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| COURT FILE NUMBER | 1101-17318 |
| 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<br><br>AND IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, R.S.A. 2000, c. B-9<br><br>AND IN THE MATTER OF LEGACY COMMUNITIES INC., AIRDRIE CAPITAL CORPORATION, AIRDRIE COUNTRY ESTATES INC., RAILSIDE CAPITAL INC., RAILSIDE INDUSTRIAL PARK INC., FOUNDATION PLACE CAPITAL INC. and FOUNDATION PLACE INC. |
| DOCUMENT | **FIFTH REPORT OF THE MONITOR**<br><br>**MAY 29, 2012** |

Clerk's Stamp

CLERK OF THE COURT
FILED
MAY 29 2012
JUDICIAL CENTRE
OF CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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## INTRODUCTION

1. On December 21, 2011, Legacy Communities Inc. ("Legacy") and Airdrie Capital Corporation and Airdrie Country Estates Inc. (collectively "Airdrie") sought and obtained protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended, (the "CCAA") pursuant to an order of this Honourable Court (the "Initial Order").

2. Pursuant to the Initial Order, Ernst & Young Inc. was appointed monitor of Legacy and Airdrie (the "Monitor").

3. On March 21, 2012, under these same proceedings, Railside Capital Inc. and Railside Industrial Park Inc. (collectively "Railside") and Foundation Place Capital Inc. and Foundation Capital Inc. (collectively "Foundation Place") were granted an Order (the "Railside & Foundation Place Order") by this Honourable Court granting them protection from their creditors pursuant the CCAA.

4. Legacy, Airdrie, Railside and Foundation Place are sometimes collectively referred to as the "Companies" or the "Debtors".

5. On January 19, 2012 this Honourable Court granted an Order creating an Unsecured Creditors Committee ("UCC") in these proceedings.

6. On March 21, 2012 this Honourable Court granted an Order appointing Ernst & Young Inc. as inspector ("Inspector") of certain related entities, 1252064 Alberta Ltd. ("125"), 1330075 Alberta Ltd. ("133") and Harvest Capital Management Inc. ("HCMI"). The Inspector now has full access to review the books and records of these entities as required.

7. The purpose of this fifth report (the "Fifth Report") of the Monitor is to provide this Honourable Court with the Monitor's comments in respect of the following:

    a) Activities of the Monitor since the Fourth Report;

b) The forecast to actual cash flow results for Legacy and Airdrie for the period of December 21, 2011 to May 25, 2012 (the "Reporting Period");

c) The process for appointing interim directors for Legacy and Airdrie (the "Directors Solicitation Process");

d) Legacy and Airdrie's request for a brief extension to the Stay Period; and

e) The Monitor's recommendations.

8. Capitalized terms not defined in this Fifth Report are as defined in the Initial Order.

9. All references to dollars are in Canadian currency unless otherwise noted.

## BACKGROUND

10. Background for the Debtors and their operations is contained in the materials filed in support of the application for the Initial Order and these documents, together with other information regarding this CCAA proceeding, have been posted by the Monitor on its website at: www.ey.com/ca/foundationgroup.

## TERMS OF REFERENCE

11. In preparing this Fifth Report, the Monitor has relied upon unaudited financial information, company records and discussions with management of the Company. The Monitor has not performed an audit, review or other verification of such information.

## ACTIVITIES OF THE MONITOR SINCE THE FOURTH REPORT

### *Monitor's Expanded Powers*

12. As a result of an Order of the Court issued on May 12, 2012, the Monitor was granted additional powers as "co-manager" of the Companies. The Monitor's powers have been expanded to include:

    a) The Monitor will lead the exit financing process for the Debtors;

    b) The Monitor will lead any processes to obtain debtor-in-possession financing after May 31, 2012 for Legacy and Airdrie and after June 30, 2012 for Railside and Foundation Place;

    c) The Monitor would have sole authority to lead negotiations on behalf of the Debtors with respect to claims Debtors have against HCMI, 125 and 133, and the Monitor shall have the sole discretion to cause the Debtors to take action against those entities if no negotiated settlement can be achieved;

    d) The Monitor will have direct involvement in CCAA plan development along with the Debtors. If the Monitor objects to provisions in the CCAA plan that the Debtors or any of them propose, the Court application to approve the plan for circulation will address the Monitor's objections;

    e) The Monitor and the Debtors will adhere to the current CCAA plan timeline for Legacy and Airdrie and if the timeline is not met the Debtors and the Monitor must seek Court approval for revised timeline and clearly explain reasons for delay;

    f) The Monitor will work with existing Debtors' existing consultants on real estate development issues to June 30, 2012. After June 30, 2012, the Monitor is at liberty to make changes to the Debtors' consultants.

