Form 49
[Rule 13.19]

CLERK OF THE COURT
FILED
MAR 13 2018
JUDICIAL CENTRE
OF CALGARY

Clerk's Stamp

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, 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	**AFFIDAVIT OF GARY L. BENTHAM**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Robyn Gurofsky Borden Ladner Gervais LLP 1900, 520 3rd Ave. S.W. Calgary, AB T2P 0R3 Telephone: (403) 232-9774 Facsimile: (403) 266-1395 Email: RGurofsky@blg.com File No. 439537-000004

AFFIDAVIT OF GARY L. BENTHAM

Sworn on March 13, 2018

I, Gary L. Bentham, of the City of Calgary in the Province of Alberta, Chartered Professional Accountant, SWEAR AND SAY THAT:

1. I am the president of BTM Advisory Services Inc. ("**BTM**"), which has been appointed as the Chief Restructuring Officer (the "**CRO**") of the applicants, Foundation Mortgage Corporation ("**FM1**") and Foundation Mortgage Corporation ("**FM2**") (together referred to as either the "**FMs**" or the "**FM Companies**") pursuant to an Order dated July 5, 2012 (the "**CRO Order**"). As such, I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief and where so stated, I verily believe the same to be true.

Relief Requested

2. I make this Affidavit in support of an application by the applicants for an order of this Honourable Court:

(a) Confirming the UDI Settlement, as herein defined;

(b) Authorizing 1330075 Alberta Ltd. ("**133**"), through its court appointed receiver, to make distributions to the creditors of FM1 and FM2 of any recoveries from the sale of the Calmar Lands in accordance with the distribution priority scheme accepted by the parties pursuant to the UDI Settlement;

(c) Authorizing 1357686 Alberta Ltd. ("**135**"), through its court appointed receiver, to make distribution of the Bow Water and Land Trust ("**BWLT**") units directly to the creditors of FM1 and FM2 based on the distribution described in this Affidavit and more particularly set out in the Fourteenth Report of the Monitor to be filed in these proceedings (the "**Fourteenth Report**");

(d) Authorizing and approving the activities of the CRO and the Monitor to date as described in this Affidavit;

(e) Approving the fees and disbursements of the CRO and the Monitor paid to date, as described to the Court and reported in the Monitor's Reports filed with the Court throughout these proceedings, and attached hereto;

(f) Discharging BTM as CRO of the FM Companies in these proceedings; and

(g) Discharging Ernst and Young Inc. as Monitor of the FM Companies in these proceedings.

History of Proceedings

3. The FM Companies were originally part of the Harvest / Foundation Capital group of companies. They were formed in 2008 and 2009 to provide funding to certain related Harvest / Foundation group entities (the "**Borrowers**") for the acquisition of lands for future development. The loans were to be short term in nature and secured, with repayment to come from the syndication to investors of the acquired lands. The FM Companies raised approximately $31 million through the issuance of bonds (FM1 raised $14.8 million and FM2 raised $16. 5 million) to investors and loaned $27 million of the funds raised to related Harvest companies. Operating losses of $4 million, consisting of commissions, fees, and interest expense

paid to bondholders in excess of interest revenue received from Borrowers account for the difference between the total of funds raised and the value of loans made to the Borrowers.

4. Due to a number of factors, the Borrowers were unable to syndicate their land holdings and repay the FM loans, although they continued to make interest payments until the end of 2011. By the end of 2011 the financial resources of the Borrowers were depleted and they could no longer service the FM Companies' loans. As a result, the FM Companies ceased payment of interest to their bondholders and on July 5, 2012 they filed for creditor protection under the *Companies' Creditors Arrangements Act* ("**CCAA**"), obtaining an initial 30 day stay of all creditor proceedings. The FM Companies have subsequently, through twelve court applications, extended the stay of creditor proceedings to March 31, 2018.

