. Stewart travelled to Estevan, Saskatchewan to inspect those of the Properties located in that City.
29. I have been informed by Mr. Stewart, and I believe it to be true, that during his visit to Estevan on March 22, 2017, he met with Ms. Leatherdale and asked her various questions regarding the condition of the Properties and the management and administration of the Properties by KPL. I have further been informed by Mr. Stewart, and believe it to be true, that during his meeting with Ms. Leatherdale on March 22, 2017, Ms. Leatherdale was unable to answer basic questions asked of her regarding the condition, management and administration of the Properties.
30. I have been informed by Mr. Stewart, and I believe it to be true, that as a result of Mr. Stewart's March 22, 2017 meeting with Ms. Leatherdale, Atrium determined that Ms. Leatherdale does not have the qualifications required to manage a portfolio of residential and industrial real estate properties, lacks knowledge of the condition of the Properties and is unaware of the details of the management and administration of the Properties.
31. I have been informed by Mr. Stewart, and I believe it to be true, that when he inspected the Properties in Estevan on March 22, 2017, he observed a "For Sale" sign posted on the Properties which identified Mr. Jamie Dyer of Royal LePage Dream Realty of Estevan, Saskatchewan ("**Mr. Dyer**") as the real estate agent of KPL who had arranged for those of the Properties located in Estevan to be listed for sale and/or lease. I have been informed by Mr. Stewart, and I believe it to be true, that he contacted Mr. Dyer by telephone on March 22, 2017.
32. I have been informed by Mr. Stewart, and I believe it to be true, that during his March 22, 2017 telephone conversation with Mr. Dyer, he was informed by Mr. Dyer that:
 - a) Mr. Dyer had arranged for those of the Properties located in Estevan to be listed for sale and/or lease on behalf of KPL for approximately the past two years and he took instructions from Mr. Kordel Korf in that regard;

- b) Mr. Dyer was responsible for leasing those of the Properties located in Estevan and he took instructions from Mr. Kordel Korf in that regard;
 - c) market conditions for the sale and leasing of residential and industrial properties in Estevan deteriorated significantly from and after 2014 due to the decline in oil prices, reduced employment levels and the resulting general slowdown in the energy sector and the economy in the City of Estevan; and
 - d) Mr. Dyer had become extremely frustrated regarding his ability to sell or lease those of the Properties located in Estevan on behalf of KPL because those Properties had then been listed for sale and/or lease without success for approximately two years and Mr. Kordel Korf continued to provide instructions to Mr. Dyer on behalf of KPL which reflected unrealistic expectations regarding both lease rates and sale price expectations.
33. I have been informed by Mr. Stewart, and I believe it to be true, that he again telephoned Mr. Dyer on January 22, 2018 and that he was then informed by Mr. Dyer:
- a) that Mr. Dyer was still handling the leasing and sale of those of the Properties located in Estevan as agent of KPL;
 - b) that the list prices for the sale of those of the Properties located in Estevan had not been reduced since Mr. Stewart's Atrium's March 22, 2017 telephone conversation with him; and
 - c) that such Estevan Properties continued to be listed for sale and/or lease at prices which reflected 2013 market conditions in Estevan (rather than 2018 market conditions in Estevan).
34. I have further been informed by Mr. Stewart, and I believe it to be true, that in the late spring of 2017, Mr. Stewart received an unsolicited telephone call from an individual (the "**Potential Purchaser**") who expressed to Mr. Stewart his interest in potentially purchasing the Property owned by KPL located in the County of Vermillion River, Alberta (the "**Vermillion Property**"). Mr. Stewart informed me, and I believe it to be true, that during this telephone conversation in late Spring of 2017:

- a) Mr. Stewart asked the Potential Purchaser why he was calling Atrium about a prospective sale of the Vermillion Property;
- b) the Potential Purchaser informed Mr. Stewart that he had conducted a title search of the Vermillion Property and had identified Atrium as the holder of the Mortgage and called Atrium as a result;
- c) the Potential Purchaser explained to Mr. Stewart that he was calling Atrium because he had attempted without success to contact Mr. Kordel Korf, Ms. Leatherdale or the realtor engaged to list the Vermillion Property for sale;
- d) Mr. Stewart suggested to the Potential Purchaser that he renew his efforts to contact Mr. Kordel Korf or Ms. Leatherdale and was informed by the Potential Purchaser in response that he had tried on several occasions to contact Mr. Kordel Korf and Ms. Leatherdale, but that he could not get a response.

