

**ALBERTA SECURITIES COMMISSION**  
**SETTLEMENT AGREEMENT AND UNDERTAKING**

**Citation: Foundation Capital Corporation, Re, 2009 ABASC 425**

**Date: 20090820**  
**Docket: E/03920**

*Securities Act, R.S.A. 2000, c. S-4, as amended (Act)*

**Foundation Capital Corporation,  
Spruce Ridge Capital Inc., Spruce Ridge Estates Inc.,  
Beyer Consulting Ltd., Ronald James Aitkens and Roy Juergen Beyer (Settlors)**

*Introduction*

1. The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that the Settlers breached Alberta securities laws by making or authorizing, permitting, or acquiescing in the making of misleading statements to investors in 2008 about a real estate development project known as Spruce Ridge Estates (**Project**).
2. The Settlers each admit that they breached those sections of the *Act* referred to in this Settlement Agreement and Undertaking (**Agreement**), and acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertaking referred to in paragraph 33, each of the Settlers agrees to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

*Parties*

5. Foundation Capital Corporation (**FCC**) was incorporated in Alberta on June 15, 2005 and maintains its registered office in Lethbridge, Alberta. FCC has never been a reporting issuer. At all material times, Ron Aitkens (**Aitkens**) was its president, a director and owned 75% of its voting shares. FCC describes itself as being focused primarily on land development projects and the financing thereof.
6. Spruce Ridge Capital Inc. (**SRC**) was incorporated in Alberta on September 6, 2007 and maintains its registered office in Calgary, Alberta. SRC has never been a reporting issuer. At all material times, Ron Aitkens was its president, sole director and owned 40% of its voting shares. SRC is the capital raising arm for the Project, further described in paragraph 12, and offered bonds to investors pursuant to an offering memorandum dated October 1, 2007 (**SRC OM**).

7. Spruce Ridge Estates Inc. (SRE) was incorporated in Alberta on September 6, 2007 and maintains its registered office in Calgary, Alberta. SRE has never been a reporting issuer. At all material times, Ron Aitkens was its president, sole director and shareholder. SRE is the owner and developer of the Project. Investors who subscribed for SRC bonds were also offered Shares of SRE pursuant to a separate offering memorandum dated October 1, 2007 (**SRE OM**).

8. Ronald James Aitkens (**Aitkens**) is a resident of Lethbridge, Alberta and, at all material times, was a director, officer and shareholder of each of FCC, SRC, and SRE. As such, Aitkens was the guiding mind of FCC, SRC and SRE and authorized, permitted or acquiesced in the creation and use of promotional materials relating to marketing the Project to investors. He is also a Certified Financial Planner. He has never been registered with Executive Director of the Commission in any capacity.

9. Beyer Consulting Ltd. (**Beyer Ltd.**) was incorporated in Alberta on July 13, 2001 and maintains its registered office in Edmonton, Alberta. Beyer Ltd has never been a reporting issuer. At all material times, Roy Juergen Beyer (**Beyer**) and his wife were its sole directors and shareholders. FCC contracted with Beyer Ltd. to provide FCC with marketing services relating to raising capital for the Project.

10. Roy Juergen Beyer (**Beyer**) is a resident of Calgary, Alberta and at all material times was a director and shareholder of Beyer Ltd. Beyer had participated in drafting the Project's marketing and promotional materials and was the main presenter at seminars held to market the Project between October 4, 2007 and June 18, 2008 (**Seminars**). He has never been registered with the Executive Director of the Commission in any capacity.

11. At no time were FCC, SEC, SRC or Beyer Ltd. reporting issuers, as defined in the *Act*, as they were raising capital and involved in the distribution of securities pursuant to the provisions of National Instrument 45-106 "Prospectus and Registration Exemptions", which does not require that they be reporting issuers. Further, Aitkens and Beyer have never been required to be registered with the Executive Director given that the Project was to be funded by capital raised pursuant to this National Instrument.

#### *Circumstances*

12. The Project was largely conceived and implemented by Aitkens through FCC, SRC, SRE, and Beyer Ltd.. The Project required capital to acquire and develop a 923 acre parcel of land in Priddis, Alberta (**Lands**). The plan is to submit for the approval of the Municipal District of Foothills (**MD**), a proposal to "redesignate" the Lands for development and construction of a community called Spruce Ridge Estates which conceptually, could include a proposed PGA-class golf course, a five star hotel and up to 1,800 residences.