5. As part of the initial application, BTM was appointed by the Court to act as CRO to assist FM1 and FM2 through the CCAA restructuring proceedings. BTM's mandate was to manage the business, affairs and restructuring of the FM Companies, including:

(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 FMs' cash flow statements and 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 FMs, 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 FMs on such basis as the CRO considered appropriate;

(g) to have full access to the books, records and key personnel of the FMs 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 generally inform and seek the input and advice of the larger or more material investors of the FMs, as the CRO considers appropriate in the circumstances, regarding all material matters relating to the restructuring of the FMs; and

(j) 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.

6. Ernst & Young Inc. ("**EY**") was appointed as Monitor by the Court in the CCAA proceedings.

7. At the time of the filing of the CCAA proceedings, I completed an assessment to determine the immediate sources of recoveries and funding available to pay for ongoing operating costs and the costs of the proceedings. As part of that assessment I completed a review and analysis of each loan to determine if the loans were secured, the payment status of the loans, and the ability to obtain repayment of or otherwise realize on the loans in the short term.

8. Aside from limited cash resources (approximately $164,000), I confirmed that the FM Companies had no other assets from which recoveries could be realized in the short term. Almost all of the FM Companies' $27 million in loans to the Borrowers were secured by second, third or fourth mortgages. Several of the loans were not secured at all. All of the loans were in default. The prior ranking mortgages, held either by the original owners of the lands or third parties, were also in default and subject to foreclosure proceedings initiated by those mortgagees. In some cases the foreclosure proceedings had been completed and the properties sold or transferred to the first mortgagees with no value available for distribution to the FM Companies in respect of their loans, and in other cases the foreclosure proceedings were in process or about to proceed.

9. As a result of my assessment, I determined that there would be no recoveries available on approximately $18.362 million of the FM1 and FM2 loans given the relative priority position of the loans and the underlying value of the collateral secured. I further determined that there could be possible recoveries from portions of the following loans with a principal value of $9.8 million as at July 5, 2012:

Calaway Lands

a) 135 was the registered owner of the Calaway Lands and is part of the Harvest Group of Companies. 135 filed for creditor protection under the CCAA on August 24, 2012 and was placed into receivership on June 16, 2014. EY is the receiver of 135.

b) FM1 advanced $1.25 million and FM2 advanced $4.45 million by way of second mortgage loans to 135 (the "**Calaway Mortgages**") to acquire 298 acres of land located west of Calgary, Alberta. In addition, FM1 advanced $294,897 on an unsecured basis to 135 for purposes of acquiring and financing that land acquisition. The first mortgage registered on the Calaway Lands in favor of a third party was registered in the principal amount of $6.9 million. The estimated value of the Calaway Lands based on appraisals obtained early on in the proceedings was in the range of $10.465 million to $16.445 million, indicating a potential recovery for the FM Companies in the range of $3.565 million to $5.7 million, before selling costs.

c) After almost two years of marketing the Calaway Lands, 135 sold the Lands to Bow Water and Land L.P. ("**Bow Water LP**") for $10.25 million, for consideration of $8.45 million in cash and a $1.8 million vendor take back mortgage. The sale to Bow Water LP was approved by order of Justice Eidsvik in the receivership proceedings of 135. Pursuant to the terms of the sale, the vendor converted the take back mortgage in to 225,564 units of the BWLT (the "**Trust Units**").

d) BWLT is looking to raise up to $30 million by equity syndication through the issuance of Trust Units (the "**Equity Syndication**"). The proceeds of the Equity Syndication are intended to finance Bow Water LP's acquisition of the Calaway Lands and the development of the Lands for commercial use. Upon a sale of the Calaway Lands, the Trust Units are entitled to a distribution of proceeds equal to a 100% return of capital, a 10% simple preferred annual cumulative return plus 50% of any excess on a pro rata basis. In addition, 135 is entitled to receive Carried Interest Units of Bow Water LP (as defined in the second report of the 135 Receiver dated January 16, 2018), the number of which depends on the ultimate amount of capital raised in the Equity Syndication. The Carried Interest Units will be entitled to 50% of the excess of proceeds from the sale of the Lands after return of Trust Units capital and the payment of the 10% simple preferred annual return to the holders of the Trust Units. The Trust Units and Carried Interest Units are

135's only remaining asset and it is proposed that they be distributed to 135's creditors, including FM1 and FM2, in accordance with the distribution mechanism set out at paragraph 14 of this affidavit.

e) At the current date the Trust Units are being issued at a price of $14.75 per unit, indicating a value of the Trust Units held by 135 to be $3.327 million. The Trust Units, however, do not trade and are not considered liquid at this time. As further discussed at paragraph 13, it is expected that FM1 and FM2 will be issued 35,800 Trust Units and 88,661 Trust Units respectively from 135.

