

Form 27
[Rules 6.3 and 10.52(1)]



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 **APPLICATION BY THE UNSECURED CREDITORS COMMITTEE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT 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

NOTICE TO RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date	May 10, 2012
Time	2:00 p.m.
Where	Calgary, Alberta
Before Whom	Madam Justice B.E.C. Romaine

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

Remedy claimed or sought:

1. An Order in the form attached hereto as Schedule "A":
 - (a) declaring service of this Application and the supporting materials to be good and sufficient; and
 - (b) approving the appointment of new members to the Unsecured Creditors Committee (the "UCC") pursuant to the Order granted by this Honourable Court on January 19, 2012.
2. Advice and direction in respect of the UCC application submitted by Mr. Eric Everitt.

Grounds for making this application:

3. On March 21, 2012 Railside Capital Inc., Railside Industrial Park Inc., (collectively, "Railside"), Foundation Place Capital Inc., and Foundation Place Inc. (collectively, "Foundation Place") were added as debtors in these proceedings:
4. Legal Counsel to the UCC has written to all bondholders of Railside and Foundation Place and invited them to participate on the UCC;
5. One of the Legacy bondholders of the UCC has resigned, and legal counsel to the UCC has similarly written to all Legacy bondholders and again invited them to participate on the UCC.
6. There is a disagreement about Mr. Everitt's eligibility to sit on the UCC.

Material or evidence to be relied on:

7. Affidavit of Kyle Brown, filed and served herewith.
8. The other evidence and Monitor's Reports filed in these proceedings.

Applicable rules:

9. Part 6, Division 1.

Applicable Acts and regulations:

10. Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c.C-36, as amended.

Any irregularity complained of or objection relied on:

11. None

How the application is proposed to be heard or considered:

12. In person before Justice B.E.C. Romaine on May 10, 2012 commencing at 2:00 p.m.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

DRAFT

SCHEDULE "A"

Form 27

[Rules 6.3 and 10.52(1)]

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DOCUMENT **ORDER (CHIEF RESTRUCTURING OFFICER)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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

DATE ON WHICH ORDER WAS PRONOUNCED: Tuesday, the 17th day of April, 2012

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

ORDER

UPON the application of the Unsecured Creditors' Committee (the "**UCC**"); **AND UPON** reading the Affidavit of Mr. Kyle Brown sworn April 11, 2012, (the "**Affidavit**"); **AND UPON** hearing from counsel for Legacy Communities Inc., Airdrie Capital Corporation, and Airdrie Country Estates Inc., Railside Capital Inc., Railside Industrial Park Inc., Foundation Place Capital Inc., and Foundation Place Inc. (the

"Debtors"), counsel for the UCC, counsel for Ron Aitkens, and counsel for Ernst & Young Inc. (the "Monitor");

IT IS HEREBY ORDERED THAT:

SERVICE

1. The time for service and filing of this Application and supporting materials is hereby abridged and this Motion is properly returnable today and, further, that service thereof upon any interested party other than the persons served is hereby dispensed with.

CHIEF RESTRUCTURING OFFICER

2. NAVIS Solutions Inc. and its President, Keith Prosser, be and is hereby appointed as chief restructuring officer of the Debtors (the "**CRO**") with authority to carry on, manage, operate and supervise the management and operation of the business and affairs of the Debtors (the "**Business**"), including all the real and personal property of the Debtors (the "**Property**"), and to retain or appoint persons to manage and operate the Business or any part thereof and to act at once until further order of this Court, on the terms and conditions of this Order.
3. The CRO shall have and may exercise and perform the following powers, responsibilities and duties (collectively the "**CRO Powers**"):
 - (a) to take such steps as the CRO deems necessary or desirable to preserve and protect the Business and the Property;
 - (b) manage the Business in the name of and on behalf of the Debtors;
 - (c) take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Debtors including, without limiting the generality of the foregoing, take such steps as are necessary or desirable to control and use all bank accounts of the Debtors;
 - (d) ensure that Keith Prosser or such other persons as he designates in writing (each, a "**CRO Signing Officer**") shall become signing officers of all bank accounts of the Debtors and the Debtors' banks are hereby directed, when notified in writing by the CRO, to revoke any existing signing authorities and act on the instructions only of such CRO Signing Officers;
 - (e) to lead the process to determine the viability of dealing with the Properties and, if appropriate, seeking alternatives in respect of the refinancing (whether interim or otherwise), development or sale of the Property or any part thereof, and issuing recommendations in respect thereof, and to otherwise assess opportunities for the preservation, development, or other monetization of the Property, cost reductions, cash conservation and revenue enhancement and to implement initiatives in respect thereto on behalf of the Debtors;

