

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NO. 2101-0117AC

TRIAL COURT FILE NUMBER 1401-12431

REGISTRY OFFICE CALGARY

APPLICANT **ACCESS MORTGAGE INVESTMENT CORPORATION (2004) LIMITED**

STATUS ON APPEAL NOT A PARTY TO THE APPEAL
STATUS ON APPLICATION NOT A PARTY TO THE APPLICATION

RESPONDENT **ARRES CAPITAL INC.**

STATUS ON APPEAL RESPONDENT
STATUS ON APPLICATION RESPONDENT

AND

NONPARTY APPLICANTS **KENZIE FINANCIAL INVESTMENTS LTD. and others, see attached Schedule A**

STATUS ON APPEAL APPELLANTS
STATUS ON APPLICATION APPLICANTS

DOCUMENT **EXTRACTS OF KEY EVIDENCE**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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Registrar's Stamp



Appeal from the Reasons for Decision of the
Honourable Justice B .E.C. Romaine
Date Pronounced April 19, 2021
Not Yet Entered

EXTRACTS OF KEY EVIDENCE

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LOAN ADMINISTRATION AGREEMENT ("Agreement")YK Projects-\$3.5 Million Priority

This Agreement made the 31st day of August, 2011

BETWEEN:

Arres Capital Incorporated (registered in British Columbia as Western Arres Capital Inc.), a body corporate incorporated under the laws of the Province of Alberta, having an office at 204, 1324 - 11th Avenue S.W., Calgary, AB, T2C 0M6

("Arres Capital")

AND: Brian Sekiya - Olympia Trust Acct. #78676

Residing at 601 12th Avenue N.E., Calgary, Alberta, T2E 1B2

(the "Co-lender")

WHEREAS:

- A. Arres Capital carries on the business of mortgage lending and brokering in various provinces of Canada;
- B. From time to time Arres Capital arranges mortgage Loans with borrowers, portions of which may be shared with various Co-lenders;
- C. The Co-lender herein is interested in participating in such Loans;
- D. The parties wish to set out the terms that govern the relationship between the Trustee (Arres Capital) and the Co-lender and the manner in which the Loans will be administered, in the event that a Loan is made;
- E. The Investor desires to participate in the Loan on the terms and conditions contained in this Agreement to the extent of the Investor's Proportionate Share being **\$75,000.00**. This \$75,000.00 is in addition to the \$100,000.00 already invested, bringing the total to \$175,000.00.
- F. A copy of the commitment letter signed by the borrower is attached here to as "Schedule A"

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements contained in this Agreement, Arres Capital and the Co-lender covenant and agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions

For the purpose of this Agreement, the following expressions shall have the following respective meanings:

"Affiliate" has the meaning ascribed thereto in the *Business Corporations Act* (British Columbia); [the Securities Act does not have a definition of Affiliate but the BCA does.

"Agreement" refers to the whole of this Agreement, including but not limited to all schedules, offering memoranda, commitment letters, letters and other documents attached hereto, and not to any particular article, clause or other portions thereof, and includes any and every instrument supplemental hereto;

"Trustee" means Arres Capital Incorporated and any Affiliates, nominees, assigns or agents appointed by Arres Capital Incorporated to administer, manage, service, or enforce any or all the terms of this Agreement, the Loan or the Security;

"Associate" has the meaning described thereto in the *Business Corporations Act* (British Columbia);

"Borrower's Commitment Letter" means the borrower's commitment letter attached hereto as Schedule A.

"Business Day" means a day other than a Saturday, Sunday or any day that is a statutory or municipal holiday in British Columbia;

"Contracted Borrower Rate" means with respect to any Loan, the interest rate payable by the borrower to The Trustee regarding such Loan as more particularly disclosed and described in the Co-lender Commitment entered into between The Trustee and the Co-lender regarding such Loan (or any replacement thereof);

"Contracted Co-lender Rate" means with respect to any Co-lender Loan, the interest rate payable by The Trustee to the Co-lender regarding such Co-lender Loan as more particularly disclosed and described in the Co-lender Commitment entered into between The Trustee and the Co-lender regarding such Loan (or any replacement thereof);

"Co-lender Commitment", attached hereto as "Schedule F", means the document executed by the Co-lender whereby the Co-lender's commitment to participate in a Loan opportunity is formalized in writing, including specific reference to the terms and conditions on which the investment is made including the Contracted Co-lender Rate;

"Co-lender" means the Co-lender to this Agreement and any other person or entity, including The Trustee and any Affiliate that invests as a co-lender, having an undivided interest in common with all other Co-lenders, in the same Loan;

"Co-lenders" mean's all the Co-lenders that participate in a particular Loan;

"Costs" means all costs or expenses incurred by the Trustee in enforcing or preserving or otherwise protecting the Security or the Real Property the title of which is encumbered by the Security, including but not limited to Arres Capital's Internal Costs, legal fees, accounting fees, monitor fees, preservation costs, protective disbursements, property taxes, insurance, municipal fees, third party expert fees, and appraisals.

"Internal Costs" means either the Spread Rate, if a Spread Rate is being used to determine the Trustee's fees, or if a Spread Rate is not being so used, then 1%, multiplied in either case by the face value of the Mortgage every 12 months from the date upon which a Loan goes into default or, if the default continues for portions of a 12-month period, a pro rata portion of each 12-month period during which the default continues until such time as the Loan has been recovered or all enforcement proceedings have been concluded.

"Loan" or "Loans" means indebtedness or obligations in which the Co-Lender has a beneficial interest and which is secured or collateralized by a Security;

"Mortgage" means a mortgage, hypothec, deed of trust, charge or other security interest of or in real property

used to secure obligations to repay money by a charge upon the underlying real property, whether evidenced by notes, debentures, mortgages, bonds, assignments of purchase and sale agreements or other evidences of indebtedness, whether negotiable or non-negotiable;

"Participating Interest" means with respect to any Loan, Security, or any Costs or other amounts relating to or regarding a Loan or Security, the Co-Lender's undivided beneficial interest in the Loan and Security. Such Participating Interest, expressed as a percentage, shall be determined by the ratio of the principal invested in the Loan by the Co-lender divided by the total principal advanced by all Co-lenders' investments comprising the Loan and Security;

"Person" means and includes individuals, corporations, limited corporations, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, investment trusts, societies or other entities, organizations and syndicates whether or not legal entities and directors, officers, trustees, executors, or other legal representatives and governments and agencies and political subdivisions thereof;

"Real Property" means property which in law is real property and includes, whether or not the same would in law be real property, rights or interests in real property, including charges, leasehold interests, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise) and buildings, structures, improvements and fixtures located on or used in connection with the real property;

"Security" means any mortgage, charge, deed of trust, pledge, lien, hypothec, encumbrance, conditional sale or title retention agreement, assignment by way of or in effect as security, general security agreement, guarantee or any other document or assurance intended to provide security for a Loan;

"Servicing Standard" means the standard of Loan administration required of The Trustee as set out in Article 2.4;

"Spread Rate" means with respect to any Co-lender Loan the difference between the interest rate payable to The Trustee by the borrower at the Contracted Borrower Rate and the interest rate payable to the Co-lender at the Contracted Co-lender Rate, determined by subtracting the Contracted Co-lender Rate from the Contracted Borrower Rate;

"Trustee" means Arres Capital.

