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NO. S-088739
VANCOUVER REGISTRY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT,
R.S.C. 1985, c. C-36

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT,
R.S.A. 2000, c.B-9

AND

IN THE MATTER OF OKANAGAN HILLS DEVELOPMENT
CORPORATION, VINEYARD HOMES AT THE RISE LTD.,
THE GOLF CLUB AT THE RISE LTD. and Y-K PROJECTS
LTD.

(All referred to hereafter as "OHDC")

AND

The "Petitioners"

MONITOR'S THIRTEENTH REPORT

July 20th, 2010

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EXHIBITS:

- “A1 – A4” OHDC and Golf Club Actual Cash Flow for the period January 16th
to July 2nd, 2010.
- “B” Consolidated Plan of Compromise and Arrangement submitted by the Petitioners.
- “C” Claims Register of OHDC/the Petitioners - Unsecured Creditors (referred to in the
Plan of Arrangement as the General Creditors.)

1. INTRODUCTION

The Rise is a master planned community development with signature golf course property located within the boundaries of the City of Vernon, British Columbia. The properties are described in the Petition filed in the Supreme Court of British Columbia ("the Court") referred to below. For the purpose of this report we shall limit the description of the properties to:

1. "The Lands", being the properties slated for residential development by OHDC, and
2. The golf course referred to as "The Golf Club".

On December 15th, 2008 a Petition was filed in the Court for an order granting a stay of proceedings pursuant to the Companies' Creditors Arrangement Act ("CCAA"). OHDC was the Petitioner. The Court granted the Order (the "Initial Order").

The First Monitor's Report was provided to the Court on December 23rd, 2008 ("the First Monitor's Report") for the purposes of providing information concerning the urgent need for Debtor in Possession Financing ("DIP").

On December 29th, 2008, an Order was made which provided that the Petitioners were authorized to borrow up to the sum of \$2,500,000 under a DIP credit facility.

The Second Monitor's Report was provided to the Court on January 29th, 2009, providing the Court information with respect to an application for an extension of the Stay of Proceedings provided for by the Initial Order, and also providing information pertaining to the replacement of the DIP Financier.

The Third Monitor's report was provided to the Court on February 19th, 2009, recommending to the Court acceptance of the DIP Financing commitment.

The Fourth Monitor's Report was provided to the Court on June 17th, 2009, to update the Court on the financial status and other matters pertaining to OHDC and in support of an Application for further extension of the Stay of Proceedings for a period of 30 days.

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The Fifth Monitor's Report was provided to the Court on July 17th, 2009 to update the Court on the financial status of OHDC and The Golf Club and in support of an application for a further extension of the Stay of Proceedings to August 24th, 2009. The report also set out the progress of the land boundary encroachment issues to be resolved between The Golf Club and The Lands.

The Sixth Monitor's Report was provided to the Court on August 16th, 2009 to update the Court on the financial status of OHDC and The Golf Club and in support of an application for a further extension of the Stay of Proceedings to September 24th, 2009.

The Seventh Monitor's Report was provided to the court on September 23rd, 2009 to update the Court on the financial status of OHDC and The Golf Club and in support of an application for a further extension of the Stay of Proceedings to November 2, 2009.

The Eighth Monitor's Report was provided to the Court on October 30, 2009 to update the Court on the financial status of OHDC and The Golf Club and to support:

- an application for additional DIP financing of \$170,000.
- approval of the Court in respect to the disposition of \$300,000 from lot sale proceeds
- a further extension of the Stay of Proceedings to December 31, 2009.
- an application to approve use of surplus funds arising after repayment of the DIP financing to maintain minimal operations at The Golf Club and The Lands until a total sale is complete.

The purpose of the Ninth Monitor's Report was to support an Application to extend the Stay of Proceedings to March 1st, 2010.

The purpose of the Tenth Monitor's Report was to support an Application to extend the Stay of Proceedings to April 30th, 2010.

The purpose of the Eleventh Monitor's Report was to support an Application to extend the Stay of Proceedings to May 28th, 2010, to finalize a Plan of Arrangement to be presented to all creditors.

