Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER	1101-17318
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 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	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	FMC LAW David W. Mann / David LeGeyt Fraser Milner Casgrain LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Ph. (403) 268-7097/3075 Fx. (403) 268-3100 File No.: 548427-1

AFFIDAVIT OF KYLE BROWN
(VOLUME I OF II)

Sworn on April 11, 2012

I, Kyle Brown, of the City of Calgary, in the Province of Alberta, Professional Engineer, SWEAR AND SAY THAT:

1. I am directly or through my company a creditor of Legacy Communities Inc. ("**Legacy**") in the original principal amount of $25,000.00, and a creditor of Airdrie Capital Corporation ("**ACC**") in the original principal amount of $120,000.00. I am not an investor in either of Railside Capital Inc. or Railside Industrial Park Inc. (collectively "**Railside**") or Foundation Place Capital Inc. or Foundation Place Inc. (collectively "**Foundation Place**"), although I have reviewed the evidence filed in these proceedings in respect of Railside and Foundation Place. I have been personally involved in the events hereinafter deposed to, and as such I have personal knowledge thereof, except where stated to be based on information and belief, and where so stated, I do verily believe the same to be true. ACC and Airdrie Country Estates Inc. shall be collectively referred to herein as "**Airdrie**"). Legacy, Airdrie, Railside, and Foundation Place shall be collectively referred to herein as the "**Debtors**").

Update - Membership

2. The Unsecured Creditors Committee ("**UCC**") was created in these proceedings by order of this Honourable Court granted on January 16, 2012, which order was Amended and Restated on February 16, 2012. A copy of the Amended and Restated Order is attached as Exhibit "**A**" (the "**UCC Order**").

3. Initially, the UCC was comprised of 3 members, being myself, Dr. Lucille Gans and Nicole Shurko. Pursuant to the UCC Order, the UCC, with the assistance of the Monitor, sent a letter to all Legacy and ACC bondholders soliciting their interest and availability to serve on the UCC as representatives of the particular project they invested in. The details of that process are set out in the Affidavit of myself filed in these proceedings on February 15, 2012, which resulted in the January 16, 2012 Order being amended and restated to confirm the addition of 4 new members to the UCC, being Don Stewart ($300,000.00) and Barry Devlin ($200,000.00) for Legacy, and Doug Nysetvold ($130,000.00) and Wayne McKeen ($70,000.00) for ACC.

4. Since the granting of the UCC Order, four new debtors have been added to these proceedings, and Don Stewart has resigned from the UCC. As a result, the UCC is canvassing the bondholders of Railside and Foundation Place for the first time, and the bondholders of Legacy again, to find individuals to serve on the UCC as representatives of those projects. Attached and marked as Exhibit "**B**" is a copy of the letter sent to Railside and Foundation Place bondholders in that regard, and attached and marked as Exhibit "**C**" is a copy of the letter sent to Legacy bondholders. Each of these letters sets a deadline for responses of April 13, 2012, in anticipation that the UCC will apply for the confirmation of the new members shortly thereafter, in accordance with the by-laws of the UCC.

Update - Activities

5. In accordance with its mandate, the UCC has:

(a) held regular meetings with its legal counsel;

(b) been in regular communication with the Monitor, both directly and through legal counsel;

(c) established a website to facilitate communication with bondholders. To date a total of 703 investors have registered for this website;

(d) requested information from both the Monitor and the Debtors concerning the affairs of the Debtors, as detailed below;

(e) reviewed a draft Sources and Uses of Cash Report prepared by the Monitor in respect of the Legacy and ACC projects (the "**Sources and Uses Report**");

(f) reviewed and commented upon the materials filed in these proceedings which added Railside and Foundation Place as debtors in these proceedings, and which granted the Monitor certain powers in respect of 1252064 Alberta Ltd. ("**125**"), 1330075 Alberta Ltd. ("**133**") and Harvest Capital Management Inc. ("**Harvest**") in these proceedings (corporate searches conducted on 125, 133 and Harvest are attached hereto and marked as Exhibits "**D**", "**E**", and "**F**", respectively);

(g) attended investors meetings organized and hosted by the Debtors;

(h) organized and held meetings for investors in Calgary, Red Deer and Edmonton, as detailed below;

(i) considered candidates for the position of Chief Restructuring Officer of the Debtors ("**CRO**"), as detailed below; and

(j) met with the Debtors' representatives, the Monitor, and their respective legal counsel.