Calmar Lands

f) FM1 advanced $2.737 million by way of a mortgage loan (the "**FM1 Calmar Mortgage**") to 133 to acquire 129 acres of land located in the town of Calmar, Alberta (the "**Calmar Lands**"). 133 is part of the Harvest Group of Companies. 133 filed CCAA proceedings on June 7, 2012 and was placed in receivership on September 30, 2013. EY is the Receiver of 133.

g) Mortgages were registered on the Calmar Lands in priority to the FM1 Calmar Mortgage, including a first mortgage loan of $388,000 (the "**Hancar Loan**") and a mortgage loan totaling 1.452 million at July 5, 2012 registered in the name of Calmar Lands Ltd. Further, another mortgage loan referred to as the UDI loan (the "**UDI Loan**") was registered in priority on the Calmar Lands in the principal amount of $2.038 million. The validity and enforceability of the UDI Loan was questioned in these proceedings, as discussed below.

h) During the CCAA proceedings of the FM Companies, it was determined that the Calmar Lands had environmental contamination caused by previous hydrocarbon development that had not been properly remediated. The estimated value of the Calmar Lands as at July 5, 2012 was determined to be in the range of $3.2 million to $4.5 million based on previous appraisals. Subject to the then uncertain impact of the UDI Loan priority issue and the environmental contamination, the CRO estimated potential recovery from the Calmar Loan to be in the range of $nil to $2.737 million, before costs.

i) The enforceability of the UDI Loan and underlying mortgage security (the "**UDI Mortgages**"), registered ahead of the FM1 mortgage on the Calmar Lands, was questioned and the Receiver of 133 filed an application with the Court for a determination of the enforceability of those mortgages, heard on November 17, 2014. Throughout 2014 and concurrent with the Receiver's application, FM1 worked with Calmar Lands Ltd. to put forth a proposal to the holders of the UDI Mortgages, represented by legal counsel at Blakes Cassels & Graydon LLP, to settle the dispute regarding the enforceability of UDI Mortgages. That proposal was made to the holders of the UDI Mortgages in September, 2014. The basic terms of the proposal were as follows:

i) FM1 and Calmar Lands Ltd. would share the net proceeds of sale of the Calmar Lands with the UDI mortgage holders on a 50 / 50 basis notwithstanding the outcome of the Court application;

ii) The proposal would be binding only on those UDI mortgage holders who accepted the proposal; and

iii) The enforceability of the UDI Mortgages held by those who did not accept the proposal would be subject to determination of the Court application;

(the "**UDI Proposal**"). Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a copy of the UDI Proposal.

(b) Calmar Lands Ltd. and FM1 agreed on or about July 16, 2014 that the net proceeds distributable to them on the sale of the Calmar Lands, should the UDI Proposal be accepted by the requisite threshold number of holders of the UDI Mortgages, would be shared on the basis of their respective security. However, as the Calmar Lands Ltd. mortgage is ahead of the FM1 mortgage, it was agreed between FM1 and Calmar Lands Ltd. that FM1 be paid $75,000 as reimbursement of costs plus a minimum of $150,000 of proceeds of sale. For certainty, it was agreed that any payments would be from any proceeds of sale of the Lands (the agreement as between Calmar Lands Ltd. and FM1, together with the UDI Proposal is sometimes referred to herein as the "**UDI Settlement**").

(c) Approximately 79% of UDI Mortgage holders voting, holding 82% in value accepted the UDI Proposal, the votes for which were administered by EY.

a) The Court ultimately rendered a decision in respect of the UDI Mortgages on July 5, 2016 and concluded that the UDI Mortgages were valid and enforceable in accordance with their terms.

b) As of the date of this affidavit, the Calmar Lands have not been sold and the environmental remediation of the lands is ongoing. There have been no recoveries from the Calmar Loan to date.