13. Between about October 4, 2007 and June 18, 2008, SRC and SRE raised at least \$46 million, of which about \$41.8 million was raised in Alberta from 1,731 Alberta investors. The proceeds were raised by selling 6%, 5 year term, redeemable bonds in SRC, and class B common shares of SRE, pursuant to the SRC OM and SRE OM.

14. In order to raise these funds, the Settlers engaged in a variety of capital raising activities including radio and print advertising, distributing promotional materials, and conducting Seminars.

15. The promotional materials created by the Settlers included letters, brochures, flyers and Powerpoint presentations (**Promotional Materials**). The Promotional Materials presented at the Investor Seminars were drafted by Beyer in reliance upon information supplied by Aitkens. Aitkens approved of all of the Promotional materials before they were circulated.

16. The Settlers were all engaged in either authoring or presenting, or both, the Promotional Materials and Seminars.

*Misleading Statements about Support from MD*

17. During seminars, held on February 26, 2008, and May 27, 2008, Beyer on behalf of the Settlers and in response to questions posed by potential investors, represented that, in his opinion, after meetings with officials from the MD, the MD officials were “very, very supportive” and/or “very, very favourable”.

18. Staff alleges these statements were untrue and potentially misleading as the MD had yet to take a position about approving the development of the Project.

19. Staff further alleges that Beyer, on behalf of the Settlers, omitted to state all of the facts necessary for the above statements not to be misleading, because he failed to accurately represent concerns that had been expressed to the Settlers by the MD regarding the local residents historical concerns about population density, the visual impact of the Project and the use of groundwater.

20. As of this date, no application has been made to the MD to redesignate the Lands. However, the Settlers state that they intend to do so.

*Misleading Statements about “Guarantee” on Bonds*

21. During the Seminars, Beyer on behalf of the Settlers, presented a slide in a Powerpoint presentation, and verbally represented to attendees, that the bonds would pay “a guaranteed rate” of 6% per year for 5 years.

22. Staff alleges this statement was misleading because as stated in the SRC OM:

1. the bonds were redeemable by SRC on 90 days notice, in advance of the 5-year term,
2. the timing of and the distribution of interest payments were at the sole discretion of SRC, and
3. the loan from SRC to SRE was secured by a mortgage on the lands, while the bonds were unsecured and ranked *pari passu* with SRC’s other unsecured creditors.

23. Staff alleges that the use of the term “guarantee” respecting the interest payments on the SRC bonds was misleading in light of the facts described in paragraph 22 and the risk of default in payment by SRC.

24. The Settlers state that in using the term “guaranteed rate” they had meant to convey the fact that the interest rate was “fixed” but nevertheless, acknowledge that the use of the term “guaranteed rate” was potentially misleading.

25. The Settlers further state that prior to becoming aware of the investigation being carried out by Staff, the Settlers had ceased the use of words “guaranteed rate”.

#### *Breaches*

26. The Settlers admit that they breached section 92(4.1) of the *Act*, and acted contrary to the public interest by making or authorizing, permitting, or acquiescing in the making of the statements described herein to prospective investors about the Project at the seminars, held on February 26, 2008, and May 27, 2008, 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, and would reasonably be expected to have a significant effect on the market price or value of the SRC and SRE securities.

#### *Other Circumstances Relevant to Settlement*

27. The Settlers state that it was never their intention to mislead investors about the nature or security of their investment and their breaches of the *Act* were not deliberate.

28. None of the Settlers has been previously sanctioned by the Commission.

29. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

30. FCC commits to paying a minimum of \$100,000 to fund both internal sales agent registration for the Canadian Securities Course and training relating to improving compliance with Alberta securities laws, including National Instrument 31-103 regarding registration reform.

31. FCC has voluntarily agreed to pay \$250,000 to the Commission to fund the creation, development and delivery of an exempt market training module to be provided to participants under the direction of the Commission. The funds will be payable as follows:

31.1 \$100,000 on execution of this Agreement; and

31.2 \$50,000 on the anniversary date of this Agreement in 2010, 2011 and 2012.

31.3 FCC agrees these funds may be used for a similar educational purpose, at the Commission’s discretion, in the event that the exempt market training module is no longer a suitable purpose for the funds.

