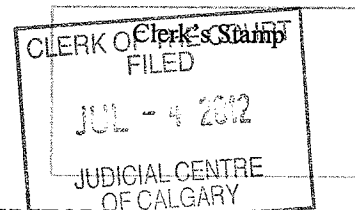


COURT FILE NUMBER 1201- 08478
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Calgary



APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36**

**AND IN THE MATTER OF THE BUSINESS CORPORATIONS
ACT, R.S.A. 2000, c. B-9**

**AND IN THE MATTER OF FOUNDATION MORTGAGE
CORPORATION and FOUNDATION MORTGAGE "2"
CORPORATION**

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Patrick T. McCarthy, QC/John L. Ircandia, QC
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 232-9441/232-9406
Facsimile: (403) 266-1395
File No. 439537-000004

BLG
Borden Ladner Gervais

NOTICE TO THE RESPONDENT(S)/INTERESTED PARTIES:

This application is made against you. You are a respondent or an interested party.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: Thursday, July 5, 2012
Time: 9:30 A.M.
Where: Calgary Courts Centre, 601 – 5th Street S.W., Calgary, Alberta
Before: Justice B.E.C. Romaine

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicants are Alberta companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") apply.
2. The Applicants are in the real estate investment and development industry and have experienced financial difficulties such that they will not be in a position to meet their obligations to their creditors when they come due and are therefore insolvent.
3. The inability of the Applicants to meet their financial obligations threatens their viability and without a stay of proceedings in place, the alternative liquidation of assets will cause a significant shortfall to and prejudice the creditors and investors. A Bankruptcy Application has been filed but not yet heard respecting the Applicants.
4. As such, a stay of proceedings is necessary in order to preserve the value of the Applicants' business, property and assets for the benefit of its stakeholders.
5. An initial loan is required, in particular with respect to Foundation Mortgage 2 Corporation ("FM2"), in order to operate in the short term. Foundation Mortgage Corporation ("FM1") has sufficient funds on hand to finance its own operations as well as those of FM2 in this interim period. In the longer term, debtor-in-possession financing will likely be required in order for the Applicants to stay in operation during the period of their respective restructurings.
6. BTM Advisory Services Inc. ("BTM") and its principal Gary Bentham, an individual with considerable experience in insolvency matters, including insolvencies of complex real estate investment entities, has consented to act as Chief Restructuring Officer ("CRO") of the Applicants.
7. Ernst & Young Inc. has acted as Monitor, as well as in other related capacities, in connection with the CCAA proceedings with respect to similar or affiliated real investment vehicles, Legacy Communities Inc. ("Legacy"), Airdrie Capital Corporation ("ACC"), Airdrie Country Estates Inc, Railside Capital Inc., Railside Industrial Park Inc., Foundation Place Capital Inc. and Foundation Place Inc. It is anticipated that the restructuring of the Applicants will be similar in nature to the restructuring recently undertaken relative to Legacy and ACC. As such the advice and guidance of Ernst & Young Inc. in the capacity of Monitor of the Applicants, will be particularly valuable and cost effective. Ernst & Young Inc. has consented to act as Monitor of the Applicants.

8. It is anticipated that the assets, property and business of the Applicants will sustain and secure the necessary priority charges for administration, professionals, directors, the interim loan from FM1 to FM2 referred to above and any debtor in possession financing that the Applicants may subsequently require and this Court approve.

9. Such other grounds as are set forth in the Affidavit of Ronald Aitkens sworn July 4, 2012.

10. The provisions of the CCAA and the equitable jurisdiction of this Honourable Court.

11. Such further and other basis as counsel may advise and this Honourable Court may permit.

Remedy sought:

12. The Applicants seek an Order substantially in the form of that attached as **Schedule 'A'** hereto, (the "Draft Initial Order"), including without limiting, the following relief:

- (a) Dispensing with service of notice of the within Application on all creditors or interested parties respecting the Applicants, or allowing the within Application to be made on an *ex parte* basis;
- (b) In the alternative, leave, if required, to bring this application on short notice;
- (c) An order pursuant to the CCAA granting an interim stay of proceedings pursuant to section 11 of the CCAA, on the terms set out in the Draft Initial Order;
- (d) An order authorizing FM1 to provide FM2 with short term financing respecting the sum of \$82,000.00 required for operations on the basis set out in the Draft Initial Order;
- (e) Directions on serving such creditors or interested parties of the Applicants not already given notice of the within proceedings during the period of the aforesaid interim stay of proceedings; and
- (f) Such further and other relief as this Honourable Court may deem just in the circumstances.