Forbearance Agreement between Atrium and KPL

- 35. I have been informed by Jeffrey Lee of MLT Aikins LLP, counsel to Atrium, and I believe it to be true, that Atrium prepared receivership materials seeking an Order of the Court appointing a receiver to manage the rents and profits of the Properties and to provide professional property management services to manage the Property (the "**Receivership Materials**") and that Atrium provided the Draft Receivership Materials to counsel for KPL on January 26, 2018.
- 36. I have been informed by Mr. Lee, and I believe it to be true, that upon receipt of the Receivership Materials, KPL acknowledged that the Indebtedness was entirely due and payable by KPL to Atrium and requested that Atrium forbear from enforcement of the Security. Atrium agreed to KPL's request and entered into a forbearance agreement with KPL dated April 1, 2018 (the "**Forbearance Agreement**").
- 37. The Forbearance Agreement required KPL to enter into property management contracts with experienced property managers to manage, repair, maintain, market and/or lease the Properties (the "**Property Managers**") and required KPL to cooperate with the Property Managers to allow them to improve management of the Properties. Attached and marked as **Exhibit "K"** to this Affidavit is a true copy

of the Forbearance Agreement which is the basis for the facts sworn to by me in the immediately preceding two paragraphs.

38. The Forbearance Agreement was amended and extended pursuant to Amending Agreements dated September 1, 2018 and April 1, 2019. Attached and marked as **Exhibit "L"** and **Exhibit "M"**, respectively, to this Affidavit are true copies of the Amending Agreements described in this paragraph which are the basis for the facts sworn to by me in this paragraph.
39. The Forbearance Agreement expired on December 31, 2019.

Continued Accumulation of Property Tax Arrears

40. Colliers is the property manager that KPL engaged to manage the commercial properties owned by KPL and located in the City of Estevan, Saskatchewan pursuant to the Forbearance Agreement.
41. I have been informed by Colliers, and I believe it to be true, that as at December 31, 2019, KPL owed municipal property tax arrears on the Properties to the City of Estevan in the total aggregate amount of \$95,590.21 in regard to the seven industrial properties in the City of Estevan. Particulars of these outstanding municipal property tax arrears owed by KPL on the seven industrial properties in Estevan (as described to me by Colliers) were as follows:
- a) 353 Imperial Ave. - \$19,398.94;
 - b) 77-79 Devonian St. - \$4,559.47;
 - c) 118 Highway 47 S - \$14,560.24;
 - d) 122 Highway 47 S - \$18,682.98;
 - e) 126-130 Perkins St. - \$28,896.15;
 - f) 260 & 270 Kensington Ave. - \$9,492.44.
42. In addition to KPL continuing to default in its obligations to pay municipal property taxes on the Properties, KPL has allowed significant deferred maintenance issues to develop in regard to the Properties. Further particulars of these deferred maintenance issues are described in the following paragraphs.

Deferred Maintenance Issues at the Devonian Street Property

43. I have been informed by Colliers, and I believe it to be true, that at the industrial property owned by KPL and located at 77-79 Devonian Street in Estevan, Saskatchewan (the "**Devonian Street Property**"), the piping for the in-floor heating system was not properly drained after the previous tenant vacated the premises. Over the subsequent winters, the piping for the in-floor heating system expanded and ruptured, leaving the Devonian Street Property without heat.
44. I have been informed by Colliers, and I believe it to be true:
- a) that the Devonian Street Property was left in the condition described in the immediately preceding paragraph prior to Colliers assuming property management responsibilities for the Devonian Street Property in 2018;
 - b) that the in-floor heating system in the Devonian Street Property cannot be repaired; and
 - c) that an alternative heating solution for the Devonian Street Property is required.