32. FCC states it will have legal counsel review all future trades, seminars and marketing materials to ensure compliance with Alberta securities laws.

#### **Settlement Payments and Undertakings**

33. Based on these facts and admissions, each of the Settlers undertakes to the Executive Director of the Commission, upon execution of this Agreement, as follows:

33.1 Spruce Ridge Estates Inc. and Spruce Ridge Capital Inc. undertake to:

- a) before distributing securities SRC and SRE will each file a new Offering Memorandum which complies with NI 45-106F2; and
- b) appoint sufficient qualified directors and officers to ensure the proper oversight and operation of their respective businesses within 3 months.

33.2 Foundation Capital Corporation:

- a) FCC agrees to pay \$100,000 to settle the allegations against it; and
- b) FCC agrees to pay \$20,000 towards the cost of these proceedings.

33.3 With respect to Ron Aitkens (**Aitkens**):

- a) Aitkens agrees to pay \$30,000 to settle the allegations against him; and
- b) Aitkens agrees to pay \$15,000 towards the cost of these proceedings.

33.4 With respect to Roy Beyer (**Beyer**):

- a) Beyer agrees to pay \$20,000 to settle the allegations against him; and
- b) Beyer agrees to pay \$5,000 towards the cost of these proceedings.

**Administration**

34. Each of the Settlers acknowledges that they have sought independent legal advice and that they have voluntarily made the admissions herein.

35. Each of the Settlers waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

36. Each of the Settlers acknowledges that this Agreement may be referred to in any other proceedings under the *Act*, and in securities regulatory proceedings in other jurisdictions, but in no other proceedings and for no other purpose.

37. The Agreement resolves all issues involving the Settlers as described above, and Staff will take no further steps against any of them arising from these facts.

38. The Agreement may be executed in counterpart.

Signed by the duly authorized signatory ) FOUNDATION CAPITAL CORPORATION  
of Foundation Capital Corporation at )  
Calgary, Alberta this 19 day )  
of August 2009, in the presence of: )  
)  
Marjorie McCue )  
WITNESS NAME ) PER: "Original Signed By"  
) Ronald James Aitkens  
) President  
"Original Signed By" )  
SIGNATURE )

Signed by the duly authorized signatory ) SPRUCE RIDGE ESTATES INC.  
of Spruce Ridge Estates Inc. at )  
Calgary, Alberta this 19 day of )  
August 2009, in the presence of: )  
)  
Marjorie McCue )  
WITNESS NAME ) PER: "Original Signed By"  
) Ronald James Aitkens  
) President  
"Original Signed By" )  
SIGNATURE )

Signed by the duly authorized signatory ) SPRUCE RIDGE CAPITAL INC.  
of Spruce Ridge Capital Inc. at )  
Calgary, Alberta this 19 day of )  
August 2009, in the presence of: )  
)  
Marjorie McCue )  
WITNESS NAME ) PER: "Original Signed By"  
) Ronald James Aitkens  
) President  
)  
"Original Signed By" )  
SIGNATURE )

Signed by the duly authorized signatory ) BEYER CONSULTING LTD.  
of Beyer Consulting Ltd. at )  
Red Deer, Alberta this 15 day of )  
August 2009, in the presence of: )  
)  
Brian Anderson )  
WITNESS NAME ) PER: "Original Signed By"  
) Roy Juergen Beyer  
) President  
)  
"Original Signed By" )  
SIGNATURE )

Signed by Ronald James Aitkens at )  
Calgary, Alberta, this 19 day of )  
August, 2009, in the presence of: )

Marjorie McCue )  
WITNESS NAME )

"Original Signed By" )  
SIGNATURE )

"Original Signed By" )  
RONALD JAMES AITKENS )

Signed by Roy Juergen Beyer at )  
Red Deer, Alberta, this 19 day of )  
August, 2009, in the presence of: )

Brian Anderson )  
WITNESS NAME )

"Original Signed By" )  
SIGNATURE )

"Original Signed By" )  
ROY JUERGEN BEYER )

) ALBERTA SECURITIES COMMISSION )  
)

Calgary, Alberta, August 20, 2009 )

) "Original Signed By" )  
) John P. Petch )  
) Director, Enforcement )