__Information Requests__

6. On January 23, 2012 legal counsel to the UCC met with the Monitor and its legal counsel. Following that meeting legal counsel to the UCC wrote to the Monitor on January 24, 2012 requesting various information. A copy of that letter is attached as Exhibit "**G**". The items requested in that letter and the status of the Monitor's responses are as follow:

(a) Would you please provide us with a copy of the term sheet setting out the terms and conditions of the Interim Financing currently being utilized by the debtor companies in the CCAA Proceedings?

- Status: Delivered on January 27, 2012

(b) If there is no formal term sheet, would you please provide us with a summary of all of the particulars, including the nature and term of the facility, the interest rate, any fees and charges under the facility, and any other salient terms to the financing?

- Status: See above

(c) Would you please provide us with a detailed background on the individuals that are currently assisting this restructuring, including their CVs and the terms and conditions of their current engagements?

- Status: Delivered on January 27 and February 6, 2012

(d) Please provide us with any appraisals that have been done on the lands that are actually owned by Legacy and Airdrie and advise whether any other appraisals have been commissioned and, if so, their current status.

- Status: Draft appraisals were delivered to the UCC on February 8, 2012 with the Debtors' advice that these draft appraisals were not accurate and that new appraisals were being obtained. Updated appraisals by a different appraiser were delivered on April 3, 2012.

(e) The UCC would like to see the report the Monitor prepares in respect of the sources and uses of funds of Legacy and Airdrie and, in particular:

(i) the details of any investments that have been made by Legacy/Airdrie in other entities, whether related or unrelated to Legacy/Airdrie; and

(ii) any underlying or supporting documentation in connection with those investments, including contracts, land title certificates, appraisals, financial statements and like material.

- Status: Draft report received March 19, 2012, final report filed in these proceedings on April 5, 2012

(f) Would you please provide us with the Monitor's position on the disbursements that Legacy and Airdrie are incurring in the CCAA Proceedings, including the history of such payments, the necessity of such payments being made, and any non-arm's length recipients of such payments?

- Status: Outstanding

7. On February 8, 2012 the UCC had a meeting with the Monitor, representatives of the Debtors, and their legal counsel. In advance of that meeting legal counsel to the UCC wrote to the Debtors' legal counsel requesting various information. A copy of that email is attached as Exhibit "**H**". The items requested in that communication and the status of Debtors' responses are as follows:

(a) Seeing all documentation regarding investments made by the debtors (Panama, Liberty Crossing, etc);

- Status: outstanding

(b) Understanding the debtors' position on the payment structure they contemplate for the UCC, including the charges in the CCAA proceedings and actual payments;

- Status: resolved by agreement in late February 2012, although no payments have been made to the UCC's legal counsel to date

(c) Related to the previous point, what are the debtors' intentions regarding ongoing DIP financing? Is there a process for obtaining DIP from a third party lender? Will the debtors involve the UCC in developing cash projections and the process to solicit bids for third party DIP proposals?

- Status: outstanding

(d) Knowing if other Harvest/Foundation Capital/Aitkens related entities will seek creditor protection? When? Will those entities join the current proceedings or make new filings?

- Status: resolved in respect of Railside and Foundation place, otherwise outstanding

(e) Seeing the development pro-forma's for both the Legacy and Airdrie projects, along with their cost base analysis; and

- Status: outstanding

(f) Understanding where the debtors plan to get the funds to pay for the rest of the lands in Legacy.

- Status: outstanding

8. On March 13, 2012 legal counsel to the UCC sent follow up correspondence to both the Monitor and legal counsel to the Debtors reaffirming these information requests, noting that much of the requested information had not yet been provided, and making new information requests. Copies of these letters are attached as Exhibits "**I**" and "**J**" respectively.

9. Among the requests made by the UCC's lawyer in Exhibit "J" is a request for the email address of the Debtors' bondholders. The UCC's legal counsel has made this request on multiple occasions, and the Debtors have refused to comply with it.