The purpose of the Twelfth Monitor's Report was:

- 1) to support an Application to extend the Stay of Proceedings for a period of 63 days to July 30th, 2010;
- 2) to provide information concerning the need for ongoing Debtor in Possession financing ("DIP") in the amount of \$2,000,000. A portion of said DIP credit facility was proposed to be retroactive for advances already made in the amount of \$1,035,766.

The purpose of the Thirteenth Monitor's Report is:

- 1) to provide independent comment on the terms and functionality of the Plan of Arrangement, the classification of the Petitioners' creditors and the proposed compromises outlined in the Plan; and
- 2) to support a basis for the Petitioners' further application for an extension of the Stay of Proceedings to September 8th, 2010 to allow for the implementation of the Plan.

2. REVIEW OF OHDC AND THE GOLF CLUB COMBINED ACTUAL CASH FLOW TO JULY 2ND, 2010

Attached as Exhibit A1 – A4 are schedules that show the actual cash flow for the period January 16th, 2010 to July 2nd, 2010.

- In the period to July 2nd, 2010 the cash flow shortage was financed by advances of \$447,000 received from the ARRES Group and \$130,000 from new DIP financing (Exhibit A1). An additional advance of \$25,000 from the new DIP financing was made in the week ending July 16th, 2010.
- OHDC and The Golf Club have presented a further application for draws against the new DIP for delivery by July 27th, 2010 of \$282,000, which includes billings of the Monitor and Legal fees to June 30th, 2010.
- As at July 2nd, 2010, OHDC cash in hand was \$15,000 and The Golf Club had \$14,000 cash in hand. During the period up to July 2nd, since the last report, the operations have been funded by the new DIP financing as noted above.

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- The Golf Club actual cash flow shows a deficiency of \$353,000 for the period January 15th through July 2nd, 2010, after payment of leases and finance costs of \$235,000 (Exhibit A4). December 15th, 2008 to January 15th, 2010, The Golf Club cash deficit for the period was \$537,000.
- For the period July 3rd through September 10th, 2010, The Golf Club is expected to show a further deficit of \$59,000, after payment of all leases and financing costs of an additional \$147,000 (Exhibit A4).
- The Monitor's fees for the period ending June 30th, 2010 of \$63,000 and legal counsel fees of \$174,451 for the period ended June 30th, 2010 are outstanding.
- Further fees and expenses of the Monitor and Legal Counsel are estimated to be in the range of \$150,000 to work through the Plan of Arrangement, formulate the Creditors' Meetings, subsequent necessary Court Proceedings, assuming that the process takes to September, 2010.
- Also included in the deficient funding of OHDC is the funding requirements to sustain the HSBC loan on the Beach Lands at the rate of \$6,700 per month.
- City taxes have not been paid for 2009, for an estimated total, including penalty and interest, of \$118,000 for OHDC, and a total of \$166,000 for The Golf Club.
- City taxes have not been provided for 2010 in the cash flows, for an estimated total of \$114,000 for OHDC and \$149,000 for The Golf Club.
- BDC continues to express no willingness to fund any of the ongoing operations of The Golf Club.

3. **ENCROACHMENT BY THE LANDS ON THE GOLF CLUB AND VISA VERSA**

- With a view to settling the issues between the ARRES Mortgage Group (“ARRES”) having security over OHDC and BDC having security over The Golf Club, the Monitor solicited an offer from ARRES on the following basis:
 - 1) Offer \$3,000,000;
 - 2) No interest;
 - 3) Security in front of the present and future Debtor in Possession Financing (“DIP”);
 - 4) 25% of all Lots presently available for sale (there are 14 individual Lots, having a total asking price of \$8,000,000 approximately);
 - 5) Further conditions may be appropriate but would be subject to further negotiations.
- This offer was remitted through BDC’s legal counsel July 8th, 2010. No indication of a counter offer has been received. Negotiations presently are at a standstill. The Petitioners propose to treat the BDC claim as an “unaffected creditor”.
- BDC has filed an Application returnable July 26th, 2010 to lift the Stay as against BDC. The Petitioners will take no position on this Application.
- BDC has scheduled an Application for two days on September 27th and 28th, 2010 to resolve the encroachment issues in the CCAA Proceedings as part of the Claims process.