Cimarron Lands

c) FM2 advanced $3.2 million by way of a mortgage loan (the "**Cimarron Loan**") to acquire three parcels of land located in Medicine Hat, Alberta. There were $6.9 million of mortgages registered on these lands in priority to the Cimarron Loan, all of which were in default, and foreclosure proceedings had been commenced by one of the mortgagees. Based on the assumption that certain loans could be refinanced to enable development to proceed, FM2 estimated its potential recovery from the Cimarron Loan to be in the range of $689,000 to $1.809 million. FM2 was ultimately unable to refinance the loans and each of the three parcels were foreclosed and ownership transferred to the first mortgagees. There was no recovery of the FM2 loan.

Foundation Homes Inc.

d) FM1 advanced $2.043 million to Foundation Homes Inc. ("**Foundation Homes**") for the purpose of acquiring residential lots and modular homes, primarily in Swift Current, Saskatchewan and in Coalhurst and Nobleford, Alberta. Foundation Homes was a Harvest / Foundation related company. At the date of commencement of the CCAA proceedings, FM1 held five mortgages totalling $441,000 on modular homes owned by Foundation Homes. Foundation Homes also owned four homes in Nobleford which were not mortgaged.

e) FM1 was able to realize on the sale of the five mortgages held over the period July, 2013 to June, 2014 and received net proceeds of $295,138 from the disposition of the underlying security of residential lots.

f) In order to obtain further realizations on its loans to Foundation Homes, FM1 applied for the appointment of EY as Interim Receiver of Foundation Homes on February 20, 2014 pursuant to the *Bankruptcy and Insolvency Act*. Foundation Homes was subsequently placed into bankruptcy upon the application of FM1, which application was rigorously contested by Foundation Homes and involved cross examinations on affidavit and multiple court applications. EY was ultimately appointed as trustee in bankruptcy of Foundation

Homes on December 18, 2014. EY completed the liquidation of assets of Foundation Homes and FM1 received a final distribution of $196,565 in October, 2016

10. FM1 and FM2 were granted a total of 12 stay extensions through the CCAA proceedings. These stays of proceedings were sought to enable the CRO to complete the FM1 and FM2 loan assessments, and to pursue the settlement and loan realization activities discussed above.

Calaway Lands Mortgage Priority Settlement and Trust Unit Distribution

11. The Receiver of 135 challenged the enforceability of the Calaway Mortgages on the basis that the mortgage security underlying each were void as a transfer at undervalue under section 96 of the *Bankruptcy and Insolvency Act*. Further, the Receiver also asserted that the FM2 mortgage was also void as a fraudulent preference under section 95 of the *Bankruptcy and Insolvency Act*.

12. FM1 and FM2 reached a settlement with the 135 Receiver regarding the validity and enforceability of the Calaway Mortgages, whereby FM1 and FM2 agreed to file their claims against the assets of 135 as unsecured. Further, the Receiver agreed that those claims would include interest calculated to February 27, 2017. As a result, the Receiver has accepted unsecured claims of FM1 and FM2 of $7,958,959 and $3,213,685 respectively.

13. The Receiver of 135 obtained an Order of this Court on January 25, 2018 approving a creditor claims process, with a claims bar date of February 22, 2018, and the distribution of the 225,564 Bow Water and Land Trust units to the creditors of 135. Based on the final outcome of the 135 claims process, it is expected that FM1 will be issued 35,800 Trust Units and FM2 will be issued 88,661 Trust Units. The details of the distributions to the FM1 and FM2 creditors will be more particularly outlined in the Fourteenth Report.

14. The Monitor and the CRO have determined that it is in the best interest of the FM1 and FM2 creditors that the Trust Units issued to the FM Companies be distributed to the creditors now, as opposed to waiting for a liquidity event associated with the Trust Units and distributing cash to the creditors in the future. It is uncertain as to when the Trust Units will be monetized and, based on discussions with Bow Water LP, monetization may not be for several years. The FM Companies do not have the cash resources to continue the CCAA proceedings thus it is more efficient to distribute the Trust Units to the creditors and enable the termination of the CCAA proceedings now.