10. Legal counsel to the Debtors responded to the UCC's lawyer by letter dated March 15, 2012, which was sent on March 16, 2012. The UCC's lawyer responded to this letter by email on March 16, 2012. A copy of the letter is attached as Exhibit "**K**", and a copy of the email is attached as Exhibit "**L**".

11. The UCC has been informed by the Monitor that the Debtors have been extremely slow in responding to the Monitor's requests for information and documents, and that the Debtors often only comply with the Monitor's requests once the Monitor imposes a deadline on the Debtors for compliance.

12. The UCC and its legal counsel met again with the Debtors and the Monitor on March 28, 2012. Following this meeting the UCC's legal counsel affirmed the UCC's earlier information request, and requested new information discussed in the meeting. A copy of the letter from the UCC's legal counsel is attached as Exhibit "**M**", and a copy of the email response from the Debtors' legal counsel is attached as Exhibit "**N**". The majority of this information request remains outstanding as well.

<u>**Sources and Uses of Cash Report of the Monitor**</u>

13. The UCC was provided with a draft of the Sources and Uses Report on March 19, 2012. The Monitor advised the UCC it could make use of the information in the draft Sources and Uses Report.

14. After reviewing the Sources and Uses Report, and reviewing the Affidavits of Ron Aitkens filed in these proceedings, the UCC has the following concerns in respect of Legacy and ACC:

Legacy

(a) undisclosed investment agreement between Legacy and Harvest;

(b) investment of Legacy funds in assets located in Panama, Ontario, and Red Deer through 125, a company privately owned by Ron Aitkens, which investments were, to the best of my knowledge, not disclosed to Investors until Legacy filed for CCAA protection;

(c) over payment of fees paid to parties related to Mr. Aitkens of more than $1,200,000;

(d) uncertainty surrounding the acquisition of the Legacy options by 1109411 Alberta Ltd. (erroneously referred to in the Sources and Uses Report as 1109211 Alberta Ltd. Copies of a corporate searches of 1109211 Alberta Ltd. and 119411 Alberta Ltd. are attached as Exhibits "**O**" and "**P**" respectively;

(e) no working capital for development or anything else;

(f) significant amounts paid for water licenses including significant amounts paid to 133 for one of these water licenses;

(g) no funds to exercise options to acquire the balance of the land in the Legacy project; and

(h) no meaningful development on the land in approximately six years.

Airdrie

(a) lift to 125 of $6,400,000;

(b) overpayment of fees to parties related to Mr. Aitkens of more than $475,000;

(c) undisclosed sour gas well on the property;

(d) no working capital for development or anything else; and

(e) no meaningful development on the land in approximately six years.

15. Railside and Foundation Place were added as Debtors in these proceedings on March 21, 2012. As such, the UCC has had only a short time to review the evidence filed in respect of those projects, and has not received any of the information the UCC has requested from the Monitor in respect of those projects. Further, no "sources and uses of cash" report has been generated yet by the Monitor in respect of these Debtors. However, based on the Affidavits which have been filed in respect of those projects, the UCC has the following concerns:

Railside

(a) Lift to 125 of $7,400,000;

(b) The balance sheet attached as Exhibit "G" to the Affidavit of Ron Aitkens filed March 15, 2012 (the "**Aitkens March 15 Affidavit**") shows $6,205,000 owing to Railside Industrial Park Inc. from 125;

(c) The balance sheet attached as Exhibit "A" to the Supplemental Affidavit of Ron Aitkens filed on March 21, 2012 no longer shows this receivable from 125, and instead contains a new line for "Capitalized Construction Costs" in the amount of approximately $7.8 million; and

(d) No working capital for development or anything else.

Foundation Place

(a) Lift to 125 of $1,440,000;

(b) Balance sheet shows $387,000 due from 133, another company privately owned by Ron Aitkens;

(c) Balance sheet discloses "Investments" of $1,562,500. Given the Legacy investments in Panama, Ontario and Red Deer through an undisclosed Investment Agreement, these "investments" concern the UCC; and

(d) No meaningful development on the land in approximately four years.

(e) No working capital.

Investor Demographics

16. Attached hereto and marked as Exhibit "**Q**" is a chart which shows the number of investors that have invested money with Airdrie and Legacy, as well as a breakdown of the relative size of their investments.