1.2 Schedules to this Agreement

The following Schedules are attached to and form a part of this Agreement:

- Schedule A – Borrower's Commitment Letter with Exhibit 1 attached
- Schedule B – Schedule of Lands being used as Security
- Schedule C – Investor/Lender Conflict of Interest Disclosure Statement
- Schedule D – Arres Capital Incorporated Privacy Policy
- Schedule E – Offering Memorandum for Syndicated Mortgages
- Schedule F – Loan Summary and Co-lender Commitment
- Schedule G – Risk Acknowledgement under Blanket Order 31-505

ARTICLE 2 – APPOINTMENT OF TRUSTEE, LOAN ADMINISTRATION & TRUSTEE POWERS**2.1 Appointment of Trustee**

The Co-lender hereby irrevocably nominates, constitutes and appoints the Trustee as its Trustee to hold its Participating Interest in a Loan.

2.2 Loan Administration and Trustee Powers

- 1) The Co-Lender hereby grants the following powers to the Trustee over the Co-Lender's Participating Interest in the Loan or Loans:
 - a. Subject only to the terms of this Agreement, the Trustee shall have the sole and exclusive power to administer and manage the Co-Lender's Participating Interest in the manner the Trustee determines is appropriate.
 - b. Subject only to the terms of this Agreement, the Trustee shall have the authority to deal with the Security in the manner the Trustee determines is appropriate. The Trustee will act as signing authority for the Co-lender and shall enter into all commitments, contracts, mortgage discharges, postponements, priority agreements, subdivision plans, and obligations in that capacity, for and on behalf of the Co-lender.
 - c. All rights, monies, payments, profits and advantages relating to the Co-lender's Participating Interest in the Loan belong to and shall be held for the use, benefit and advantage of the Co-lender subject to the provisions of this agreement.
 - d. The Trustee, in its sole discretion, may use either its own name or the name of an Affiliate as the registered owner of the Security ;
 - e. If the Trustee ceases to carry on business or becomes insolvent, makes a general assignment for the benefit of its creditors, makes an assignment in bankruptcy, or is the subject of a receiving order, the Co-Lender has the right to have its Participating Interest in the Security conveyed from the name of the Trustee to the name of the Co-Lender. The Trustee agrees to execute such documents as are required to effect such a change in legal title to the Security.

2.3 Administration of Loans

The Trustee and the Co-Lender agree that the Trustee has the sole and exclusive discretion to take such actions as it may deem necessary or desirable to administer, service the Loans, and enforce the Security of each Loan or Participating Interest, including, but not limited to, retaining and instructing lawyers, accountants, receivers, monitors, or other professional advisers and agents to protect and enforce the Trustee's rights and interests against a borrower or any other Person in respect thereto, and including, without limiting the generality of the foregoing, the following specific actions:

- (a) Monitoring the performance of the Loans, including tracking the status of outstanding payments, grace periods and due dates, and the calculation and assessment of other applicable charges;
- (b) Subject to receipt of funds, completing progress or other advances under the Loans in accordance with the Trustee's normal lending practice;

- (c) making reasonable efforts to collect all payments on account of principal or interest payable on the Loans where applicable and to cause the borrower to perform its obligations under the Loans or other security documents relating thereto, including, but not limited to, instituting foreclosure or other enforcement remedies, if necessary;
- (d) administering the Loans in good faith and in the Trustee's sole discretion, granting to the borrower such extensions, accommodations, indulgences (including reductions of principal or interest) or compromises as may be reasonably necessary or prudent having regard to the particular Loan and the circumstances in existence at the time;
- (e) Deciding whether realization is financially practical or viable in the circumstances;
- (f) granting priority on title over the Mortgage to new funds the Trustee deems are necessary to preserve or protect the Real Property against wasting or to secure the payment of Costs and Internal Costs; and
- (e) Maintaining records and accounts in respect of each Loan as set out in this Agreement.

2.4 The Servicing Standard

The Trustee agrees to service the Loans in the same manner, and with the same care, skill, prudence and diligence with which it services and administers its current Loans for its own account, giving due consideration to customary and usual standards of practice of a commercial mortgage loan administrator and manager used with respect to loans comparable to the Loans. The Trustee also agrees to exercise its powers and discharge its duties under this Agreement honestly and in good faith (the standard described in this paragraph is herein referred to as the "Servicing Standard").

2.5 Termination of Trust

Notwithstanding any other provision of this Agreement, the Co-lender's right, title and interest in or to a Participating Interest in a Loan, and the Trustee's obligations under this Agreement shall automatically terminate without any action or written notice by the Co-lender or Trustee upon the occurrence of any of the following events:

- (a) The repayment to the Co-lender of the principal amount of its Participating Interest in the Loan and all interest and other amounts payable thereon or in respect thereof;
- (b) tendering to or receipt by the Co-lender of its Participating Interest in any amount or in any form received as a final compromise or settlement with a borrower in default in respect of a Loan including, but not limited to, the exchange of the Co-Lender's Participating Interest in the Loan for an equity stake in the mortgagor, or any entity to which the mortgagor's interest is transferred, of the Real Property encumbered by the Security
- (c) a final court order being made regarding realization or enforcement of a Loan and dealing with the disposition of any proceeds of realization, provided that the Trustee distributes to the Co-lender its Participating Interest in any net proceeds of realization received by the Trustee; or
- (d) The Trustee delivering to the Co-lender such executed documents as are required to transfer to the Co-lender that Co-lender's Participating Interest in the Loan and related Security pursuant to Article 2.2 (e) above.

2.6 Trustee's Irrevocable Option to Repurchase

Notwithstanding any other provision of this Agreement, the Co-lender hereby grants to the Trustee the irrevocable right at any time to redeem the Co-Lender's Participating Interest in a Loan for a purchase price equal to the Co-lender's Participating Interest in the principal amount of such Loan plus any accrued interest payable thereon at the Contracted Co-lender Rate, calculated as at the end of business on the day immediately preceding the purchase date or, if such day is not a Business Day, the immediately preceding Business Day, less the Co-lenders Participating Interest in all accrued Costs and expenses relating to the Loan to the extent such accrued Costs or expenses relating to the Loan have been billed to the Co-lender but remain unpaid.