Calmar Lands Proceeds Distributions

15. Similarly, it is uncertain when the Calmar Lands will be sold and the quantum of proceeds distributable to FM1 can't be determined at this time. The Monitor and the CRO have determined that it is in the best interests of the FM1 creditors that 133, the owner of the Calmar Lands, through its Receiver, distribute the proceeds from the sale of the Calmar Lands in accordance with the UDI Settlement, directly to the FM1 creditors when and if proceeds become available. The FM1 creditor list entitled to any distributions from the future sale of the Calmar Lands will be outlined in the Fourteenth Report. By permitting 133 to complete any distribution from the Calmar Lands, the FM1 CCAA proceedings can be terminated.

Repayment of Initial Lender's Charge

16. At the time the Initial Order was granted, FM2 did not have sufficient cash to operate and FM1 acted as the initial interim lender to FM2. The Initial Order authorized FM2 to borrower from FM1 the sum of $82,000 to finance FM2's working capital requirements and other general corporate purposes and capital expenditures. In consideration for such advance, FM1 was granted a charge on FM2's property pursuant to the Initial Lender's Charge, as defined in the Initial Order. The Initial Lender's Charge was subsequently increased pursuant to an Order of Justice Jeffrey dated November 23, 2012, from $82,000 to $250,000.

17. Throughout the CCAA proceedings, FM1 advanced a total of $296,189 to FM2 through a series of multiple advances, of which $177,000 was paid back at various times. In addition, interest of $61,016 is due from FM2 on the FM1 advances and $51,908 of professional fees paid by FM1 have been reallocated to FM2. In total there remains $232,112 owing by FM2 to FM1, including $11,318 allocated as costs to complete the CCAA proceedings.

18. FM2 does not have sufficient capital to repay FM1 the amounts outstanding under the Initial Lender's Charge. It is therefore proposed that FM2 provide a portion of its Trust Units to FM1 in satisfaction of the outstanding indebtedness.

19. Based on the current estimated value of a Trust Unit of $14.75, it is proposed that 15,736 Trust Units with an estimated fair value of $232,112 be transferred from FM2 to FM1, being the total amount owing by FM2 to FM1 in respect of the Initial Lender's Charge.

20. Additionally, it is expected that FM1 and FM2 will each issue 784 Trust Units to the services professionals in compensation for unpaid professional fees. As a result, the net number of units to be issued to FM1 and FM2 for distribution to their creditors will be 50,752 and 72,140 respectively.

Finalization of FM1 and FM2 Creditor Claims

21. FM1 and FM2 completed a claims process in 2012, pursuant to an Order of this Court dated August 2, 2012. All claims filed against FM1 and FM2 have been fully and finally determined except for five claims. I understand that the Monitor has issued Notices of Dispute in respect of each of these claims, either disallowing or revising the claim.

22. Assuming no objections are received to the Notices of Dispute, it is expected that the distribution of Trust Units to the creditors of FM1 and FM2 will be completed on or about April 15, 2018. In the event one or more objections are received to the Notices of Dispute, FM1 and FM2 will work with the Monitor to address the objection and will hold off making any distributions of Trust Units to the FM Companies' creditors until the dispute is properly adjudicated.

Consultation with Stakeholders

23. The CRO has reported periodically on the status of the CCAA proceedings to the FM1 and FM2 bondholders, with the most recent report being sent on January 4, 2016. The bondholders have been advised throughout the proceedings that any recovery of their investment was uncertain, and that if there was recovery, such recovery would represent a very small percentage of their original investment. Concurrent with the application to terminate the CCAA proceedings, the CRO will send a final report to the bondholders.

Final Schedules of Cash Receipts and Disbursements

24. Attached hereto and marked as **Exhibits "B" and "C"** are the final Schedules of Cash Receipts and Disbursement for FM1 and FM2.