Investor Meetings

17. After the UCC met with the Monitor and reviewed the Sources and Uses Report, the UCC organized and held meetings for bondholders of the Debtors in Calgary, Red Deer and Edmonton. A copy of the communication sent by the UCC to bondholders inviting them to these meetings is attached as Exhibit "**R**". In addition, the information about these meetings was posted on the UCC website. Exhibit "R" was sent by email to all bondholders who had then registered for the UCC website, and was sent by mail to all bondholders using the mailing addresses posted on the Monitor's website. The UCC asked the Monitor to email this communication to all bondholders that the Monitor has email addresses for. I do not know if the Monitor actually did that. It should be noted that hundreds of the communications which were sent by regular mail were returned to the UCC as having an incorrect address.

18. The UCC prepared a PowerPoint presentation to give to the investors in attendance at these three meetings. This PowerPoint presentation was prepared using the Affidavits and other materials filed in these proceedings, and, with the consent of the Monitor, the draft Sources and Uses Report which the Monitor had provided to the UCC.

19. The UCC provided a copy of the PowerPoint presentation to the Monitor in advance of the first investor's meeting, and invited the Monitor to comment on the PowerPoint presentation. The Monitor did in fact review and comment on the PowerPoint presentation, and the Monitor's comments were accepted and incorporated into the PowerPoint presentation which was ultimately shown to the investors at the meetings.

20. It should be noted that after the first meeting which took place in Calgary on March 22, 2012, the UCC and Monitor noticed a mistake in one of the figures in one of the slides used in the Calgary PowerPoint presentation, and so a slightly different corrected PowerPoint presentation was subsequently used in the Red Deer and Edmonton meetings. A copy of the PowerPoint presentation shown to investors at the Red Deer and Edmonton meetings is attached and marked as Exhibit "**S**".

21. The Monitor was invited to all of the meetings, and attended the Calgary and Red Deer meetings. The Monitor was unable to attend the Edmonton meeting due to illness.

22. At each of three meetings there was a question and answer period after Nicole Shurko, the chair of the UCC, gave the PowerPoint presentation. The UCC and its legal counsel all answered numerous questions from investors at each of the three meetings and the Monitor answered questions at the two meetings it attended.

23. The Debtors' through their legal counsel asked for permission to attend these meetings and make their own presentation to the investors. The UCC considered this request, however ultimately declined it on the basis that the UCC always intended for these meetings to be meetings of creditors only, and because the Debtors did not provide any agenda or other summary of what the Debtor's intended to communicate at these meetings.

24. At each of the three meetings a proxy form was available for all investors to sign and submit to the UCC if they so desired. The essence of that form was to ask investors whether they supported the UCC seeking a CRO in these proceedings to replace existing management, namely, Ron Aitkens "**Management**" or "**Mr. Aitkens**"). A blank copy of that proxy form is attached and marked as Exhibit "**T**" (the "**Proxy Form**").

25. More specifics of each meeting are set out below.

Calgary

26. This meeting occurred at Valley Ridge Golf Course on Thursday, March 22, 2012. The meeting was scheduled to begin at 6:30 PM, however the start of the meeting was delayed as investors were still lined up out the door of the building to sign the attendance sheet at 6:30 PM. The meeting began at about 6:45 PM.

27. Attached as Exhibit "**U**" is the attendance sheet for the Calgary meeting, which shows 178 investors attended. Of these 178 investors, 105 submitted signed a Proxy Form at the end of the meeting.

Red Deer

28. This meeting occurred at the Sheraton Hotel in Red Deer on Friday, March 23, 2012, commencing at 6:30 p.m. Attached and marked at Exhibit "**V**" is a copy of the attendance sheet which shows 120 investors attended. Of these 120 investors, 37 submitted a signed Proxy Form at the end of the meeting.

Edmonton

29. This meeting occurred at the Royal Glenora Club in Edmonton on Tuesday, March 27, 2012, commencing at 6:30 p.m. Attached and marked as Exhibit "**W**" is a copy of the attendance

sheet which shows 160 investors attended. Of these 160 investors, 54 submitted a Proxy Form at the end of the meeting.