2.7 Default and Enforcement and Expenses

The Trustee agrees to take all commercially reasonable steps to enforce and protect the Security and recover the Loans.

The Co-lender acknowledges that the time within which the Trustee may make the initial determination of appropriate action, evaluate the appropriate corrective action, if any, develop additional initiatives, or institute foreclosure, power of sale or other enforcement proceedings or not take any enforcement action with respect to the Loans may vary considerably depending on the particular investment, the Real Property and the borrower as perceived by the Trustee, the presence of an acceptable party to assume the Loan, and other factors that apply to the circumstances of the Loan and Mortgage. The Trustee may, but shall not be obligated to, retain legal counsel, accountants, receivers and other advisors and experts and advance such funds as it considers reasonable or necessary in order to preserve, protect, defend or improve the Loan, Security in the Loan, investment or any Real Property used as collateral for the Loan.

The Co-Lender agrees that all Costs and Internal Costs incurred by the Trustee in the administration, servicing and enforcement of the Loans both before and after default and enforcement shall: (a) be paid to the Trustee by the Co-Lender in accordance with Section 2.8 hereof and if not paid by the Co-Lender to the Trustee (b) form and constitute, as additional security for payment, a first charge against payments of interest, principal or other Costs collected on the Loans which charge shall be paid in priority to the Co-Lender's Participating Interest.

The Trustee may also place mortgages in priority ahead of the Mortgage to secure funds required for the purposes set out in this paragraph 2.7 and the purposes set out in paragraphs 2.3, 2.8, 2.9 and 2.10.

2.8 Interest Participation and Fees

In consideration of the performance of its services hereunder, the Trustee shall be entitled to a priority allocation of the interest accruing and payable on all Loans in an amount equal to interest calculated thereon at the Spread Rate. Interest calculated at the Spread Rate shall be paid to the Trustee by way of deduction from payments received directly by the Trustee from borrowers or others in respect of a Loan. In the event the interest received from a borrower on a Loan is less than the Contracted Borrower Rate the Trustee shall be entitled to deduct any amounts deductible under this agreement, including interest at the Spread Rate, before distributing the net interest received to the Co-lender.

In addition, the Co-lender acknowledges and agrees that the Trustee, from time to time, charges origination fees, brokers fees, lenders fees, commitment fees, extension fees, participation fees, renewal fees, NSF fees, advance fees, discharge fees, administration fees and similar or other fees to borrowers with respect to Loans, all of which fees shall be and remain the sole property of the Trustee

2.9 Costs

The Trustee shall endeavor to collect the amount of all Costs incurred in respect of a Loan from the borrower but, in the event of a shortfall between the Costs incurred by the Trustee and the Costs recovered from the borrower, the Co-lender shall indemnify the Trustee for and shall pay to the Trustee the Co-lender's share of the shortfall in Costs, calculated by multiplying the Co-lender's Participating Interest in the Loan by the amount of the shortfall, within five (5) days of demand by the Trustee plus interest at the Contracted Borrower Rate if the shortfall in Costs is not paid within the aforesaid five (5) days, and the Co-Lender hereby grants to the Trustee a lien and priority over the Co-Lender's Participating Interest in the Loan for any shortfall in Costs.

The Trustee may borrow money to fund any shortfall in Costs and shall be entitled to register a mortgage on title to the Real Property in priority to the Mortgage in order to secure the repayment of the borrowed funds and the Trustee has the power to sign any priority agreement and ancillary documents in order to register the mortgage for the shortfall in Costs ahead of the Mortgage.

2.10 Interest

Total interest paid by the borrower (contracted borrower rate) is to be 13% per annum (being 12% per annum to the investor and 1% per annum to the trustee for administration and loan servicing).

The Co-lender agrees to pay the Trustee interest on all Costs, expenses, indemnified amounts and other monies payable by the Co-lender to the Trustee pursuant to this Agreement, the Co-lender Commitment, or any Other Co-Lender Loan Documents in respect of a Loan at the Contracted Borrower Rate charged for such Loan, calculated monthly from the date such amounts become payable to the date of payment both before and after judgment.

2.11 Books and Records

At all times, the Trustee shall keep timely, complete and accurate books of account and records relating to Loans and the services performed hereunder by the Trustee, which books of account and records shall be accessible for inspection by the Co-lender at any time during ordinary business hours with reasonable notice to the Trustee. All records, papers, policies, documents, files and other information and materials regarding the Trustee or a Loan are and shall be and remain forever the property of the Trustee. The Co-lender covenants not to retain or make any copies, extracts or reproductions of the information without the prior written consent of the Trustee which consent may be subject to conditions established by the Trustee.

ARTICLE 3 – CO-LENDER RIGHTS, OBLIGATIONS, CONSENTS AND ACKNOWLEDGEMENTS

3.1 Specific Consents and Acknowledgements

The Co-lender acknowledges consents and agrees to the following:

- (a) The Trustee and its principals, Affiliates, Associates and employees, may purchase with their own funds and own as Co-Lenders, a Participating Interest in any Loan and the Trustee may also sell Participating Interests in such Loans to other Co-lenders.
- (b) The directors, officers, employees, Affiliates and Associates of the Trustee are engaged in a wide range of investing and other business activities which may include Real Property financing of real estate development projects that may compete with the project in which the Co-lender has invested.
- (c) The services of the Trustee and its directors, officers and employees are not exclusive to the Co-lender or any Loan, and the Trustee, its directors, officers, employees, Associates and Affiliates may at any

time engage in promoting or managing other entities and their investments, including those which may compete directly or indirectly against the project in which the Co-lender has invested;