- (f) to do all such things as are reasonably necessary or appropriate to negotiate, develop and implement a plan, or plans, of compromise and/or arrangement on behalf of the Debtors;
 - (g) to employ or retain and to discharge or terminate such advisors, agents, assistants and employees of the Debtors, and to otherwise deal with human resources and other organization issues of behalf of the Debtors, as the CRO may consider necessary or desirable, provided that such employment shall not constitute the CRO a "successor employer" to the Debtors or any of its subsidiaries within the meaning of any provincial or federal statute or otherwise;
 - (h) provide instruction and direction to advisors of the Debtors;
 - (i) represent the Debtors in any negotiations with any party;
 - (j) collect all receivables of the Debtors and pursue, compromise, or settle all claims by and against the Debtors;
 - (k) communicate with and provide information to the Monitor and/or the UCC regarding all matters;
 - (l) such other duties or powers that the CRO may agree to and which are approved by the Monitor or by order of this Court; and
 - (m) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers, as are reasonably required to carry out the provisions of this Order, including in the name and on behalf of the Debtors, as applicable.
4. The Debtors and their shareholders, direct and indirect subsidiaries, officers, directors, employees, servants, agents and representatives (the "**Related Persons**") shall cooperate fully with the CRO in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, all Related Persons shall provide the CRO with such access to the Debtors and their direct and indirect subsidiaries' books, records, assets and premises as the CRO requires to exercise its powers and perform its obligations under this Order.
5. The CRO shall incur no liability or obligation as a result of its engagement or the fulfillment of its duties in the carrying out of the provisions of its engagement or as may be ordered by this Court, save and except for gross negligence or wilful misconduct on its part, and no action or other proceeding shall be commenced against the CRO as a result of or relating in any way to its engagement as CRO, the fulfillment of its duties as CRO or the carrying out of any of the orders of this Court, except with prior leave of this Court and provided further that the liability of the CRO hereunder shall not in any event exceed the quantum of the fees and disbursements paid to or incurred by it in connection with this matter.
6. The Debtors shall pay the CRO's fees and disbursements as follows:
- (a) fees in the amount of \$20,000/month (excluding GST); and

(b) disbursements as may authorized by either the UCC or the Monitor.

7. The Administration Charge (as defined in the Initial Orders) shall secure the fees and disbursements of the CRO and the Directors' Charge shall secure the indemnities in favour of the CRO hereunder. The aggregate amounts of these Charges are not changed by this Order.
8. The CRO may resign or may be removed by order of this Court. In the event that the CRO resigns or is removed, the UCC, in consultation with the Debtors and the Monitor, shall nominate a replacement and such replacement shall be appointed subject to the approval of this Court.
9. The appointment of the CRO and the granting of powers and responsibilities to the CRO hereunder will not constitute the sale or disposition of the Business or the Property, and such Business and Property will continue to be the Business and Property of the Debtors unless and until sold in whole or in part to a purchaser.
10. The CRO shall be:
 - (a) free to provide consulting services to other non-competitive businesses provided that it discharges its duties, powers and responsibility as CRO in a diligent and timely fashion;
 - (b) along with its officers, directors, agents, and advisors indemnified against all claims and liabilities, howsoever arising ((including without limitation (i) all costs, charges and expenses (including legal expenses on a solicitor and its own client, full indemnity basis), and (ii) any amount paid to settle an action or satisfy a judgment, reasonably incurred by the CRO in respect of any civil, criminal or administrative action or proceeding to which the CRO is made a party)) by reason of performing or having performed services under this Agreement unless the CRO is found to have been either grossly negligent or guilty of wilful misconduct by a court of competent jurisdiction;
 - (c) responsible for deducting, remitting, and paying all insurance, federal and provincial income tax, Canada Pension Plan deductions, Employment Insurance Premiums and Workers' Compensation coverage ("Taxes") for itself and any persons it employs;
 - (d) subject to the supervisory jurisdiction of the Court.
11. The CRO, the Debtors, the UCC, or the Monitor may apply to this Court from time to time for advice and directions concerning its powers and duties or any other relevant matter.
12. None of the CRO or Keith Prosser or any of the employees or consultants of the CRO shall be deemed to be a director of any of the Debtors.