13. The Applicants further seek an Order substantially in the form of that attached as **Schedule 'B'** hereto, including without limiting, the following relief:

- (a) Confirming the engagement of Gary Bentham and BTM Advisory Services Inc. collectively as the chief restructuring officer (the "CRO") of the Applicants;
- (b) Authorizing the CRO to oversee, manage and direct the business, affairs and restructuring of the Applicants; and
- (c) Providing that the fees and disbursements paid to or incurred by the CRO in connection with the CRO's duties and exercise of powers in the within proceeding shall form a part

of and rank along with the "Administration Charge" as that term is defined in the Draft Initial Order.

Affidavit or other evidence to be used in support of this application:

14. The Affidavit of Ronald Aitkens sworn on July 4, 2012, the consent of Ernst & Young Inc. to act as Monitor (the "Proposed Monitor") any and all materials provided by the Proposed Monitor, and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

15. The CCAA, the *Judicature Act*, R.S.A. 2000, c. J-2, the *Business Corporations Act*, R.S.A. 2000, c. B-9, the *Alberta Rules of Court*, A.R. 124/2010 (in particular Rules 3.8, 3.9, 6.4, 11.29 and 13.5 thereof) and such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

How the Application is proposed to be heard or considered:

16. In person, with some or all of the parties given notice present, before the Honourable Justice B.E.C. Romaine at the Calgary Courts Centre, 601-5th Street SW, Calgary, AB on the 5th day of June, 2012 commencing at 9:30 AM or so soon thereafter as counsel may be heard.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

SCHEDULE “A”

COURT FILE NUMBER 1201-_____

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Calgary

APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended**

**AND IN THE MATTER OF THE BUSINESS
CORPORATIONS ACT, R.S.A. 2000, c. B-9**

**AND IN THE MATTER OF FOUNDATION MORTGAGE
CORPORATION and FOUNDATION MORTGAGE "2"
CORPORATION**

DOCUMENT **CCAA INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Patrick T. McCarthy, QC/John L. Ircandia, QC
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 232-9406/232-9406
Facsimile: (403) 266-1395
File No. 439375-000003

DATE ON WHICH ORDER WAS PRONOUNCED: July 5, 2012

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Justice B.E.C. Romaine

UPON the Application of Foundation Mortgage Corporation and Foundation Mortgage "2" Corporation (sometimes collectively referred to herein as the "Applicants"); **UPON** having read the Originating Application and the Affidavit of Ronald Aitkens, sworn July 4, 2012, filed; **UPON** reading the consent of Ernst & Young Inc. to act as Monitor; **UPON** reading the Report of the proposed Monitor; **UPON** hearing the submissions of counsel for the Applicants, counsel to the proposed Monitor and any other counsel or party that appearing at the hearing of this Application;

IT IS HEREBY ORDERED AS FOLLOWS:

SERVICE

1. Service of the within Originating Application and supporting materials on all creditors of the Applicants or any other interested parties is hereby dispensed with.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement or plans of compromise or arrangement (hereinafter referred to as the "Plan") in accordance with the CCAA.

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

- (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property");
- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property; and
- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan, and
 - (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as the Applicants disclaim or resiliate a real property lease in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under any real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("Rent"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of the date of this Order;

- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate (or in excess of these amounts, by order of this Court);
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, on notice given in the prescribed form, any agreement to which the Applicants or any one of them are a party on the date of this Order;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deems appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

11. The Applicants shall provide each of the relevant landlords, if any, with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least five (5) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a lease is disclaimed or resiliated by the Applicants in accordance with section 32 of the CCAA, then:

- (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
- (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. Until and including **August 5, 2012**, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
- (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the date of this Order.

NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT

18. Notwithstanding anything else contained in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their respective directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicant, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. The respective directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of **\$50,000**, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
- (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors'

and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **Ernst & Young Inc.** is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants, which any and all such reporting need not be in Affidavit form;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the DIP Lender (as defined below) and its counsel on a periodic basis as reasonably determined between the Monitor and any DIP Lender, of financial and other information as agreed to between the Applicants and any DIP Lender which may be used in these proceedings, including reporting on a basis as reasonably required by any DIP Lender;

- (d) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by any DIP Lender, which information shall be reviewed with the Monitor and delivered to any DIP Lender and its counsel on a periodic basis, but not less than monthly, or as otherwise agreed to by any DIP Lender;
- (e) advise the Applicants in its development of the Plan and any amendments to the Plan;
- (f) advise the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) cooperate and work in conjunction with the Chief Restructuring Officer (the "CRO") of the Applicants, in an efficient and cost effective manner in the event a CRO is appointed by the Court; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law

respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and any DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amount[s] of \$50,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, the CRO, if appointed by the Court, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a

charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of **\$250,000** as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs **36** and **38** hereof.