4. **DEBTOR IN POSSESSION FINANCING (“DIP”) DETAILS**

- The original DIP provided by Order of Court on February 19, 2009 in the amount of \$2,500,000 has been paid in full.

- Since the Filing Date, OHDC has realized through Lot Sales a total of \$4,700,000 in sales, of which \$2,252,000 was advanced to legal counsel for ARRES, and the balance of \$2,500,000 being used to repay the above DIP.
- \$1,200,000 of the aforementioned funds advanced to ARRES was used for a partial repayment of the CME Mortgage.
- The balance has been used to pay ARRES expenses, including ARRES legal costs and advance to OHDC of \$477,000.
- The above advances in total amounting to \$3,700,000 are described in the Plan of Arrangement and in other documents as “the Dip Replacement Lenders Mortgage”.
- The previous arrangement referred to in the Monitor’s Twelfth Report pertaining to satisfaction of the CME debt by transfer of certain Lots, was not proceeded with, and as such CME has been placed in the ARRES First Mortgage Class for its remaining outstanding indebtedness.
- By Order of the Court on May 20th, 2010, the Petitioners were granted a new DIP credit facility in the amount of \$2,000,000, which is now a new super priority charge in priority to the DIP Replacement Lenders Mortgage.

5. **MARKETING OF THE LANDS AND THE RISE (“the Property Sale”)**

- The Sales Agent employed by OHDC, CB Richard Ellis of Vancouver, although extensively contacting potential buyers and interested parties for the purchase of the entire development or joint-venturing with ARRES as the prime mortgage holders, have been unable to find a willing purchaser.
- A number of prospective purchasers made conditional offers to purchase The Rise, including The Golf Club, one in the amount of \$75,000,000 that could have seen a potential dividend to unsecured creditors of \$0.30. Unfortunately the purported \$2,000,000 deposit supporting the offer, which was accepted, turned out to be illusionary.

- After almost two years, the amount owing to the First, Second and Third ARRES Mortgage Holders and other Creditors at the original rates of interest offer no immediate prospects of an offer that would cover all obligations.

6. **CANADA REVENUE AGENCY**

- Tax accountants for OHDC have advised that they have filed the necessary filings for 2008. Revenue Canada reassessed 2005 and 2006 for YK Projects Ltd., claiming an amount of \$155,000. The accountants have filed loss carrybacks which they feel will mitigate this amount owing and result in zero taxes owing. This is not certain.

7. **ARRES MORTGAGE HOLDERS**

- By letter dated July 19th, 2010, the investors, secured by way of mortgages on OHDC property, were informed of the Plan of Arrangement and the priorities pertaining thereto.
- The letter explains the administrative charge, the DIP loans, the classification of the new ARRES First Mortgagee, Second Mortgagee, Third Mortgagee; the proposed interest rates, i.e. Court Order Interest Act at 5%; the proposal to deal with the Unsecured Creditor Class; and the need for further \$2,000,000 DIP loan.
- The letter further informs the Investors that ARRES will be making a court application on July 26th, 2010 at 11:00 a.m. at the Supreme Court in Vancouver, to enable ARRES to vote on the Investors' behalf at the CCAA Meeting of Creditors.

8. THE CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT

a) Classes of Creditors

- There are five (5) classes of Creditors for the purpose of considering and voting on this plan.

b) Treatment of Creditors

- The obligations of the Petitioners to the Creditors shall be settled and compromised pursuant to this Plan as follows:
 - i. Those Creditors who hold an ARRES First Priority Proven Claim will constitute a priority secured class (the "First ARRES Secured Creditor Class") ranking in priority immediately behind the DIP Replacement Lenders Mortgage. Upon the Plan Implementation Date the First ARRES Secured Creditor Class Mortgages will be discharged as against the Development Lands and a new mortgage (the "New First ARRES Secured Creditor Mortgage") will be registered against the Development Lands.