VARIATION OF INITIAL ORDER

13. The phrase "Applicants or the Monitor" appearing in paragraphs 13 of the Order granted in this matter by Madam Justice B.E.C. Romaine on December 21, 2011 (the "Legacy Initial Order") and paragraph 13 of the Order granted in this matter by Madam Justice B.E.C. Romaine on March 21, 2012 (the "Foundation Initial Order") is hereby amended to the following:

"Applicants, the Chief Restructuring Officer ("CRO"), or the Monitor".

14. The phrase "Applicants or the Monitor" appearing in paragraphs 14 and 45 of the Legacy Initial Order and paragraph 14 and 46 of the Foundation Initial Order (collectively the "Initial Orders") is hereby amended to the following:

"Applicants, the CRO, or the Monitor".

15. The phrase "to the Monitor" appearing in paragraph 15 Initial Orders is hereby amended to the following:

"to the Monitor and the CRO".

16. The phrase "Applicants and the Monitor" appearing in paragraphs 16, 17, 35(b), 44, 49, and 50 of the Legacy Initial Order and paragraphs 16, 17, 35(b), 44, 50, and 51 of the Foundation Initial Order is hereby amended to the following:

"Applicants, the CRO, and the Monitor".

17. The phrases "assist the Applicants" and "in its dissemination" appearing in paragraph 24(c) of the Initial Orders are hereby respectively amended to the following:

"assist the Applicants and the CRO" and "in the dissemination".

18. The phrase "advise the Applicants in its" appearing in paragraphs 24(d) and (e) of the Initial Orders is hereby amended to the following:

"advise the Applicants and the CRO in the".

19. The phrase "advise the Applicants, to the extent required by the Applicants" appearing in paragraph 24(f) of the Initial Orders is hereby amended to the following:

"advise the Applicants and the CRO, to the extent required by the Applicants and the CRO".

20. The phrase "the Monitor, counsel to the Monitor and counsel to the Applicants" appearing in paragraph 28 of the Initial Orders is hereby amended to the following:

"the Monitor, the CRO, counsel to the Monitor, and counsel to the Applicants".

21. Paragraph 29 of the Initial Orders is hereby replaced by the following:

"The CRO, the Monitor, and the Monitor's legal counsel shall pass their accounts from time to time".

22. The phrases "the Monitor, counsel to the Monitor", "the Monitor and such counsel", and "the Monitor and counsel" appearing in paragraph 30 of the Initial Orders are hereby respectively amended to the following:

"the CRO, the Monitor, counsel to the Monitor", "the CRO, the Monitor, and such counsel", and "the CRO, the Monitor, and counsel".

23. The phrase "consent of the Monitor" appearing in paragraph 40 of the Initial Orders is hereby amended to the following:
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"consent of the CRO and the Monitor".

24. The phrase "assistance to the Applicants and to the Monitor, as an officer of this Court" appearing in paragraph 48 of the Legacy Initial Order and paragraph 49 of the Foundation Initial Order is hereby amended to the following:

"assistance to the Applicants and to the Monitor and CRO, as officers of this Court".

25. The phrase "grant representative status to the Monitor" appearing in paragraph 48 of the Legacy Initial Order and paragraph 49 of the Foundation Initial Order is hereby amended to the following:

"grant representative status to the Monitor and the CRO".

B.E.C. ROMAINE

Justice of the Court of Queen's Bench of Alberta