<u>Summary of all 3 Meetings</u>

30. Based on the attendance sheets which were signed by investors at each of the three meetings, a total of 481 investors attended the presentations in Calgary, Red Deer and Edmonton. Of those 481 investors, a total of 196 submitted signed Proxy Forms at the end of the meetings. At each meeting many investors expressed a desire to take the Proxy Form with them and submit it later after considering the Proxy Form and taking advice in respect of it.

31. At each of the 3 meetings, and through the UCC's website and email address, a number of investors have asked questions of the UCC about the appointment of a CRO, and have also expressed some concerns about a CRO. These are summarized as questions and concerns about:

    (a) the cost of a CRO;

    (b) the identity of the CRO;

    (c) the role and duties of the CRO;

    (d) the process for selecting the CRO;

    (e) the transparency of the process;

    (f) wanting to hear from Debtors before singing the Proxy Form; and

    (g) displacing current management, given its experience with the Debtors' assets.

32. The UCC is also mindful of all of these issues and wants the CRO to be cost effective and transparent, and wants the CRO to possess the necessary skills to add value in these proceedings.

<u>Additional Proxy Forms Received</u>

33. Subsequently to the Edmonton meeting, an additional 235 executed Proxy Forms were submitted by investors to either the UCC or the Monitor. At the time of swearing this Affidavit, a total of 431 Proxy Forms have been signed by investors, and 8 investors have expressed their support by email.

34. Copies of all the signed Proxy Forms are attached and marked as Exhibit "**X**".

35. A breakdown of the total of all the Proxy Forms received to date is as follows:

PROJECT	NUMBER OF PROXY FORMS	$ AMOUNT OF BONDS REPRESENTED
Legacy	80	$2,850,757.68
ACC	54	$1,039,110.00
Railside	110	$2,607,215.09
Foundation Place	38	$1,023,045.20
Other Foundation Investments	15	$436,600.00

36. It should be noted that there were some anomalies with the execution of the Proxy Forms. For instance:

(a) In some cases married couples submitted one Proxy Form signed by each of them when they should have submitted separate Proxy Forms as they are each investors.

(b) Some Proxy Forms were executed with the amount of the investors' investment left blank.

37. In addition 8 investors have expressed support for a CRO by email to the UCC, however these investors did not submit a Proxy Form.

Management Meetings

38. During the week of March 26, 2012 the UCC became aware that Management of the Debtors had called a meeting for the 50 largest investors in each of Airdrie and Legacy to be held on the evening of Thursday, March 29, 2012. The UCC was not consulted prior to the Debtors organizing and calling this meeting.

39. The UCC was concerned by the Debtors calling this meeting without first consulting with the UCC, and was concerned that the UCC was not given any opportunity to be involved in the planning of that meeting or review the Debtors' proposed agenda for that meeting or the materials to be used. Of particular concern to the UCC was that Debtors would be discussing a plan of reorganization with these investors without having first discussed it with the UCC. These concerns were communicated to the Debtors' legal counsel during the week of March 26, 2012 and as a result a meeting occurred involving the Debtors, the UCC, the Monitor and their respective legal counsel on March 28, 2012.

40. During this meeting the Debtors' agents showed a PowerPoint presentation to the meeting and advised that this PowerPoint would be shown at the meeting of select investors on March 29, 2012.

41. UCC and its legal counsel reviewed the PowerPoint presentation prepared by the Debtors and concluded that it did not materially contradict any of the information contained in the PowerPoint presentation that the UCC presented to investors at the meetings organized by the UCC. The UCC also concluded that the Debtors' presentation was without substance in respect of a development plan for Airdrie or Legacy, and was without substance in respect of a plan of arrangement in these proceedings.

42. Nicole Shurko and I attended the meeting on March 29, 2012. We answered a number of questions from investors who were present at this meeting.

43. It is notable that the PowerPoint presentation which was actually shown to investors at the March 29, 2012 meeting was not the same as the one which was presented to the UCC and its legal counsel the day before. In particular, the PowerPoint presentation which was actually shown to investors contains commentary about whether or not a CRO is necessary or advisable. Nicole Shurko and I were surprised when this topic was addressed with investors as there was no discussion about this forming part of the investors' meeting at our previous meeting with the Debtors, the Monitor and legal counsel the day before. Furthermore, the Debtors solicited their own proxy forms from those in attendance at the meeting which stated that the investor did not support the actions of the UCC to appoint a CRO.