25. As indicated on Exhibits "B" and "C", there is no remaining cash for distribution to FM1 and FM2 creditors. There remains approximately $23,133 of professional fees unpaid. The unpaid professional fees will be paid through the issuance of Trust Units, as more particularly explained above and by the Monitor in the Fourteenth Report.

Relief Sought

26. The within CCAA proceedings have been protracted largely due to the illiquid nature of the assets held by the FM Companies. In particular, mortgage loans in second, third and fourth position, or unsecured loans to related entities (requiring litigation for recovery), to finance properties, the value of which has

largely proved to be insufficient to satisfy secured debt, has meant that the overall recoveries for the FM Companies' creditors is significantly less than originally hoped.

27. The two remaining sources of recoveries, being net proceeds from a future sale of the Calmar Lands, and a liquidity event for the Trust Units, are the only hope of any remaining recoveries for the FM's creditors. I believe that it is in the best interest of the FM creditors to terminate the within CCAA proceedings to curb any further administrative burn and preserve whatever value remains for the creditors.

28. I make this affidavit in support of an order:

(a) Confirming the UDI Settlement;

(b) Authorizing 133 through its receiver to make distributions to the creditors of FM1 and FM2 of any future recoveries from the sale of the Calmar Lands in accordance with the distribution priority scheme accepted by the parties pursuant to the UDI Settlement;

(c) Authorizing 135 through its receiver to make distribution of the Trust Units to the creditors of FM1 and FM2 based on the distribution described in this Affidavit and confirmed by the Monitor;

(d) Authorizing and approving the activities of the CRO and the Monitor to date as described in this Affidavit;

(e) Approving the fees and disbursements of the CRO and the Monitor paid to date; and

(f) Discharging the CRO and the Monitor from their duties in the within CCAA proceedings.

SWORN BEFORE ME at Calgary, Alberta, this 13 day of March, 2018.	)))))	
Commissioner for Oaths in and for the Province of Alberta **ROBYN GUROFSKY** **A Commissioner for Oaths in and for Alberta** **Lawyer, Notary Public**	))	GARY L. BENTHAM

This is Exhibit "**A**"
Referred to in the Affidavit of Gary Bentham
Sworn before me this 13 day of March, 2018

Commissioner for Oaths in and for Alberta

ROBYN GUROFSKY
A Commissioner for Oaths
in and for Alberta
Lawyer, Notary Public

<u>SETTLEMENT OFFER</u>

Please note that this is a time sensitive settlement offer.

Please respond by submitting the Settlement Proposal Voting Form on page 5 of this Settlement Offer <u>no later than October 30, 2014</u> to:

Ernst and Young Inc.
Receiver and Manager, 1330075 Alberta Ltd.
Attn: Jessica Caden
1000, 44 2nd Ave SW
Calgary AB T2P 5E9
Jessica.Caden@ca.ey.com
Fax: 403-206-5075

As you know, there is an upcoming court application to determine the validity of the mortgage that you have registered against certain land in Calmar. Your mortgage is one of a number of undivided interest mortgages (the "UDI Mortgages") registered against Plan 0522859, Block 1, Lot 2 ("Lot 2"). The lands are owned by 1330075 Alberta Ltd. ("1330075") Ernst & Young Inc. is the Receiver and Manager of 1330075.

As Calmar Lands Ltd. ("CLL") has set out in its Brief of Law provided to the Court, it is our view that your mortgage is unenforceable since no action was commenced by you to enforce your mortgage within the appropriate limitation period.

If we are successful in the court application, you will receive nothing from the sale. Instead, that money will go to the subsequent lenders on title, CLL and Foundation Mortgage Corporation ("FMC").

If we lose the court application, you will receive your *pro rata* share of the proceeds of a sale of Lot 2, after taxes, commission and other charges are paid.

The lands have been listed for sale since August of 2013. One potential sale which could have yielded a sale price of approximately $1.8 million on Lot 2, net of costs, fell through due to unresolved environmental issues on the lands. Please see examples of the two scenarios below assuming that Lot 1 sold for $1,750,000:

If UDI Mortgages are Unenforceable:

Sale Price: $1,750,000

UDIs receive nothing.