Deferred Maintenance Issues at the Perkins Street Property

45. I have been informed by Colliers, and I believe it to be true, that at the industrial property located at 126-130 Perkins Street in Estevan, Saskatchewan (the "**Perkins Street Property**"), a leak in the roof above the 1,472 square foot office and mezzanine portion of the Perkins Street Property previously led to flooding. The resulting costs to carry out temporary roof repairs and to remedy water damage to the interior of the Perkins Street Property have amounted to \$35,465 to date.
46. The roof repair and water damage remedies described in the immediately preceding paragraph were recommended as urgent repairs by Colliers. These measures were eventually approved by KPL. However, I have been informed by Colliers, and I believe it to be true, that mold remediation measures in the Perkins Street Property have not yet been addressed.
47. I have further been informed by Colliers, and I believe it to be true, that a more permanent roof replacement (at an estimate cost of approximately \$54,000) or

building demolition (at an estimate cost of approximately \$35,8000) will ultimately be required for the Perkins Street Property.

48. I have further been informed by Colliers in regard to the Perkins Street Property, and I believe it to be true:
- a) that additional costs for interior repair and mold remediation to the Perkins Street Property have not been identified;
 - b) that the in-floor heating for the Perkins Street Property has also ruptured and will require additional repair;
 - c) that until the repairs and remediation to the Perkins Street Property described above are completed, the Perkins Street Property will remain unleaseable; and
 - d) that there is a pigeon infestation in the rafters at the Perkins Street Property that needs to be remedied.

Deferred Maintenance Issues at Apartment Properties

49. I have been informed by Imperial Property Management ("**Imperial**"), the property manager engaged to manage the apartment properties located at 103 and 113 Souris Avenue in Estevan, Saskatchewan (the "**Souris Avenue Properties**"), and I believe it to be true, that urgent repairs to the Souris Avenue Properties were identified, including:
- a) replacement of hallway and stairwell carpets and building entry doors;
 - b) repair or replacement of washing machine drain lines, building entry doors and heating and sewer piping;
 - c) a broken sewer pipe apparently causing leaking in the crawl space which requires immediate attention; and
 - d) roof repairs to remedy a number of active leaks which are causing water damage to the Souris Avenue Properties.
50. I have been informed by Imperial, and I believe it to be true, that repairs of the items described above in paragraphs 49(b), 49(c) and 49(d) hereof have been completed.

51. I have been informed by Imperial, and I believe it to be true, that the total cost for the repairs to the Souris Avenue Properties described above in paragraphs 49(a) and 49(d) hereof are estimated to be approximately \$145,000. Approximately \$80,808 worth of repairs have been completed to the roofs of the Properties located at 103 & 133 Souris Avenue in Estevan. The repairs described above in paragraph 49(a) hereof have not been completed.
52. I have been informed by Imperial, and I believe it to be true, that there exist additional outstanding deferred maintenance issues in regard to two units in 103 Souris Avenue and five units in 113 Souris Avenue which require repair at an estimated cost of \$5,000 per unit (for total estimated repair costs of \$35,000).
53. I have been informed by Imperial, and I believe it to be true, that in regard to the Apartment Property located at 522 Albert Street, Estevan, the sum of \$21,778 was expended from cashflow in order to replace a boiler that had been allowed to fall into disrepair and had failed prior to the engagement of Imperial as property manager.
54. The deferred maintenance issues which have developed with the Properties described above represent the issues to which Atrium and CMSC have been alerted to by the Property Managers. Given the poor condition of the Properties, CMSC expects that there are further underlying issues associated with the Properties in which there is no heat (the Devonian Street Property and the Perkins Street Property) and potential mold issues in Properties which have experienced water penetration (the Perkins Street Property and the Souris Avenue Properties).
55. Deferred maintenance issues with regard to the Properties have been exacerbated by the failure, inability or unwillingness of KPL to provide proactive direction or guidance to the Property Managers or to provide timely cooperation to the Property Managers when requested to do so. I have been informed by Colliers and Imperial, and I believe it to be true:
 - a) that Mr. Korf has no direct contact with the Property Managers; and
 - b) that when communications from the Property Managers to KPL require a response, approval or input from KPL, such a response is often delayed, is

perfunctory in nature and at times comes from legal counsel to KPL located in Calgary.