44. The Debtors' PowerPoint presentation which was delivered to investors at the March 29, 2012 meeting is attached as Exhibit **"Y"**.

45. It is notable that slide 25 of the Debtors' PowerPoint presentation contains information pertaining to the value of the Airdrie and Legacy lands. This slide indicates that if the Legacy lands were sold now the Debtors expect proceeds of $19,900,000.00 to satisfy obligations of $46,000,000.00. The slide also indicates that if the Airdrie lands were sold now the Debtors expect proceeds of $4,320,000.00 to satisfy $19,600,000.00 in obligations. Obviously this indicates that bondholders of Legacy and Airdrie should expect a significant shortfall in their investments, and that they are the only stakeholders in respect of these projects.

46. Finally, at the March 28, 2012 meeting the Debtors and their agents advised the UCC that about half of the land which forms the Legacy land assembly is located on a flood plain and is not developable. This was not disclosed at any time prior to March 28, 2012.

<u>Removal of Director and Replacement with Chief Restructuring Officer</u>

47. The UCC has recently concluded that new management through the appointment of a CRO by this Honourable Court is necessary for the following reasons:

(a) Management is not responding to the information requests of the UCC or the Monitor in a timely fashion;

(b) The Sources and Uses Report shows the following facts about Legacy and Airdrie:

(i) overpayment of fees to related parties of more than $1,200,000 on Legacy and $475,000 on ACC;

(ii) no working capital to advance the development of the projects;

(iii) over $9.5 million in Legacy funds were directed to 125 for investment elsewhere even though the Investment Agreement referenced in Ron Aitkens' initial Affidavit is made between Legacy and Harvest Capital Management, and no amounts have been recovered by Legacy from these entities, even though they are controlled by Ron Aitkens ;

(c) No meaningful development has occurred on Legacy, Airdrie or Foundation Place, notwithstanding that Management has had many years to advance these projects. The development on Railside is inadequate;

(d) Management has received significant lifts on the sale of most of these projects to investors (Airdrie - $6,400,000, Railside - $7,400,000, Foundation Place - $1,440,000);

(e) Non-disclosure of the Investment Agreement between Harvest, a company for which Ron Aitkens is the sole director and shareholder, and Legacy (the "**Harvest Agreement**") in any of the Legacy Offering Memoranda. I have reviewed the funding summary appearing on pages 17 and 18 of the third Offering Memorandum, dated October 29, 2007, ("**Legacy OM3**") respecting Legacy, referred to in paragraph 18 of the Aitkens December 20 Affidavit, and it appears that at least some of the funds raised pursuant to the first Offering Memorandum, dated July 15, 2005, ("**Legacy OM1**") and all of the funds raised pursuant to the second Offering Memorandum, dated September 15, 2006 ("**Legacy OM2**") and Legacy OM3 were raised after the date of the Harvest Agreement. A copy of Legacy OM3 is attached hereto and marked as Exhibit "**Z**").

(f) Non-disclosure of the sour gas well and high pressure sour gas pipeline located on the lands owned by Airdrie (collectively the "**Sour Gas Well**") in the two Offering Memoranda respecting Airdrie (collectively the "**Airdrie Offering Memoranda**"). Moreover, the Sour Gas Well was not pictured in any marketing materials prepared with respect to Airdrie even though the Sour Gas Well, as shown in the photograph attached hereto and marked as Exhibit "**AA**" is a significant structure;

(g) A marketing brochure, attached hereto and marked as Exhibit "**BB**", respecting Airdrie states "Water issue resolved: As of December 20th, 2007 Alberta Environment dismissed appeal against the water sourcing for the Balzac East development zone". Yet, in his affidavit dated December 20, 2011, Mr. Aitkens deposes that "(f)urther setbacks to the Airdrie Project were caused by water and sewage servicing issues that arose in or around 2008. ACE discovered at that time that it would be very difficult to bring the necessary water and sewage infrastructure to develop this area."

(h) Project updates circulated to Bondholders by the Debtors continued to be positive, and gave no indication of the dire state of the Debtors' affairs. Other than receiving these periodic project updates, I did not receive any other communication from the Debtors regarding my investment. I believe that my experience is the same as that of the vast majority of bondholders.