The Monitor must agree to any development steps being taken by the Debtors; and

g) The Monitor will further review the current management fees paid by the Debtors and will agree on an appropriate reduction thereof. Failing any agreement the Monitor may apply to this Honourable Court for advice and direction.

13. The Debtors maintain control of accounting and investor relations function, with Monitor oversight;

14. The Debtors maintain control of cash management, with all disbursements to be reviewed and consented to by the Monitor;

15. The Debtors maintain control over matters regarding providing information to the Monitor and any other entities subject to the requirements under the Initial Order; and

16. All investor communications initiated by the Debtors and the UCC are to be reviewed and approved by the Monitor prior to their issuance.

***Restructuring Efforts***

17. Legacy and Airdrie have been working diligently and in good faith with their counsel, the Monitor and the UCC over the course of the last several weeks to develop the plans of compromise and arrangement for Legacy and Airdrie (together, sometimes referred to as the "Proposed Plans").

18. It is the Monitor's understanding that Legacy and Airdrie will be in a position to apply for an order approving the circulation of the Proposed Plans within the next week.

*Sources and Uses of Funds Analysis*

19. The Monitor has received the majority of the requested information and has commenced its review of the sources and uses of funds for Railside, Foundation Place, 125, 133 and HCMI.

20. The Monitor anticipates being in a position to report on the sources and uses of funds for Railside and Foundation Place in mid June 2012.

21. Based on a higher than expected volume of accounting and cash transactions, the Inspector anticipates being in a position to report on the sources and uses of funds for 125, 133 and HCMI in July 2012.

## FORECAST TO ACTUAL RESULTS

*Legacy*

22. The cash flow forecast to actual presented at Appendix A contains the cash receipts and disbursements incurred to date for Legacy as compared to the cash flow forecast previously provided to this Court in the Third Report of the Monitor.

**Legacy Communities Inc.**
**Cash Flow Forecast to Actual**
**December 21, 2011 - May 25, 2012**

| | Forecast | Actual | Variance |
|---|---|---|---|
| Receipts | 787,000 | 787,000 | - |
| Disbursements | 708,347 | 744,760 | (36,413) |
| Net Cash Flows | 78,653 | 42,240 | 36,413 |

23. As expected, the only cash receipt for the Reporting Period was $787,000 of DIP Financing from Harvest Capital Management Inc. and Azimuth Risk Management Ltd.

24. Operating expenses that have been incurred but not entirely paid during the Reporting Period for Legacy totaled approximately $745,000. The negative

variances of approximately $36,000 relates primarily to higher than forecasted management and consulting fees, higher than forecasted professional fees. The variance is partially offset by the waived Eyelogic fees and lower than forecasted development costs, which are expected to be incurred at a later date.

***Airdrie***

25. The cash flow forecast to actual presented at Appendix B contains the cash receipts and disbursements incurred to date for Airdrie as compared to the cash flow forecast previously provided to this Court in the Third Report of the Monitor.

**Airdrie Capital Corporation and Airdrie Country Estates Inc**
**Cash Flow Forecast to Actual**
**December 21, 2011 - May 25, 2012**

| | Forecast | Actual | Variance |
|---|---|---|---|
| Receipts | 537,000 | 537,000 | - |
| Disbursements | 517,953 | 516,946 | 1,007 |
| Net Cash Flows | 19,047 | 20,054 | (1,007) |

26. As expected, the only cash receipt for the Reporting Period was $537,000 of DIP Financing from Harvest Capital Management Inc. and Azimuth Risk Management Ltd.