INTERIM FINANCING

31. Until such time as a longer term debtor in possession lender (the "DIP Lender") can be arranged and approved by this Court, FM1 (sometimes referred to in subsequent paragraphs of this Order as the "Initial Lender") is authorized to lend to FM2 and FM2 is authorized to borrow from FM1, the sum of \$82,000.00 out of \$164,000.00 of cash on hand currently available to FM1 (the "Initial Loan") in order to finance FM2's working capital requirements and other general corporate purposes and capital expenditures, provided that such borrowings shall be on reasonable terms as agreed between the Initial Lender and the Monitor and secured by the property and assets of FM2 ("FM2 Property") on the basis of the priority set out in paragraphs **36** and **38** below. Any additional or subsequent loans required from a DIP Lender shall be subject to further order of this Court.

32. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other documents (collectively, the "Initial Lending Documents"), as are contemplated by the Initial Loan or as may be reasonably required by the Initial Lender or the Monitor, and FM2 is hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to Initial Lender under and pursuant to the Initial Loan and the Initial Lending Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. The Initial Lender shall be entitled to the benefits of and is hereby granted a charge (the "Initial Lender's Charge") on the FM2 Property, to secure all obligations under the Initial Lending Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Initial Lending

Documents. The Initial Lender's Charge shall have the priority set out in paragraphs 36 and 38 hereof.

34. Notwithstanding any other provision of this Order or otherwise, the rights and priorities of the Initial Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

35. The Initial Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to the advance referred to herein.

VALIDITY AND PRIORITY OF CHARGES

36. The priorities of the Directors' Charge, the Administration Charge and the Initial Lender's Charge, as among them, shall as regards FM1 and FM2 individually, be as follows:

A) FM1

First – Administration Charge (to the maximum amount of \$125,000); and

Second – Directors' Charge (to the maximum amount of \$25,000).

B) FM2

First – Administration Charge (to the maximum amount of \$125,000);

Second – Initial Lender's Charge (to the maximum amount of \$82,000); and

Third – Directors' Charge (to the maximum amount of \$25,000).

37. The filing, registration or perfection of the Directors' Charge, the Administration Charge, the Initial Lender's Charge or any DIP Lender's Charge subsequently approved by the Court (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. Each of the Directors' Charge, the Administration Charge and any DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property of the Applicants, as applicable, and the Interim Lender's Charge shall constitute a charge on the Property of FM2, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

39. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, any DIP Lender, if applicable, and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.

40. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or any DIP Lender thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which bind the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including

any Commitment Letter or the Definitive Documents related to any DIP Loan Facility, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are a party;

- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the Applicants entering into any Commitment Letter, or execution, delivery or performance of the Definitive Documents; and
- (iii) the payments made by the Applicants pursuant to this order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law;

- (f) the appointment of a Receiver of any or all of the assets of the Applicant..

ALLOCATION

41. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administration Charge, the DIP Lender's Charge, if any, the Interim Lender's Charge and the Directors' Charge amongst the various assets comprising the Property of the Applicants, as applicable.

SERVICE AND NOTICE

42. The Monitor shall:

- (a) without delay, publish in the Calgary Herald a notice containing the information prescribed under the CCAA;
- (b) within five days after the date of this Order, (A) make the Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants

of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

43. The Applicants and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicants' creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor may post a copy of any or all such materials on its website at www.ey.com/ca/foundationmortgage/ which shall be established for informational purposes.

GENERAL

44. The Applicants, the Monitor or any CRO appointed by the Court in these proceedings, may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

45. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

46. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants or any one of them, or the Business or the Property.

47. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and

to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

48. Each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

49. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

50. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE “B”

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

Calgary

APPLICANTS

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, as amended**

**AND IN THE MATTER OF THE BUSINESS
CORPORATIONS ACT, R.S.A. 2000, c. B-9**

**AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
FOUNDATION MORTGAGE CORPORATION AND
FOUNDATION MORTGAGE "2" CORPORATION**

DOCUMENT

ORDER

(Appointment of a Chief Restructuring Officer)

ADDRESS FOR SERVICE AND

Patrick T. McCarthy Q.C./John Ircandia,
Q.C.