(i) Mr. Aitkens has previously been investigated by the Alberta Securities Commission for misrepresenting facts to investors. In a Notice of Hearing, attached hereto and marked as Exhibit "**CC**", the Alberta Securities Commission alleged, at page 5, that , *inter alia,* Mr. Aitkens breached securities laws by, *inter alia*:

(i) making, authorizing, permitting, or acquiescing in the making of statements to investors about a project named "Spruce Ridge Estates" in two Offering Memoranda that they knew or ought to have known were misleading and untrue, or that omitted to state a fact or facts that were required to be stated, or that were necessary to be stated in order for the statement or statements not to be misleading;

(ii) signing certificates in two Offering Memoranda that were not true;

(iii) engaging in illegal distributions of securities; and

(iv) making, authorizing, permitting, or acquiescing in the making of statements to investors about a project named "Spruce Ridge Estates" at investor seminars that they knew or ought to have known were misleading and untrue, or that omitted to state a fact or facts that were required to be stated, or that were necessary to be stated in order for the statement or statements not to be misleading.

(j) In a Settlement Agreement and Undertaking dated August 19, 2009, a copy of which is attached hereto and marked as Exhibit "**DD**", Mr. Aitkens, in addition to various other parties, admitted that he had breached section 92(4.1) of the *Securities Act* (Alberta) and acted contrary to public interest by making or authorizing, permitting, or acquiescing in the making of certain statements to prospective investors about the Spruce Ridge Estates project at seminars which they knew or ought to have known could be misleading or untrue, and because they omitted to state a fact or facts that were required to be stated, or that were necessary to be stated in order for the statement or statements not to be misleading.

(k) There has been unusual and significant balance sheet activity by Railside in a 27 day period in February, where a receivable from 125 in the amount of approximately $6.2 million disappeared, and a new item for "capitalized construction costs" has appeared, in the amount of approximately $7.8 million;

(l) Management changed the PowerPoint presentation it made to investors from the one which was reviewed by the UCC, the Monitor and their legal counsel; and

(m) Allegations made against Ron Aitkens, Harvest Capital Management Inc. and other related and affiliated parties in a Statement of Claim recently issued by Neo Exploration Inc., which allegations include but are not limited to:

(i) breach of contract,

(ii) misrepresentations in an offering memorandum,

(iii) omission to disclose material contracts in an offering memorandum,

(iv) breach of fiduciary obligations,

(v) self-dealing,

(vi) high handed and malicious conduct worthy of punitive damages,

(vii) realizing a significant "lift" at the expense of investors, and

(viii) conspiracy. A copy of this Statement of Claim is attached as Exhibit "**EE**".

48. Based on the conduct described above, the UCC does not believe Mr Aitkens is concerned with the best interests of the Debtors or their creditors or capable of competently and responsibly managing the Debtors. The UCC believes that Mr. Aitkens is unreasonably impairing, and is likely to continue to unreasonably impair, the possibility of a viable compromise or arrangement being made in respect of the Debtors and that he is acting inappropriately as a director of the Debtors and is likely to continue to act inappropriately as a director in the circumstances.

49. As set out above, the question posed to investors in the Proxy form is essentially whether they want the UCC to apply to this court for the appointment of a CRO to displace Management of the Debtors in these proceedings and the investors and the investors we have been able to reach overwhelming support for the removal of Mr. Aitken and the appointment of a CRO.

50. The UCC has lost all faith in Mr. Aitkens and wants him removed and replaced by the appointment of a CRO as soon as possible. It is the UCC's view that the CRO needs a background in Alberta real estate, an understanding of the regulatory regimes in place, experience in dealing with a multitude of investors, and should be arms-length to the Debtors and their current management.

51. As a result of these concerns the UCC has considered a number of potential candidates for the proposed role of CRO in these proceedings. More specifically, the UCC has considered 6 parties for the role of CRO by reviewing the publically accessible information and/or resumes available to the UCC. Those 6 parties are described, without names (except for the successful candidate), as follows:

(a) Retired restructuring partner from a large accounting firm;

(b) Retired restructuring partner from a different large accounting firm;

(c) Small private restructuring firm;

(d) Businessman with diverse business and public service experience, and recent experience as court appointed CRO in Alberta CCAA proceedings;

(e) Businessman with experience in public companies and a private fund with an emphasis on bridge, mezzanine and special situation financing;

(f) Keith Prosser, the Founder and CEO of Sterling Bridge Mortgage Financial Group. Mr. Prosser's resume is attached as Exhibit "**FF**".