If UDI Mortgages are Enforceable:

Sale Price:	$1,750,000
Commission:	- $55,000
Receiver's Charge:	- $100,000
UDI Counsel's Charge	- $40,000
Property Taxes:	- $25,000

Available to distribute to UDI Mortgages: **$1,530,000**

Total amounts due under UDI Mortgages at September 30, 2014:

$3,939,000 (principal and unpaid interest to September 30, 2014)

Pro Rata Recovery for each UDI Mortgagee: **39%**

UDI Mortgagees would each receive **39%** of their mortgage principal and accrued interest due.

Please note that the above calculation is for illustrative purposes only as it is based on a number of estimates and assumptions, most importantly, the estimated sale price. We note that regardless of the sale price, if the UDI Mortgages are unenforceable, you will receive nothing.

We believe that we are more likely than not to be successful in the court application. Nevertheless, all litigation carries risk. In order to mitigate that risk for all parties, CLL and FMC are making you the following settlement offer:

> **You will agree with CLL and FMC that you will receive 50% of your *pro rata* share of the net sale proceeds of Lot 2 and CLL and FMC will receive the other 50%, regardless of whether or not your mortgage is found to be enforceable.**

In the example above, the *pro rata* share for all the UDI Mortgagees was 39%. Using those assumptions, including a sale price of $1,750,000, if your mortgage has $50,000 outstanding, you would be entitled to receive $19,500 from the sale of Lot 2 if your mortgage is held to be enforceable and $0 if your mortgage is not enforceable. If you accept the settlement, you would get $9,750 (after the sale closes) regardless of whether the court decides that your mortgage is enforceable or unenforceable.

Please note that we have included a schedule of our understanding of what is outstanding on your mortgage for your reference.

There are some additional terms to the settlement:

1. At least 20% of the gross dollar amount of the UDI Mortgages need to accept the settlement for the settlement to be binding on CLL and FMC (the "20% Threshold"). If the 20% Threshold is not achieved, the settlement is null and void and all of the UDI Mortgagees will be subject to the Court's decision regarding the enforceability of the UDI Mortgages.

2. If the 20% Threshold is met, CLL and FMC will proceed with the court application. The UDI Mortgagees that voted 'NO' to the settlement will be subject to the Court's decision regarding the enforceability of the UDI Mortgages. Those that voted 'YES' will not.

3. You will only get paid under this Settlement Proposal once the sale closes on Lot 2 and the proceeds are available for distribution. There is presently no offer on Lot 2 and CLL and FMC are not guaranteeing a minimum sale price for those lands.

4. Lot 2 is listed for sale with an adjacent lot (Lot 1) that also has mortgages on it registered by CLL and FMC but the UDI Mortgagees have no claim to that lot. The apportionment of the sale price between the lots has not been determined and nothing in this settlement offer deals with the apportionment issue.

5. This settlement offer is confidential.

Please direct any questions with respect to this settlement offer to:

BTM Advisory Services Inc.
Chief Restructuring Officer, Foundation Mortgage Corporation.
Attn: Gary Bentham
#230, 6125 – 11th Street SE
Calgary AB T2H 2L6
gbentham@btmadvisory.com
Phone: 403-561-7341

In addition, we welcome the UDI Mortgagees to call in to a Town Hall Conference Call hosted by FMC and CLL on October 7th, 2014 at 2:00 p.m. to obtain additional information about the Settlement Proposal from representatives of FMC and CLL. The Settlement Proposal will be explained during the conference call, after which the UDI Mortgagees will have an opportunity to ask questions. The call-in number and participant code for the Town Hall Conference Call on October 7, 2014 at 2:00 p.m. are as follows:

Call-in Number: 1-855-353-9183
Participant Code: 79716#

We ask that the UDI Mortgagees call in by 1:45 p.m. in order that you may register your attendance on the call. You will be greeted by a Telus agent who will welcome you to the call and ask your name. Once you have registered your name with the Telus agent, there will be hold music until the presentation starts.