56. Communication with the Property Managers and necessary approvals required by KPL primarily continue to be handled in a perfunctory fashion by Mr. Korf's employee, Ms. Leatherdale, and by his lawyer, Dan Jukes of Calgary, Alberta. While I intend no personal criticism of Ms. Leatherdale or Mr. Jukes, the responses received do not appear to reflect much (if any) effort or reflection by KPL.
57. As more particularly described above, Ms. Leatherdale does not appear to be qualified to carry out property management duties and does not appear to have the expertise required to provide direction to the Property Managers. When a response is provided by KPL through Ms. Leatherdale, it is often tentative and is only provided after repeated requests. For example, I have been informed by Colliers, and I believe it to be true, that Colliers sought approval of 2020 property budgets for the industrial properties from KPL on December 20, 2019. KPL did not respond. Colliers again sought approval from KPL of its 2020 property budget on January 20, 2020. KPL finally provided to Colliers a simple approval of the 2020 property budget (without questions, discussion or feedback) on January 23, 2020. I was copied by Colliers on these e-mail messages.

Very High Vacancy Rates

58. Those of the Properties located in Estevan have very high vacancy rates. These Properties are in need of active direction and management with regard to leasing. Particulars of the high vacancy rates in the Estevan Properties owned by KPL are as follows.
59. All six of the industrial properties owned by KPL which are located in Estevan (the Devonian Street Property, the Perkins Street Property, the 118 Hwy 47 property, the 122A & 122B Hwy 47 property and the 260/270 Kensington Avenue property) are 100% vacant.
60. I have been informed by Imperial, and I believe it to be true, that as at December 31, 2019, the five apartment building properties owned by KPL and located in Estevan have an overall vacancy rate of 41%, with 30 of the 73 apartment units vacant. Particulars are as follows:

- a) 103 Souris Avenue is 25% vacant;
- b) 113 Souris is 61% vacant;
- c) 1210 2nd is 25% vacant;
- d) 1321 2nd Street is 50% vacant; and
- e) 522 Albert Street is 47% vacant.

Unauthorized Occupancy of the Property by KPL

61. In August of 2019, during my visit to the Properties located in Estevan, I learned that KPL was in unauthorized occupancy of the industrial property located at 122 Hwy 47 without permission and was not paying rent. During my August, 2019 site visit to the Properties in Estevan, I was informed by Colliers, and I believe it to be true, that Colliers had previously requested KPL to vacate the 122 Hwy 47 property, but KPL had refused to do so. I have further been informed by Colliers, and I believe it to be true, that it was only after receiving a written demand from Atrium’s lawyer that KPL finally vacated the premises which it was unlawfully occupying.

Demand and Enforcement of Security

62. By letter dated February 13, 2020, Atrium once again demanded that KPL repay the Indebtedness owing to Atrium by KPL, which Indebtedness (as at January 31, 2020) amounted to \$23,103,873.95 (the "**Indebtedness**"), plus interest on that amount accruing from and after that date (at a per diem rate of \$4,843.18), as well as additional legal fees incurred by Atrium from and after that date in regard to the Security and in regard to recovery of the Indebtedness. Particulars of the Indebtedness (as at January 31, 2020) were as follows:

Principal Balance to July 15, 2017	\$18,500,000.00
Interest Due (July 15 – August 14, 2017)	\$118,708.33
Interest Due (August 15 – September 14, 2017)	\$118,708.33
Interest Due (September 15 – October 14, 2017)	\$118,708.33
Interest Due (October 15 – November 14, 2017)	\$118,708.33

Interest Due (November 15 – December 14, 2017)	\$118,708.33
Interest Due (December 15, 2017 – January 14, 2018)	\$118,708.33
Interest Due (January 15 – February 14, 2018)	\$118,708.33
Interest Due (February 15 – March 14, 2018)	\$118,708.33
Interest Due (March 15 – April 14, 2018)	\$118,708.33
Interest Due (April 15 – May 14, 2018)	\$118,708.33
Interest Due (May 15 – June 14, 2018)	\$118,708.33
Interest Due (June 15 – July 14, 2018)	\$118,708.33
Interest Due (July 15 – August 14, 2018)	\$118,708.33
Interest Due (August 15 – September 14, 2018)	\$118,708.33
Interest Due (September 15 – October 14, 2018)	\$118,708.33
Interest Due (October 15 – November 14, 2018)	\$118,708.33
Interest Due (November 15 – December 14, 2018)	\$118,708.33
Interest Due (December 15, 2018 – January 14, 2019)	\$118,708.33
Interest Due (January 15 – February 14, 2019)	\$118,708.33
Interest Due (February 15 – March 14, 2019)	\$118,708.33
Interest Due (March 15 – April 14, 2019)	\$118,708.33
Interest Due (April 15 – May 14, 2019)	\$118,708.33
Interest Due (May 15 – June 14, 2019)	\$118,708.33
Interest Due (June 15 – July 14, 2019)	\$118,708.33
Interest Due (July 15 – August 14, 2019)	\$118,708.33
Interest Due (August 15 – September 14, 2019)	\$118,708.33
Interest Due (September 15 – October 14, 2019)	\$118,708.33
Interest Due (October 15 – November 14, 2019)	\$118,708.33