The Plan provides for a First Arres Secured Creditor Mortgage to be registered against the Lands in priority immediately behind the DIP Replacement Lenders Mortgage. The First Arres Secured Creditor Mortgage will replace the First Arres Secured Creditor Class Mortgages. All mortgages that rank first in priority over portions of the Lands are defined as First Arres Secured Creditor Class Mortgages under the Plan. They are:

- S136, B2B, Olympia \$15.0 million mortgage KX021116 and assignment of rents KX021117 ("\$15 Million")
- S136, B2B, Olympia \$5.0 million mortgage KW086920 and assignment of rents KW086921 ("\$5 Million")
- S136 \$525,000 mortgage CA419774 and assignment of rents CA419775 ("Discovery")
- S136, Olympia \$8,200,000 LA143704 mortgage and assignment of rents, LA143705 ("Watermark")

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- S136 \$5,300,000 mortgage CA675632 and assignment of rents CA675633 ("Winery Lots")
- CME \$4,900,000 mortgage CA669544 ("CME")

By way of background, the \$15 Million and \$5 Million mortgages secure an initial advance by Arres in the amount of \$20 million. The \$15 Million and \$5 Million mortgages are registered over all of the Lands. The Monitor has been informed that new money was invested into the Development by Arres investors and various priority agreements were entered into with these new Arres investors whereby the new money invested was to have priority over the existing mortgages over those specific developments within the Rise in which the new money was invested. The Discovery, Watermark, Winery Lots, and CME mortgages secure the new money and on this basis have been included in the First Arres Secured Creditor Class Mortgages.

- ii. Those Creditors who hold an ARRES Second Priority Proven Claim will constitute a second priority secured class (the "Second ARRES Secured Creditor Class") ranking in priority immediately behind the New First ARRES Secured Creditor Mortgage. Upon the Plan Implementation Date the Second ARRES Secured Creditor Class Mortgages will be discharged as against the Development Lands and a new mortgage (the "New Second ARRES Secured Creditor Mortgage") will be registered against the Development Lands.
- iii. Those Creditors who hold an ARRES Third Priority Proven Claim will constitute a third priority secured class (the "Third ARRES Secured Creditor Class") ranking in priority immediately behind the New Second ARRES Secured Creditor Mortgage. Upon the Plan Implementation Date the Third ARRES Secured Creditor Class Mortgages will be discharged as against the Development Lands and a new mortgage (the "New Third ARRES Secured Creditor Mortgage") will be registered against the Development Lands.

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- iv. The General Creditors will form the General Creditor Class. Each General Creditor will be paid its General Creditor Pro Rata Share of its General Creditor Proven Claim to be paid out of the net proceeds of sale of General Creditor Lots.
- v. The DIP Replacement Lenders will form a separate secured class (the "DIP Replacement Lender Class") and will be issued the DIP Replacement Lender Mortgage. The DIP Replacement Lender Mortgage will rank in priority ahead of the New First ARRES Secured Creditor Mortgage. Each DIP Replacement Lender comprising the DIP Replacement Lender Class will share in the DIP Replacement Lender Mortgage based on its DIP Replacement Lender Pro Rata Share.

The Plan provides for a new DIP Replacement Lenders Mortgage to be registered in a priority position ahead of the new ARRES mortgages. This DIP Replacement Mortgage will replace the existing super priority Joint ARRES/CME Capital Charge created by order of the Court on October 15th, 2009. By way of background, as the Rise Development progressed new money was invested into the Development by ARRES investors. The Monitor has been informed that various priority agreements were entered into with these new ARRES investors whereby the new money invested was to have priority over existing ARRES mortgages over those specific developments within the Rise in which the new money was invested. The Joint ARRES/CME Capital Charge was originally created to capture the net proceeds of sale from sold Lots in circumstances where the existing ARRES mortgages registered against title to those sold Lots were extinguished by way of vesting order upon the transfer of free and clear title to the third party purchasers of those Lots. As Lots were sold, the Joint ARRES/CME Capital Charge "bucket" was filled with the Net Proceeds of sale from the sale of the Lots. The Net Proceeds of sale from the sale of the Lots in the Joint ARRES/CME Capital Charge "bucket" secures the new money invested by ARRES investors. Presently, the Joint ARRES/CME Capital Charge "bucket" contains \$3,781,000 of new money which presently has court ordered priority ahead of all existing encumbrances registered against the Development Lands. Under the terms

of the Plan, the Joint ARRES/CME Capital Charge "bucket" will be extinguished and replaced with the new DIP Replacement Lenders Mortgage.