Once you have decided what you want to do with respect to the settlement offer, please return the enclosed direction to **Ernst and Young Inc.** by **October 30, 2014.**

Regards,

Ogilvie LLP
for Calmar Lands Ltd.

Borden Ladner Gervais LLP
for Foundation Mortgage Corporation

SETTLEMENT PROPOSAL VOTING FORM

Name: ______________________________________

Address: ____________________________________

Phone: ______________________________________

Fax/Email: ___________________________________

Please tick one of the following boxes:

☐ **YES**, I agree to the settlement and that I will receive 50% of my *pro rata* share of the net sale proceeds of Lot 2 regardless of whether my mortgage is found to be enforceable. I further agree that as a result of accepting the settlement, I will not participate in the court application to determine whether the UDI Mortgages are enforceable.

☐ **NO**, I do not agree to the settlement and will participate in the court application to determine whether the UDI Mortgages are enforceable. In refusing the settlement, I acknowledge I will receive $0.00 in the event the Court finds my mortgage to be unenforceable.

DATED at: ____________________________, this ___ day of September, 2014.
(City)

______________________________ ______________________________

Witness **(signature of individual completing form)**

This form must be signed and witnessed.

PLEASE RETURN THIS FORM TO ERNST & YOUNG INC. BY OCTOBER, 30, 2014

This is Exhibit "**B**"
Referred to in the Affidavit of Gary Bentham
Sworn before me this 13 day of March, 2018

Commissioner for Oaths in and for Alberta

ROBYN GUROFSKY
A Commissioner for Oaths
in and for Alberta
Lawyer, Notary Public

Foundation Mortgage Corporation
Schedule of Cash Receipts and Disbursements
For the Period July 5, 2012 to March 23, 2018

Cash receipts:	
Loan payment - 1357686 Alberta Ltd.	$150,000
Net recovery from Foundation Homes Inc.	491,703
Interest income	124
	641,827
Cash disbursements:	
Expenses	
Appraisals and environmental	5,377
Bank service charges	657
Monitor fees and legal expenses	63,119
Chief Restructuring Officer fees	178,776
Consulting - Harvest CCAA Operations	48,723
Consulting - investor communications	23,215
Consulting - other	2,435
BWLT trust unit distribution expense	4,085
Operating	53,839
Legal fees	275,733
Total operating expenses	655,959
Advances to Foundation Mortgage '2' Corporation	296,189
Advances repaid	(177,000)
Net advances to Foundation Mortgage '2' Corporation	119,189
GST paid	31,574
Payment of pre-CCAA legal fees	3,859
Unpaid A/P recovery	(1,647)
Total cash disbursements	808,932
Excess of cash disbursements over cash receipts	(167,105)
Cash in bank, July 5, 2012	167,105
Cash in bank, March 23, 2018	($0)

This is Exhibit "**C**"
Referred to in the Affidavit of Gary Bentham
Sworn before me this 13 day of March, 2018

Commissioner for Oaths in and for Alberta

ROBYN GUROFSKY
A Commissioner for Oaths
in and for Alberta
Lawyer, Notary Public

Foundation Mortgage '2' Corporation
Schedule of Cash Receipts and Disbursements
For the Period July 5, 2012 to March 23, 2018

Cash receipts:	
Loan recoveries from related parties:	
West Springs Village	$275,000
Liberty Crossing	67,000
	342,000
Advances from Foundation Mortgage Corporation:	
Expenses paid on behalf of FM2 by FM1	296,189
Repayments to FM1	(177,000)
Net advances received, amounts owing to FM1	119,189
Total cash receipts	461,189
Expenses	
Bank charges	2,104
Legal fees	94,433
Chief Restructuring Officer fees	133,068
Consulting fees - Harvest CCAA Operations	40,414
Consulting fees - investor communications	17,010
Monitor fees and legal expenses	72,624
BWLT trust unit distribution expense	4,540
Operating	27,800
	391,994
GST Paid	18,495
Advances to 1610822 Alberta (Cimarron)	51,134
Total cash disbursements	461,622
Excess of cash receipts over cash disbursements	(434)
Cash in bank, July 5, 2012	434
Cash in Bank, March 23, 2018	$0