Interest Due (November 15 – December 14, 2019)	\$118,708.33
Interest Due (December 15, 2019– January 14, 2020)	\$118,708.33
Interest Due January 15 – January 31, 2020 inclusive	\$62,273.22
Late Interest	\$451,390.43
Inspection Fee (March 27, 2017)	\$950.33
Tax Certificate Fee (December 8, 2017)	\$10.00
Appraisal (December 8, 2017)	\$15,000.00
Tax Certificate Fees (December 18, 2017)	\$275.00
Tax Certificate Fee (December 18, 2017)	\$20.00
o/s Property Taxes (December 21, 2017)	\$234,188.86
o/s Property Taxes (December 21, 2017)	\$75,810.60
o/s Property Taxes (December 21, 2017)	\$74,085.41
Notary & Printing Costs (February 6, 2018)	\$210.34
Appraisal Fee (April 13, 2018)	\$15,975.00
Tax Certificate Fee (June 27, 2018)	\$20.00
Tax Certificate Fee (July 24, 2018)	\$10.25
Tax Certificate Fee (July 25, 2018)	\$125.00
Late Fees (May 15, 2017 – January 15, 2020)	\$4950.00
Default Proceedings Fee	\$600.00
Legal Fees	\$106,729.61
	\$23,103,873.95

63. Attached and marked collectively as **Exhibit "N"** to this Affidavit are true copies of demand letters from counsel to Atrium addressed to KPL and Kordel Korf dated February 13, 2020, together with a Notice of Intention to Enforce a Security pursuant to section 244 of the BIA.

64. I have been informed by Mr. Lee, and I believe it to be true, that these items were served upon counsel for KPL and Kordel Korf on February 13, 2020. No payments from KPL have been received by Atrium in response to these demands.
65. On March 5, 2020, I received e-mail correspondence from Colliers informing me that Colliers was having difficulty obtaining insurance for the industrial properties owned by KPL and located in the City of Estevan, Saskatchewan and the County of Vermillion River, Alberta, with the result that these industrial properties are currently uninsured and at risk. Attached and marked as **Exhibit "O"** to this Affidavit is a true copy of the e-mail correspondence described in this paragraph.

Appointment of a Receiver of KPL

66. By reason of the facts and matters described above, CMSC has determined that KPL is insolvent and that KPL has committed acts of bankruptcy by ceasing to meet its liabilities generally as they come due. Further, CMSC is gravely concerned that its security in the Properties is in jeopardy as a result of:
- a) the continually accumulating municipal property tax arrears owing against the Properties;
 - b) the significant deferred maintenance issues associated with the Properties;
 - c) the disengaged, weak and absentee ownership of the Properties exhibited by KPL; and
 - d) the failure, inability or unwillingness of KPL to engage with the Property Managers and to take an active role in administration, stewardship and preservation of the Properties.
67. By reason of the facts and matters described above, CMSC has determined that it is appropriate, just and convenient that a receiver of the property, assets and undertakings of KPL be appointed pursuant to section 243 of the BIA, sections 65 and 76 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, and section 64(8) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2.
68. MNP Ltd. is a licensed insolvency trustee and has consented to being appointed Receiver of the property, assets and undertaking of KPL. A copy of the signed

Consent of MNP Ltd. to act in this capacity will be filed in support of this application by CMSC.

69. I make this affidavit in support of the application by Atrium for an Order appointing MNP Ltd. as receiver of the property, assets and undertakings of KPL, all as more particularly described in the Notice of Application filed by CMSC.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British Columbia,)
this 9 day of March, 2020.)


_____)

A NOTARY PUBLIC in and for the Province of
British Columbia

THOMAS W. CLIFFORD
BARRISTER & SOLICITOR
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_____)
Marianne Dobslaw

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