CONTACT INFORMATION OF

Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.

PARTY FILING THIS

Calgary, AB T2P 0R3

DOCUMENT

Telephone: (403) 232-9441/232-9774

Facsimile: (403) 266-1395

Email: jircandia@blg.com

File No. 439537-000004

DATE ON WHICH ORDER WAS PRONOUNCED: July 5, 2012

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Justice B.E.C. Romaine

UPON the application of Foundation Mortgage Corporation and Foundation Mortgage "2" Corporation, (together "the FM's") **AND UPON** having read the Affidavit of Ron Aitkins filed (the "Aitkins Affidavit"); **AND UPON** reading the consent of BTM Advisory Services Inc. and Gary Bentham to act as chief restructuring officer of the FM's; **AND UPON** hearing counsel

for the FM's, Ernst & Young Inc. and other parties appearing at the hearing of the within application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Capitalized terms not defined herein shall have the meanings ascribed to them in the Initial Order of this Honourable Court in these proceedings (the "Initial Order").

APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

2. The engagement of BTM Advisory Services Inc. and Gary Bentham as the chief restructuring officer of the FM's is authorized and approved, on the terms and conditions outlined in the engagement agreement, and BTM Advisory Services Inc. and Gary Bentham are hereby appointed chief restructuring officer of the FM's to manage the businesses, affairs and restructuring of the FM's, as an officer of this Court, with the powers and obligations set out in this Order. Mr. Bentham's services will be provided through BTM Advisory Services Inc., Mr. Bentham and BTM Advisory Services Inc. are hereinafter together referred to as the "CRO".

3. The CRO shall be and is hereby authorized to manage the businesses, affairs and restructuring of the FM's including, without limiting the generality of the foregoing:

- (a) to oversee and direct the Restructuring including, without limitation, engaging in discussions and negotiations with creditors, investors, customers, the Monitor or others;
- (b) to review FM's mortgage loans and other loans to third parties (the "Mortgage Loans") and to companies related by common share ownership and / or common directorship and management (referred herein as the "Harvest Group of Companies");
- (c) to oversee and direct the preparation of the FM's cash flow statements and in the dissemination of financial and other information in these proceedings;
- (d) to arrange for debtor-in-possession ("DIP") financing, as required to fund the ongoing operations of the FM's, under terms to be approved by the Monitor and this Court;
- (e) to sell or otherwise realize on the Mortgage Loans subject to the approval of the Monitor and this Court;
- (f) subject to the other restrictions contained in this Order, to approve all disbursements of the FM's on such basis as the CRO considers appropriate;

(g) to have full access to the books, records and key personnel of the FM's and the Harvest Group of Companies as may be necessary for the completion of its duties under this Order;

(h) to report to this Court and other stakeholders as the CRO, in its discretion, considers appropriate;

(i) to perform such other duties as are required to carry out the powers and obligations conferred upon the CRO by this Order or any further Order of this Court; and

(j) to generally inform and seek the input and advice of the larger or more material investors of the FM's, as the CRO considers appropriate in the circumstances, regarding all material matters relating to the restructuring of the FM's.

4. The FM's and their respective shareholders, officers, directors, employees, agents and representatives shall co-operate fully with the CRO in the exercise of its powers and discharge of its duties and obligations, including providing the CRO with access to the FM's and the Harvest Group of Companies' books, records, assets and premises as the CRO requires.

5. No director, officer, shareholder, employee, agent or representative of the FM's, nor any party related to the business of the FM's, shall interfere with the CRO's management of the business and affairs of the FM's and the Restructuring and the exercise of its powers, duties, rights and obligations in connection therewith.

6. The CRO shall not incur any liability or obligation as a result of the fulfillment of its duties, and no action or other proceedings may be commenced against the CRO relating to its appointment or its conduct as CRO except with the prior leave of this Court obtained on at least seven days notice to the FM's and the CRO and provided further that any liability of the CRO hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by the CRO in connection herewith. In addition, all of the protections granted to the directors and officers of the FM's in the Initial Order shall apply *mutatis mutandis* for the benefit of the CRO and the CRO shall be entitled to the benefit of the Administration Charge granted in the Initial Order.

7. The CRO may apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order.

Consented to by:

BTM Advisory Services Inc.

Per: _____

Ernst & Young Inc.

Per: _____

Entered this _____ day
of June, 2012

Clerk of the court