27. Operating expenses that have been incurred but not entirely paid during the Reporting Period for Legacy totaled approximately $517,000. The positive variances of approximately $1,000 relates primarily to the waived Eyelogic fees and lower than forecasted development costs, which are expected to be incurred at a later date. The variance is partially offset by higher than forecasted professional fees.

## DIRECTORS SOLICITATION PROCESS

28. The Monitor has prepared a Directors Solicitation Process in which a slate of interim directors ("Interim Directors") will be appointed for each of Legacy and

Airdrie at the time the Proposed Plans are implemented. A copy of the Directors Solicitation Process is attached as Exhibit A to the Supplemental Affidavit of Ronald Aitkens, sworn May 29, 2012.

29. The Directors' Solicitation Process calls for nominations ("Nominees") to be put forth to the Monitor by no later than June 14, 2012.

30. Any individual, who is qualified at law to serve as a director, including any Creditor, can request that his or her name be put forth as a Nominee. An individual wishing to be a Nominee should submit a request to the Monitor that he or she be a Nominee, along with any information relevant to the individual's proposed appointment as a Nominee, by no later than June 14, 2012.

31. All Nominee requests should be submitted by registered mail, facsimile or email to the following address:

Ernst & Young Inc.
Attention: Jessica Caden
1000, 440 2nd Ave SW
Calgary, AB T2P 5E9
Email: jessica.caden@ca.ey.com
Facsimile: 403-206-5075

32. Based on the nominations received, the Monitor, with input from Legacy, Airdrie and the UCC, will determine a slate of up to five of the Nominees as the proposed Interim Directors for each of Legacy and Airdrie.

33. The Monitor will consider the following when choosing the slate of Nominees;

a) The amount of the individual's investment in Legacy or Airdrie in the event that the Plans are implemented in accordance with their terms;

b) Any previous experience that the individual has in serving as a director or officer of a publicly traded company;

c) Any previous experience that the individual has in the development of real-estate projects;

d) Any relevant input received by Legacy, Airdrie or the UCC from Creditors in respect of the individual wishing to be a Nominee; and

e) Any other factor that Legacy, Airdrie or the UCC consider relevant to whether an individual should be a Nominee.

34. Individuals who have previously worked as a director, officer, employee, consultant, agent (including sales agents and agents who sold securities of the Harvest Group of Companies or Foundation Group of Companies), contractor, or advisor to any entity related or affiliated with the Harvest Group of Companies or Foundation Group of Companies or any relation thereof will not be eligible to be an Interim Director.

35. After selecting the slate of Interim Directors, the Monitor will inform the Creditors of the individuals selected as Interim Directors for each of Legacy and Airdrie at the Creditors' Meeting. Also, the Monitor will post the names of those selected as Interim Directors on its website on or before June 18, 2012.

36. Upon implementation of the Proposed Plans, this Interim Directors would be appointed.

**LEGACY AND AIRDRIE'S REQUEST FOR A STAY EXTENSION**

37. Pursuant to the Order of this Honourable Court dated April 17, 2012 the Stay Period expires on May 31, 2012 for Legacy and Airdrie.

38. Legacy and Airdrie are seeking a brief extension of the Stay Period up to and including June 8, 2012 (the "Legacy and Airdrie Stay Extension").

39. The Monitor understands that the Proposed Plans are almost complete and ready for circulation to the Creditors, however, a little more time is required to refine

the terms and incorporate all provisions necessary to ensure that the resulting investments for the Creditors are tax efficient and RRSP-eligible. Legacy and Airdrie anticipate that they will be in a position prior to June 8, 2012 to apply for an order approving the circulation of the Proposed Plans to the Creditors and directing a meeting of creditors be called for the purposes of voting on the Proposed Plans.

40. There are no cash expenditures forecasted for the Legacy and Airdrie Stay Extension, therefore no further DIP Financing will be required by either Legacy or Airdrie during Legacy and Airdrie Stay Extension.

41. In the Monitor's view, Legacy and Airdrie are acting in good faith and with due diligence.

**RECOMMENDATIONS**

42. The Monitor recommends that this Honourable Court approve:

a) The Directors' Solicitation Process; and

b) The Legacy and Airdrie Stay Extension.