- (d) in accordance with the Servicing Standard, the Trustee will collect information and documentation from borrowers and other third parties in respect of the Loans it offers to the Co-lender for investment; however, the Trustee makes no representation or warranty regarding the accuracy or completeness of such information and documentation;
- (e) The Trustee is under no obligation to make payments to the Co-lender hereunder in respect of its Participating Interest in a Loan unless and until payments are received by the Trustee from the borrower or other Person in respect of the Loan in any particular month;
- (f) The Co-lender has an undivided, beneficial interest, in an amount equal to the Co-Lender's Participating Interest, in the Loan and Security in common with all other Co-lenders;
- (g) the Trustee, in its absolute discretion, may, but shall not be required to, put any issue dealing with the enforcement or administration of any Loan to a vote by the Co-lenders participating in such Loan, either at a meeting called for that purpose or by a notice in writing. Forms of notices, approvals in writing, notice periods and conduct of meetings shall be reasonably decided by the Trustee, whose decisions on procedure shall be final and binding. The Co-lender agrees that the result of any such vote shall be final and binding on it for all purposes. The Trustee shall be entitled to vote if it holds a portion of the Co-lender Loan in its own right as a Co-lender. Each Co-lender shall have a weighted vote equal to its Participating Interest in the Co-lender Loan, and each vote shall be decided on by simple majority of the Participating Interests represented by the votes cast by Co-Lenders entitled to vote and who cast their votes either in person or by written proxy at the meeting at which the vote was held or who sent in their votes in writing in response to a request by the Trustee for written responses and votes. Nothing herein shall prevent the Trustee from applying to a Court of competent jurisdiction for advice and direction, should the Trustee deem it necessary;
- (h) the total principal advanced on a Loan may increase after the date that the Co-lender's funds are advanced to the Trustee, in which case the Co-lender's Participating Interest in the Loan will decrease in direct proportion to the increase in the principal of the Loan as such additional advances are made;
- (i) the Co-Lender acknowledges that it has read the Offering Memorandum for Syndicated Mortgages attached to and forming part of this Agreement and in particular acknowledges that there are risks inherent in participating in a Co-lender Loan and that, in making such investment decision, the Co-Lender is relying solely on its own judgment, accepts the risks associated with such investment, including, but not limited to, defaults by the borrower, fluctuating property values and lack of liquidity. The Co-Lender undertakes to review each Loan with such independent professional advisers as the Co-lender considers appropriate and agrees that the Trustee is not promoting the Loan but simply making investment opportunities available to Co-Lenders who have determined that the Loans are suitable investments for the Co-Lender;
- (j) The Co-Lender acknowledges that the Trustee will be the legal title holder to the Security and that the Co-Lender has a beneficial interest in the Security. The Co-Lender agrees that it shall not register a caveat or any other charge or interest in the applicable land titles registry to evidence its beneficial interest in the Security. Without limitation, if the Co-lender registers such an interest, it shall forthwith, upon request of the Trustee, discharge such registration, and the Co-lender shall be liable for all Costs, expenses and damages (including legal costs on a solicitor and his own client basis) paid or suffered by the Trustee or other Co-Lenders on account of such registration.
- (k) The Co-Lender agrees that the Trustee shall have the sole and exclusive right to conduct enforcement proceedings and to determine the best course of action to protect and recover the Loan and the Co-Lender's Participating Interest in the Security. The Co-Lender further agrees that it does not have the legal standing to oppose the Trustee's court proceedings to enforce the Security or recover or protect the

Loan and even if the Co-Lender does have such legal standing, the Co-Lender agrees that it shall not exercise it.

- (l) If the Co-Lender, despite paragraph 3.1 (j) and (k) above, prosecutes a court action against the Trustee the Co-lender agrees to post cost with the court at the commencement of the proceeding and further agrees that if the Co-Lender is unsuccessful in that action, the Co-Lender shall pay the Trustee all the actual out of pocket legal and other expenses, including the Trustee's time based on the Trustee's hourly rate, and that those expenses shall be paid immediately by the Co-Lender or shall be deducted by the Trustee from any payments that might be made toward the Co-Lender's Participating Interest
- (m) The Co-Lender agrees that the Trustee may, in order to enforce the Security and recover or protect the Loan, Security, Real Property and the Co-Lender's Participating Interest, be required to raise other funds and that if such funds are, in the exclusive opinion of the Trustee, required, the Trustee may register mortgages on title to the Real Property that rank in priority ahead of the Security in order to secure the funding the Trustee determines is necessary.

3.2 Joint and Non-Individual Co-lenders

If a Participating Interest in a Loan is held jointly by two or more Co-lenders, or by a corporation or other non-individual, the Trustee is irrevocably authorized to deal with and take instructions from any one of the joint Co-lenders, or any one director or officer of a corporate Co-lender or such Person representing themselves as having such authority in respect of a non-individual other than a corporation, and such dealing or instructions shall bind all other joint Co-lenders or the corporate or non-individual Co-lender, as the case may be. None of the Trustee, its directors, officers or employees shall be bound to ensure or otherwise inquire into the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which a Participating Interest is or may be subject, or to ascertain or inquire whether any dealing in respect of a Participating Interest by a Co-lender or by his or her Personal representatives is authorized by such trust, charge, pledge, or equity, or to recognize any Person as having any interest therein except for a Co-lender.

ARTICLE 4 - DISTRIBUTIONS

4.1 Distribution of Loan Payments

The Co-lender shall be entitled to receive interest on its Participating Interest in a Loan calculated at the Contracted Co-lender Rate for such Loan but subject to the terms of this Agreement and any Other Loan Documents including, without limitation, those terms providing for deduction of certain amounts in priority to distributions to the Co-lender.

Unless superseded by any Other Loan Documents: (a) on a monthly basis the Trustee will distribute to the Co-lender its proportionate share of the net interest received by the Trustee from a borrower in respect of the Loan after deduction of any interest Costs, allocations, fees, reserves, expenses or disbursements properly payable to the Trustee by the Co-lender or deductible by the Trustee with regard to the Loan in accordance with this Agreement and any Other Loan Documents; and (b) any partial payments of principal or interest received by the Trustee in respect of a Loan will be paid to those participating Co-lenders pro rata in accordance with their Participating Interests in such Loan.

The Trustee is under no obligation to make payments to Co-lenders unless and until payments are received from the borrower in any particular month and repayment of the principal amount of a Co-lender's Participating

Interest will be made within five (5) Business Days of receipt thereof by the Trustee from the borrower in respect of a Loan.

Where a Participating Interest is held jointly by two or more Co-lenders, any payment in respect of such Participating Interest will be paid to the order of all Co-lenders of such Participating Interest failing written instructions from all Co-lenders to the contrary and such payment shall be a valid discharge of the Trustee's obligations, or a portion of them, to the Co-Lender. In the case of the death of one or more joint Co-lenders, any payment in respect of such Participating Interest may be paid to the survivor or survivors of such Co-lenders and such payment shall be a valid discharge of the Trustee's obligations, or a portion of them, to the Co-Lender and the deceased Co-Lender's estate.

In the event that the Trustee shall hold any amount owing to a Co-lender which is unclaimed or which cannot be paid for any reason, the Trustee shall be under no obligation to invest or reinvest the same but shall only be obliged to hold the same in a current or other non-interest bearing account pending payment to the Person or Persons entitled thereto. The Trustee shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amount so held to the Public Trustee (or other appropriate government official or agency) in the province where the Trustee has its principal office, whose receipt shall be a good discharge and release of the Trustee.