c) **Unaffected Claims**

- The following claims are not affected by this Compromise and Arrangement:
 - i. **The CCAA Claims** – these pertain to any outstanding fees and obligations to the Monitor and legal counsel of the Petitioners secured by the Administration Charge and the Directors' Charge.
 - ii. **Post Filing Claims** – these pertain to any obligations of the Petitioners arising subsequent to December 15, 2008 that are unpaid.
 - iii. All Claims pursuant to or in respect to the DIP Loan Mortgage by the Holder thereof or its successor or assignee.
 - iv. **The HSBC Mortgage** – the HSBC holds mortgage security on beachfront property on Okanagan Lake in the amount of approximately \$800,000.
 - v. **Claims of Compliance Deposit Creditors** – the Petitioners propose that all valid claims of Compliance Depositors will be recognized as and when such compliance depositors satisfactorily complete the landscaping and/or building requirements. In the event that Compliance Depositors have claimed as a creditor, they should withdraw their Proof of Claim unless they wish to realize their outstanding deposit by way of dividend.
 - vi. **Claims of Equipment Lessors** – OHDC and The Golf Club have been maintaining the lease payments necessary pursuant to the terms of the leases entered into with the Equipment Lessors (all varied by mutual consent). OHDC and The Golf Club will continue to maintain their respective leases and lessor claims should be withdrawn from this Plan of Arrangement.

- vii. **Claims of The Golf Club Founding Members** – the financial obligation to Golf Club Founding Members will be satisfied with the payment to unsecured creditors (see Para. d below). Golf Club Founding Members will be entitled to continue to have the golfing rights and privileges as set out in the Schedule of Benefits annexed as Schedule B to the Membership Agreement.
- viii. **Claims of Golf Club Members in good standing** – such Golf Club Members will continue to have the right to play golf at The Golf Club in accordance with the Golfing Rights and Privileges as set out in the Membership Agreement. All other golf club member claims will be settled as part of the dividend contemplated in the settlement to unsecured creditors. Golf Club Members in good standing should withdraw their Proof of Claim if they wish to continue their Membership.
- ix. **Claims of the City of Vernon** – subject to dispute resolution pertaining to certain claims of the City of Vernon, the claims of the City of Vernon will be unaffected.
- x. **Claims of the BDC Mortgage** – unless settled prior to the meeting and Final Order, the BDC Mortgage will be unaffected.
- xi. **Inter-Company Debts Owning Between Petitioners.**

d) **Unsecured Claims**

- The Petitioners will make available to the Unsecured Creditors, with the consent of ARRES, the following two Lots for sale, the proceeds of which will be used to pay a dividend to the Unsecured Creditors:

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Calculation of Estimated Dividend Payable to Unsecured Creditors:

	Lot 13	Lot 17	Total
	<u>PID 026-990-326</u>	<u>PID 027-271-838</u>	
Appraisal Value	<u>\$270,000</u>	<u>\$270,000</u>	<u>\$540,000</u>
Less:			
Outstanding Property Taxes	4,235	3,948	8,183
Seeking Costs @ 5%	<u>13,500</u>	<u>13,500</u>	<u>27,000</u>
(including legal costs)	<u>17,735</u>	<u>17,448</u>	<u>35,183</u>
Estimated Net Proceeds:	<u>\$252,265</u>	<u>\$252,552</u>	<u>\$504,817</u>
Total value of claims of Unsecured Creditors (attached as Exhibit "C") (subject to revision)			<u>\$8,642,849.18</u>
Estimated Dividends per \$ Claim			<u>\$0.0584</u>
E. & O.E.			