Dated at Calgary, this 29th day of May, 2012.

**ERNST & YOUNG INC.**
**in its capacity as**
**Monitor of Legacy, Airdrie**
**Railside and Foundation Place**

Neil Narfason, CA•CIRP, CBV
Senior Vice-President

Cassie Hern, CA
Manager

# APPENDIX A

**Legacy Communities Inc.**
**Cash Flow Forecast to Actual**
**December 21, 2011 - May 25, 2012**

| | Forecast | Actual | Variance |
|---|---|---|---|
| **RECEIPTS** | | | |
| Debtor-in-possession financing | 787,000 | 787,000 | - |
| **Total receipts** | 787,000 | 787,000 | - |
| **DISBURSEMENTS** | | | |
| Management fees | 64,580 | 113,739 | (49,159) |
| Consulting fees | 40,000 | 88,200 | (48,200) |
| Property taxes | - | 331 | (331) |
| Operating Expenses | 500 | 72 | 428 |
| Appraisals | - | 4,200 | (4,200) |
| Eyelogic fees | 28,267 | - | 28,267 |
| Development costs | 200,000 | 53,219 | 146,781 |
| CCAA professional fees (Note 1) | 375,000 | 485,000 | (110,000) |
| **Total disbursements** | **708,347** | **744,760** | **(36,413)** |
| **NET CASH FLOWS** | **$ 78,653** | **$ 42,240** | **$ 36,413** |
| **OPENING CASH** | $ (6) | $ (6) | |
| **NET CHANGE IN CASH FLOWS** | 78,653 | 42,240 | |
| **ENDING CASH** | **$ 78,647** | **$ 42,234** | |

Note 1

| Professional Fees | Invoices | WIP | Total |
|---|---|---|---|
| BLG | $ 216,744 | $ 37,500 | $ 254,244 |
| EY | 174,873 | 20,000 | 194,873 |
| McCarthy | 30,178 | 15,000 | 45,178 |
| FMC | 61,950 | 80,000 | 141,950 |
| | | | $ 636,245 |
| Covered by current funding | | | $ 485,000 |
| Covered by Administration Charge | | | $ 151,245 |

# APPENDIX B

**Airdrie Capital Corporation and Airdrie Country Estates Inc.**
**Cash Flow Forecast to Actual**
**December 21, 2011 - May 25, 2012**

| | Forecast | Actual | Total |
|---|---|---|---|
| **RECEIPTS** | | | |
| Debtor-in-possession financing | 537,000 | 537,000 | - |
| **Total receipts** | 537,000 | 537,000 | - |
| **DISBURSEMENTS** | | | |
| Management fees | 54,319 | 36,319 | 18,000 |
| Consulting fees | 24,000 | 37,800 | (13,800) |
| Property taxes | - | 281 | (281) |
| Operating Expenses | 500 | 1,105 | (605) |
| Appraisals | - | 4,200 | (4,200) |
| Eyelogic fees | 14,134 | - | 14,134 |
| Development costs | 75,000 | 27,241 | 47,759 |
| CCAA professional fees (Note 1) | 350,000 | 410,000 | (60,000) |
| **Total disbursements** | **517,953** | **516,946** | **1,007** |
| **NET CASH FLOWS** | **$ 19,047** | **$ 20,054** | **$ (1,007)** |
| **OPENING CASH** | $ (11) | $ (11) | |
| **NET CHANGE IN CASH FLOWS** | 19,047 | 20,054 | |
| **ENDING CASH** | **$ 19,036** | **$ 20,043** | |

**Note 1**

| Professional Fees | Invoices | WIP | Total |
|---|---|---|---|
| BLG | $ 162,378 | $ 37,500 | $ 199,878 |
| EY | 124,805 | 20,000 | 144,805 |
| McCarthy | 26,769 | 15,000 | 41,769 |
| FMC | 61,950 | 80,000 | 141,950 |
| | | | $ 528,402 |
| Covered by current funding | | | $ 410,000 |
| Covered by Administration Charge | | | $ 118,402 |