If the Trustee anticipates holding a Co-lender's funds in cash for a period in excess of seven (7) days, the Trustee will endeavor, but shall be under no obligation, to invest such funds for and on behalf of the Co-lender in a short term deposit account, treasury bill account, guaranteed investment certificate, or similar instrument at a Canadian Chartered Bank at a rate of interest then available from such institution for such funds and for such time period, all in the sole and exclusive discretion of the Trustee. Notwithstanding the foregoing, the Co-lender authorizes the Trustee to hold a cheque for its funds un-cashed until such time as the Loan for which the funds were paid to the Trustee is ready for funding or as otherwise directed by the Co-lender from time to time.

ARTICLE 5 - LIMIT OF LIABILITY

5.1 Limit of Liability

The Trustee assumes no responsibility under this Agreement or any Other Loan Documents or trust documentation other than to render the services called for in accordance with the Servicing Standard. The Trustee will not have any liability to the Co-lender for taking any action or refraining from taking any action in good faith or for errors in judgment. The Trustee shall only be liable to the Co-lender by reason of acts constituting bad faith, willful misconduct or gross negligence in respect of its duties hereunder or there under, and, subject to the foregoing, none of the Trustee, its Affiliates, Associates, shareholders, directors, officers, employees or agents shall be liable to the Co-lender or anyone claiming by, through or under the Co-lender, or to any successor or assign of the Co-lender or anyone claiming by, through or under any of them.

In addition, any liability of the Trustee hereunder shall be limited to actual damages incurred by the Co-lender (regardless of the form of action, whether in contract, negligence or otherwise) and in no event shall the Trustee be liable for consequential, special, incidental or punitive loss, damage or expense (including without limitation, lost profits, opportunity costs, etc.) even if it has been advised of their possible existence.

5.2 Non-Warranty

The Trustee, by this Agreement or any other documentation, does not warrant or guarantee the soundness, collectability, potential income, profit, return, security or any other related matter pertaining to any or all Loans and the Co-lender acknowledges and agrees that the foregoing aspects of each and every Loan are solely the risk of the Co-lender.

ARTICLE 6 – TERM AND TERMINATION**6.1 Term and Termination**

This Agreement shall commence upon execution by the parties hereto and the payment by the Co-lender of the funds it has agreed to commit to the Loan. This Agreement may be terminated by the Trustee or by the Co-lender at any time when the Co-lender does not own a Participating Interest in any Loan being administered by the Trustee or, in relation to a particular Loan, solely by the Trustee when the Trustee ceases to administer that Loan, upon three (3) days' written notice of termination. This Agreement may not be terminated by either party while the Co-lender is the holder of a Participating Interest in a Loan being administered by the Trustee pursuant to this Agreement.

ARTICLE 7 – MISCELLANEOUS

7.1 Security. The Trustee shall have a lien on the Participating Interest of the Co-lender to enforce payment of all amounts owing from time to time to The Trustee by the Co-lender under this Agreement, including but not limited to Costs and Internal Costs.

7.2 Privacy. The Co-lender hereby acknowledges that it has read and understood the Trustee's current privacy policy, (which forms part of this document) including specifically the provisions respecting the collection, use and disclosure of its personal information and hereby consents to the Trustee's collection, use and disclosure of the Co-lender's personal information as described in the Trustee's current privacy policy in relation to both this Agreement and each Loan in which the Co-lender participates from time to time.

7.3 Loan Participation. The Trustee has sole discretion in determining which Loans it will make available to the Co-lender for participation, if any, and will contact the Co-lender at the time such Loan is available for participation and will at that time provide the Co-Lender with an Offering Memorandum and the Co-Lender Commitment detailing the Loan and seeking the Co-lender's agreement to participate in such Loan. The Co-Lender Commitment and Offering Memorandum form part of this Agreement and are attached to this Agreement.

7.4 Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice if sent by facsimile or other means of electronic communication shall be deemed to have been received on the Business Day it is sent or, if not sent on a Business Day, then the Business Day next following sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notices and other communications shall be addressed as follows:

To the Co-lender: At the address written above on page one.

To The Trustee: C/O Arres Capital Incorporated at: 204, 1324 – 11 Avenue SW, Calgary, AB, T3C 0M6
Attention: President.

7.5 Relationship. The Trustee is, and shall perform its duties hereunder as, an independent contractor on behalf of the Co-lender. The Co-lender and the Trustee are not partners or joint venturers with each other and nothing in this Agreement shall be construed so as to make them partners or joint venturers or impose any liability as such on either of them.

7.6 Dealings with Borrower - The Co-lender agrees not to contact or deal either directly or indirectly with the borrower or any guarantor regarding the Investment without the prior written approval of the

the Trustee.

7.7 Subcontracting. In the performance of its duties hereunder, the Trustee may delegate any of its duties hereunder to any Person, provided that no such delegation shall relieve the Trustee of its duties hereunder.

7.8 Other Services. If and to the extent that the Trustee or any Person affiliated with the Trustee renders services to the Co-lender in addition to those specifically required to be rendered under this Agreement, such services will be compensated separately as agreed to between the Trustee or the Affiliated Person, as the case may be, and the Co-lender.

7.9 Assignment. The Trustee may assign this Agreement to an Affiliate or Associate of the Trustee without the prior consent of the Co-lender, in which event the Trustee will be relieved of its obligation hereunder. The Trustee may assign this Agreement to any other party with the prior consent of the Co-lender. The Co-lender may assign this Agreement only with the prior written consent of the Trustee, which consent may be unreasonably withheld.

7.10 Amendment. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing by the Co-lender and a signing officer of the Trustee.

7.11 No Waiver. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the time or at any prior or subsequent time.

7.12 Merger. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth or referenced expressly in this Agreement. Unless stated otherwise herein, this Agreement supersedes any prior written or verbal agreements between the Trustee and the Co-Lender with respect to the subject matter hereof.

7.13 Conflict. Where there is a conflict between the provisions of this Agreement and any Other Loan Documents, the provisions of this Agreement will govern unless the provisions of the Other Loan Documents in question specifically state that it supersedes any prior or other agreements with respect to the subject matter thereof, which provision will be specifically interpreted as including this Agreement.

7.14 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, Canada.

7.15 Severability. In the event that any condition, covenant or other provision of this Agreement is held to be invalid or void by any applicable court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or other provision of this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such condition, covenant or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

7.16 Further Assurances. The parties hereto will execute and deliver such further and other instruments, agreements and writings and will do and perform and cause to be done and performed such further and other acts and things that may be necessary or desirable to give full effect to this Agreement and every part of it.

7.17 Counterparts. This Agreement may be executed in one or more counterparts by facsimile, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

13

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

(Name of Corporation)

(Authorized Signatory)

C/s

Witness to Execution

Signed by the Co-lender(s) in the presence of:

(Signature of Witness)

Gaye Saruwatari

(Name of witness)

004 0635 37 Ave NE

Calgary, AB T1Y 5Z6.