52. The UCC had deliberations and considered the qualifications of each of the candidates listed above. The UCC considered what unique skill set each candidate possessed, and considered whether that expertise was desirable in these proceedings, or whether that skill set was duplicative of skills already present in this restructuring.

53. Based on these deliberations, Keith Prosser was selected by the UCC as the most desirable CRO in these proceedings. This decision was based upon the following:

(a) Mr. Prosser's recent experience in restructuring the MIC business of Sterling Bridge;

(b) Mr. Prosser's experience in dealing with a large number of investors;

(c) Mr. Prosser's experience in lending, commercial real estate, exempt market dealings, and public directorships (including having served on a transitional committee for the ASC re National Instrument 31-103);

(d) Mr. Prosser's has an established support team at Sterling Bridge Mortgage Corporation;

(e) Mr. Prosser's skill set as a businessman will not duplicate the skill sets of the accounting and legal professionals already involved in these proceedings; and

(f) Mr. Prosser has not been involved with the Debtors, or their projects, in the past and, thus, will bring a fresh, independent perspective to these proceeding.

54. I have spoken with Mr. Prosser and he advises me that he is unaware of any conflict existing that would impair his ability to fulfill the mandate of the CRO described in this Affidavit. I am further advised by Mr. Prosser that:

(a) he has met with Mr. Aitkens on two occasions prior to being asked to serve as the CRO but no business was conducted in those meeting;

(b) he was introduced through a pre-existing relationship to Mr. Frank Lonardelli, a former member of the Debtors' management, in 2008 to discuss providing consulting services to Mr. Lonardelli's company Arlington Street MIC in respect of matters unrelated to the Debtors and Foundation Capital. Although Mr. Prosser was engaged by the company, he did not actually provide any services or receive any compensation, and eventually withdrew from the engagement. Notwithstanding this, Mr. Lonardelli posted Mr. Prosser's photograph and bio on the Arlington Street website and when Mr. Prosser learned of this he asked Mr. Lonardelli to remove this information from the website.

55. I have spoken with Mr. Prosser and he has advised me that he consents to the role of CRO on the basis of what is described in this Affidavit and in the form of Order attached to the Notice of this Application.

56. Based on the foregoing, the UCC has lost all faith in Management and wants it replaced with Keith Prosser, as appointed CRO, in these proceedings as soon as possible.

<u>No Equity in Legacy's and Airdrie's Properties</u>

57. Based on the values presented to certain Investors by Management at the March 29, 2012 meeting, there is no stake in the Legacy or Airdrie projects for anyone other than the unsecured creditors.

<u>Email from Former Management</u>

58. On April 9, 2012 and individual named Craig Burrows sent an email to a number of Debtors' investors, and investors in companies related to the Debtors. According to this email Mr. Burrows is the past President and Ultimate Designated Person for Foundation Securities Corp. A copy of this email is attached and marked as Exhibit "**GG**". I did not directly receive this email however a copy of it was forwarded to me by someone who did.

59. While Mr. Burrows' email speaks for itself and can be reviewed in its entirety, his email indicates that (i) the Debtors (and related entities) have had management problems for some time, (ii) Mr. Aitkens did not make full disclosure of all relevant facts to the management team in place at the relevant time, and (iii) the Debtors (and related identities) have failed to communicate with their investors in a transparent way.

Relief Requested

60. I make this Affidavit in support of an application by the UCC for (i) the appointment of Keith Prosser (or his nominee) as CRO of the Debtors in these proceedings, and (ii) the removal of Management.

SWORN BEFORE ME at Calgary, Alberta, this 11th day of April, 2012	))))	
(Commissioner for Oaths in and for the Province of Alberta)		(Signature)
PRINT NAME AND EXPIRY/LAWYER		**Kyle Brown** (Print Name)

DAVID LeGEYT
Barrister & Solicitor