Note:

- 1) *The above total value of claims of unsecured creditors includes the amounts claimed by BMR Development Inc. ("BMR") and Black Paw Construction Inc. ("Black Paw") for \$431,150 and \$369,697 respectively. The Monitor, in collaboration with the Petitioner(s) has sent a Revision Notice to BMR and Black Paw and is waiting for additional information in respect to those Revision Notices.*
- 2) *The City of Vernon has made a secured claim which is classified in the Plan of Arrangement to be an Unaffected Claimant. The Monitor, in collaboration with the Petitioner(s), has sent a Revision Notice to the City of Vernon and has received additional information in support of the claim. If there is no resolution the Petitioner(s) will deal with this claim as a secured creditor.*

- The Monitor is of the opinion that in the event that the Petitioners are forced into a liquidation, **there will be no dividends** available to the Unsecured Creditors.
- In addition, the ARRES Investors will suffer a significantly greater loss in a liquidation than under this proposed Plan, on the basis that greater value will be

derived by the further development and subdivision of the Lands, which necessitate a requirement for new funding in the future.

9. **DISALLOWED CLAIMS**

In collaboration with the Petitioner(s) the Monitor sent Revised Notices to the following claimants:

	<u>Claim</u> <u>Amount</u>	<u>Disputed</u> <u>Amount</u>	<u>Revised</u> <u>Acceptable</u> <u>Amount</u> <i>(still in dispute)</i>
BMR Development Inc.	\$ 735,410.73	\$650,410.73	\$85,000.00
Black Paw Construction Inc.	369,697.04	369,697.04	0.00
City of Vernon	480,941.75	337,171.20	143,770.55

10. **CLAIMS RECEIVED AFTER THE CLAIM BAR DATE**

- The Monitor has on hand claims in the amount of \$381,000, of which approximately \$266,000 relates to Revenue Canada for GST that may be subject to dispute.
- Included in the above total is a \$26,000 claim the Monitor deems to be secured and will be part of the Super Priority Claim.
- The Monitor has deemed these claims to be acceptable and included them in the overall calculation of Unsecured Claims referred to in Para. 8.d.

11. CONCLUSION

- The Monitor is of the opinion that the Unsecured Creditors have a total loss in a liquidation situation versus a minimum \$0.05 per dollar claimed dividend under this Plan.
- The Monitor is also of the opinion that the ARRES Investors have a greater chance of realizing their principal and interest through a workout under the Plan, (albeit at Court Ordered interest rate), rather than in an outright forced liquidation, which would be the alternative. A forced liquidation and sale would very likely result in a loss to the ARRES Investors.
- The Monitor is of the opinion that the Petitioners have acted and are continuing to act in good faith and with due diligence, and the Monitor supports the filing of the Plan and classification of the Classes as outlined in the Plan and the extension of the Stay to September 8th, 2010 in order to allow the Plan to be implemented.

This concludes the Monitor's Thirteenth Report. Should there be any questions or comments in connection with this report or in connection with any aspect of these proceedings and the Monitor's role therein, please contact either Mr. George Abakhan or Mr. Philip McCourt at (604) 689-4255 or by facsimile at (604) 689-4277.

Yours truly,

ABAKHAN & ASSOCIATES INC.

In its capacity as Monitor of Okanagan Hills Development Corporation,
Vineyard Homes at the Rise Ltd., The Golf Club at the Rise Ltd. and
Y-K Projections Ltd., and not in its personal capacity.

Per:

Philip McCourt
George Abakhan, CA-CIRP
President

GA/ss
Attachments

RESTRICTIONS

In the course of conducting our duties including the writing of this report, we have relied entirely on information supplied by management. We did not conduct procedures necessary to enable us to express an opinion on the financial information contained in this report in accordance with Generally Accepted Auditing Standards. Nor have we conducted a formal valuation of the operating subsidiaries of the Company. Projected financial information and the assumptions on which it is based are solely the responsibility of the company. Since the assumptions relate to the future they may be affected by unforeseen events, we can express no opinion as to how closely the forecasts will correspond to actual results.

Further, since the projections and calculations are based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur and the variances may be material. Accordingly, we express no assurance as to whether the projections or calculated estimated realizations will be achieved.