(Address of witness)

OR

(Signature of Brian Sekiya)

(Signature of Co-lender)

ARRES CAPITAL INCORPORATED

Per: _____

Wes Serra

c/s

**SCHEDULE A - BORROWER'S COMMITMENT LETTER
(ARRES CAPITAL TO INSERT)**

**Exhibit 1 to Schedule A – Extension Terms of YK Priority DIP Original Mortgage of \$2 Million
(being increased to \$3.5 Million)**

AGREEMENT AMENDING TERMS OF MORTGAGE/COMMITMENT LETTER

THIS AGREEMENT made this 21st day of June, 2011.

BETWEEN:

YK PROJECTS LTD.
of 364 Cordon Lane
Vernon, BC V1H 1Z9

(hereinafter called the "Mortgagor")

OF THE FIRST PART

- and -

ARRES CAPITAL INCORPORATED
of #205, 707 – 10th Avenue S.W.,
Calgary, Alberta T2R 0B3

(hereinafter called the "Mortgagee")

OF THE THIRD PART

WHEREAS the Mortgagor is the owner of the lands and premises described in a certain Mortgage (hereinafter called the "Mortgage"), dated the July 8, 2010, and registered on the July 13, 2010, as CA1651714, in the Kamloops Land Titles Office, given to the Mortgagee by the Mortgagor to secure payment of certain monies and interest as are set out therein;

AND WHEREAS the Parties hereto have agreed to amend certain of the terms of the Mortgage/commitment letter;

WITNESSETH THAT in consideration of the premises and the mutual agreements herein made, IT IS AGREED by and between the parties hereto that the Mortgage/commitment letter shall be amended and varied as follows, namely:

1. By amending and increasing the current mortgage of 2 Million dollars to 3.5 Million dollars.
2. By including a clause that allows for the mortgage of \$3.5 Million to postpone to construction financing on the Belago lands only so long as all terms, budget, etc are acceptable to Arres Capital Incorporated and/or its assigns.
3. The term is extended for one year from the original date thus the renewal fee due in June 2011 will be waived for this year.
4. A fee of 3% on the 1.5 Million dollars is due and owing to Arres Capital. This will be paid 50% on the first advance with the balance payable after \$750,000.00 is raised.
5. #1 and #2 are subject to investors' consent to both items.
6. Legal fees for amending this mortgage and the supporting documentation required to raise funds will be paid from mortgage proceeds.

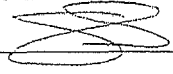
IT IS HEREBY DECLARED AND AGREED between the parties hereto that this Agreement shall, from the date hereof and without prejudice to the present stage of the Mortgage Account, be read and construed with the Mortgage and the Commitment Letter, and be treated as part thereof, and for such purpose and so far as may be necessary to effectuate this Agreement the Mortgage is hereby amended, and the Mortgage as so amended, together with all the covenants and provisions thereof, shall remain in full force and effect.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. Whenever the singular or masculine gender is used in this Agreement the same shall be construed as including the plural or feminine gender where the context or the parties hereto so require, all covenants herein shall be deemed to be joint and several.


IN WITNESS WHEREOF Y.K. Projects Ltd. and _____
has hereunto affixed its name by its proper officers this 29 day of June, 2011.

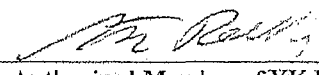


Witness **M. GAYE SARUWATARI**



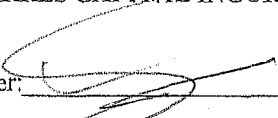
Witness


Per: _____ **BRIAN A. SEKIYA**
Barrister, Solicitor & Notary Public
Authorized Member of YK Board


Per: _____
Authorized Member of YK Board
Steven Reilly

IN WITNESS WHEREOF ARRES CAPITAL INCORPORATED has hereunto affixed its name by its proper officers this 30th day of October, 2009.

ARRES CAPITAL INCORPORATED.


Per: _____
Wes Serra

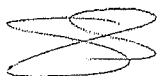
AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

BRIAN A. SEKIYA
~~Barrister, Solicitor & Notary Public~~
 I, _____, of _____

, MAKE OATH AND SAY THAT:
 , MAKE OATH AND SAY THAT:

1. I am an officer and director of YK Projects Ltd named in the within or annexed instrument.
2. I am authorized by the corporation to execute the instrument without affixing a corporate seal.

SWORN BEFORE ME at the City
 of Calgary, in the Province of
 Alberta, this 30 day of
June, 2011.




A Commissioner for Oaths in and for
 the Province of Alberta.



Authorized Member of YK Board

SWORN BEFORE ME at the City
 of Calgary, in the Province of
 Alberta, this 30 day of
June, 2011.



A Commissioner for Oaths in and for
 the Province of Alberta.

BRIAN A. SEKIYA
 Barrister, Solicitor & Notary Public



Authorized Member of YK Board

Steven Reilly

M. GAYE SARUWATARI
 A Commissioner for Oaths
 in and for the Province of Alberta
 My Commission Expires December 1, 2011

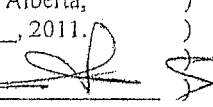
AFFIDAVIT OF EXECUTION

CANADA) I, M. GAYE SARUWATARI
 PROVINCE OF ALBERTA) of the City of Calgary, in the Province of Alberta,
 TO WIT:) MAKE OATH AND SAY THAT:

BRIAN A. SEKIYA

1. I was personally present and did see Barrister, Solicitor & Notary Public named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for purposes named therein.
2. The same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City of)
 Calgary, in the Province of Alberta,)
 this 30 day of June, 2011.)


 A Commissioner for Oaths in and for
 the Province of Alberta


TRACEY D. GENOVY
 A Commissioner for Oaths
 in and for the Province of Alberta
 My Commission Expires May 9, 2012

AFFIDAVIT OF EXECUTION

CANADA) I, M. Gaye Saruwatari
 PROVINCE OF ALBERTA) of the City of Calgary, in the Province of Alberta,
 TO WIT:) MAKE OATH AND SAY THAT:

1. I was personally present and did see Steven Reilly named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for purposes named therein.
2. The same was executed at the City of Calgary, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I know the said party and he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the City of)
 Calgary, in the Province of Alberta,)
 this 30 day of June, 2011.)


 A Commissioner for Oaths in and for
 the Province of Alberta

TRACEY D. GENOVY
 A Commissioner for Oaths
 in and for the Province of Alberta
 My Commission Expires May 9, 2012

Schedule A



ARRES

Capital Inc.

#205, 707 – 10th Ave SW
 Calgary, AB T2R 0B3
 Tel: (403) 261-9955

Fax: (403) 264-9954

May 21, 2010

YK HOLDINGS
 c/o Fraser Milner Casgrain LLP
 1040 West Georgia Street
 Vancouver B.C
 V6E 4H8

Dear Sir/Madam:

Re: Loan of \$2,000,000.00

Western Arres Capital Inc. and/or its assigns is pleased to advise that the following mortgage loan has been approved on the terms and conditions set forth below. If you agree with these terms and conditions please sign the duplicate copy of this letter in the space provided below and return it to Western Arres Capital Inc. and/or its assigns

1. Borrowers: YK PROJECTS LTD.
 Guarantors: (Hereinafter referred to as the "Borrower")

Property to be mortgaged:
 (Hereinafter referred to as the "Lands")

2. Amount of loan: TOTAL LOAN OF \$2,000,000.00

Proposed Funding Date: June 1, 2010 (Interest Adjustment Date)

3. Position & Term: FIRST mortgage on Lands
 ONE year, renewable at the discretion of the Lender
 First payment due: July 1, 2010

4. Rate of Interest:

Interest will be charged at 13% per annum. Monthly interest owing will be adjusted and calculated from time to time. The various fees hereunder and the interest rate are based on an expected repayment of the entire loan by May 15, 2010 (the "Maturity Date").

5. Fees:

Fees for this transaction shall be 3%. The Fee shall be earned and be payable to Western Arres Capital Inc. and/or its assigns upon acceptance of this letter by the Borrowers, and the Borrowers

agree that a caveatable charge is thereby created which shall specifically charge all the interest and estate of the Borrowers in the Lands, which caveatable charge shall remain in force until the Fee is paid in full.

In the event that any further funds are required by the borrower or any re-advancement under this loan shall also be subject to the same fees and terms as set out herein upon any re-advancement.

6. Repayment:

Interest calculated shall accrue from the date of the advance and be paid on the same day of the month following the date of advance (the "Interest Adjustment Date"). Thereafter on the same day as the date of the advance in each month, during the term, interest only payments shall be due and payable.

-These payments will be made payable to Arres Capital in Trust. Arres Capital will issue the pro-rated portion of the payment to each lender on my behalf

Any payments late or returned dishonoured will be charged \$125.00 NSF fee.

7. Prepayment:

The Borrowers, when not in default hereunder shall have the privilege to prepay the whole or any part of the monies hereby secured without penalty.

8. Security and other documents:

The Borrowers agree to provide to Western Arres Capital Inc. and/or its assigns in form and substance satisfactory to it, all security requested by Western Arres Capital Inc. and/or its assigns including, without limitation, the following documentation (the "Security") which will be held by Western Arres Capital Inc. and/or its assigns as security for the loan and all other direct and indirect liabilities of the Borrowers or any of them to Western Arres Capital Inc. and/or its assigns from time to time:

The borrower and/or all principals of the borrower corporation must swear an Affidavit setting out that their occupation is not that of a Farmer.

A FIRST mortgage over the Lands

A general security agreement comprising a FIRST charge on all assets of the Borrowers.

A certified copy of a Resolution of the Directors of the Company approving the loan request and the security to be granted.

A Certificate of Encumbancy of the Company.

An opinion of Counsel to the Company indicating that the Company has the corporate capacity to enter into this agreement.

An opinion of Counsel to Western Arres Capital Inc. and/or its assigns satisfactory to Western Arres Capital Inc. and/or its assigns

A court order that provides for a priority charge ranking in priority to all mortgages and charges registered against the Rise Lands except for the administrative Charge and the Directors Charge.

9. Conditions and/ or Pre-Conditions:

That the security set forth in paragraph 8 above is registered as therein described.

That there be no prior mortgages to this mortgage of Western Arres Capital Inc. and/or its assigns over the Lands.

That all property taxes payable to local authorities shall have been paid.

That all amounts due to Revenue Canada by the Borrowers whether for income Taxes, Employee Deductions or GST are current and that there are no arrears;

That all dues to Workers Compensation Board have been paid.

A satisfactory inspection of the property, which inspection is to the sole satisfaction of Western Arres Capital Inc.

Assignment of Rents

Assignment of all plans, permits and drawings

Prior to funding Title insurance is to be obtained at the cost of the borrower.

Partial discharges - to vary upon each deal:

- In order to get a discharge we need 100% of the gross sales proceeds once reasonable costs are deducted for real estate fees - which costs are not to exceed 5% of the sales price of the property.
- All sales are to be within 3% of the appraised value, sale value or list price (whichever is greater) of the properties.
- Any other amount must be agreed to in writing by Arres prior to the sale taking place

USE OF FUNDS:

\$ 60,000.00 Fees

\$1,940,000.00 Allocated interest reserve for this file and operations of the Rise

\$2,000,000.00 TOTAL MORTGAGE AMOUNT

10. Taxes:

That all taxes due to federal, provincial and local governments and amounts due to Workers Compensation Board shall be paid as they become due.

The borrower will pay all real property taxes when then are due. During the term of this mortgage, should the borrower not pay the real property taxes when due, the lender may, but is not obligated to, attend to payment of the real property taxes on behalf of the borrower, and charge the amount of the real property taxes payment plus a \$250.00 service fee to the mortgage balance.

11. Insurance:

The borrower shall insure the property in favour of the lender to the amount of a sum not less than the total of the principal sum of money being secured or, to the amount of its full insurable value if such sum be greater than the insurable value. It is further agreed that should the policy expire during the term of the Mortgage and not be replaced with satisfactory coverage, then the lender may place insurance with its own carriers and charge the premium plus a \$250.00 service fee to the mortgage balance.

As well, the borrower must agree to the following (which agreement is acknowledged by the signing of this commitment letter):

All risk insurance covering the tenants' improvements and equipment of the borrower with the first loss payable to Western Arres Capital Inc. and/or its assigns

Flood insurance if the secured property is within 2 kilometres of any lake, river, creek, ocean, or other body of water which may cause any type of flooding to the secured property.

Western Arres Capital Inc. and/or its assigns must be added to Liability insurance as "Additional named insured"

That the borrower agrees that in the event that any insurance claim is made during the term of this mortgage or any renewal terms, Western Arres Capital Inc. shall have full entitlement to any amounts collected under such claim.

The borrower must always be assured that it is names the lender as a first or second loss payable as appropriate on all insurance policies. It will be a requirement prior to any funds being released; the lawyer must be in receipt of an insurance binder which must be satisfactory to Western Arres Capital Inc. with no obscure clauses. Any funds sent with trust conditions will not be relatable until the binder has been received and reviewed.

12. Documentation:

The security documents set out in the paragraph 8 herein shall be in all respects satisfactory to Western Arres Capital Inc. and/or its assigns (acting reasonable) and its solicitors in their absolute discretion. Western Arres Capital Inc. and/or its assigns solicitors in this transaction are:

Thomas Butler LLP
700, 1708 Dolphin Avenue
Kelowna, B.C. V1Y 9S4
Attn: Kelly Cairns Ph: (250) 763-0200 Fax: (250) 762-8848

Solicitor for the Borrower:

FRASER MILNER CASGRAIN LLP
15th Floor - 1040 West Georgia Street
Vancouver, BC V6E 4H8
Attn: Christopher Ramsey tel: (604) 622-5151 fax: (604) 683-5214

13. Title:

The Borrower will have, as the registered owner of the property, good title in fee simple to the property, and Western Arres Capital Inc.'s Inc. and/or its assigns Charge on the property will be FIRST in priority over all other financial encumbrances, leases, agreements for leases, restrictions, agreements, liens, assignments and charges whatsoever to the full extent of the loan except as Western Arres Capital Inc. and/or its assigns may in writing consent to or the law may require.

The security required by Western Arres Capital Inc. and/or its assigns shall have been duly authorized and comply in all respects with all applicable laws, by-laws, government requirements, whether federal, provincial, municipal including without restriction, those dealing with planning, zoning, use occupancy, subdivision, parking, historical designations, fire, access, loading facilities, landscaped areas, pollution of the environment, toxic material or other environmental hazards, building construction, public health and safety and there shall be no outstanding work orders against the property and or the improvements or any part thereof.

The Borrower shall provide such certificates or other written confirmation as Western Arres Capital Inc. and/or its assigns solicitors may reasonable require, certifying that no control orders, stop orders, or prosecutions exist with respect to the property or any activity or operation carried out thereon pursuant to any federal, provincial, municipal, or local environment, health and safety laws, statues and regulations as may apply to the property or the activities or operations carried out thereon.

14. Costs and Fees:

Whether or not the transaction contemplated hereby is completed, you will pay all Western Arres Capital Inc.'s and/or its assigns costs associated with this transaction including the legal fees and disbursements of our solicitor (on a solicitor and his own client basis) together with the costs to incorporate Western Arres Capital Inc. and/or its assigns in the province of British Columbia. Such fees, disbursements, and GST shall be deducted from the Mortgage Proceeds.

Other

If Western Arres Capital Inc. or any affiliate of Western Arres Capital Inc. is required to deal with the needs of your business in order to protect the security of the mortgagor and in order for you to carry on your business in its usual fashion a fee of \$50.00 per occurrence or \$200.00 per hour (whichever is the lesser amount) will be charged in addition to any other fees or costs set out in this document and such fees will be invoiced and deducted from the next mortgage advance requested. (ie. Dealing with a creditor regarding outstanding payment of an invoice).

15. Right of Termination:

Western Arres Capital Inc. and/or its assigns shall have the right to terminate its agreement to provide the loan to you and be relieved of all obligations in connection therewith in the event that any of the following events should occur:

You fail or are unable or are unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this letter within the time indicated for such compliance; or

You fail or refuse to execute any documentation as per this Commitment Letter requested by our solicitors or to deliver such documentation to our solicitors; or

The net proceeds of the loan have not been fully advanced on or before the commitment expiry date referred to herein; or

Your refuse to accept the funds when advanced; or

You or any other person or Corporation whose covenant is required should become bankrupt, or subject to bankruptcy, receivership or insolvency proceedings; or

There has been, in the sole opinion of Western Arres Capital Inc. and/or its assigns, a material adverse change in the condition of the property or Collateral Property or the Borrowers; or

Western Arres Capital Inc. and/or its assigns, acting reasonable, is not satisfied with the matters set out in paragraph 13; or

All legal matters and documentation relating to the transaction have not been completed to Western Arres Capital Inc. and/or its assigns and its council's satisfaction.

If Western Arres Capital Inc. and/or its assigns elects to terminate its agreement to provide the loan to you prior to the advance of the entire amount of the loan, the amount advanced on the loan, if any, together with interest thereon at the rate set out herein shall become immediately due and payable and Western Arres Capital Inc. and/or its assigns shall, whether or not any proceeds have been advanced, be entitled to retain the commitment fee, if any, as compensation for all damages sustained by it, it being agreed that the amount of such commitment fee is a fair estimate of the damages which will be suffered by Western Arres Capital Inc. and/or its assigns in such event.

16. Renewal of Mortgage after Maturity

Upon maturity of each term of the mortgage, the mortgage may be renewed at the discretion of the lender. You will be required to sign a Renewal Agreement prior to the maturity date in order to keep the mortgage current. The first term of this mortgage will mature on May 15, 2011 and a renewal fee not to exceed 3% of the principal balance owing on the mortgage at the time of renewal will be payable to Western Arres Capital Inc. at the time of the renewal. The Renewal Agreement will set out the balance owing at time of maturity along with the interest rate, the payment amount, and the length of term.

In the event that the mortgage matures and is not renewed, the entire balance owing including any extra fees resulting from NSF's or any other charges incurred in relation to the mortgage will be due and payable in full after the date of maturity and all legal

-7-

remedies will be enforced for such payment. Until such time as entire balance is paid in full, interest will be charged as set out in the "Rate of Interest" paragraph #4 of this commitment letter.

17. Commitment Expiry Date:

In the event the initial advance is not fully disbursed by the close of business on May 21, 2010 Western Arres Capital Inc. and/or its assigns agreement to provide the loan or advance any funds, at the sole discretion of Western Arres Capital Inc. and/or its assigns, shall expire.

18. Amendment:

Any amendment to this commitment or Security documents must be in writing and signed by a duly authorized officer of Western Arres Capital Inc. and/or its assigns

19. Governing Laws:

The agreement constituted by your acceptance of this letter shall be governed by the laws of the Province of Alberta and any and all Court actions commenced shall be commenced and take place in the City of Calgary in the Province of Alberta regardless of where the mortgage property is located.

20. Headings:

The headings contained in this letter are for reference only and shall not constitute any part of the terms and conditions contained herein.

21. Previous Agreements: N/A

22. Successors and Assigns:

Subject to the provisions hereof, this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

23. Severability:

Each provision of this agreement is severable and any terms or provision hereby declared to be contrary to, prohibited by, or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining terms and provisions hereof.

24. Survival:

The terms and conditions of this letter shall, after acceptance by you, survive the execution and registration of all security documentation and there shall be no merger of these provisions or conditions in the Security and that in case of a conflict between the provisions hereof and of any of the security documents, Western Arres Capital Inc. and/or its assigns may elect which provision shall prevail.

-8-

25. Time:

Time shall in all respects be of the essence hereof.

26. Waiver:

No terms or requirements of this commitment of any security documents may be waived or varied orally or by any course of conduct of any office, employee, or agent of the lender. Any failure by Western Arres Capital Inc. and/or its assigns to exercise any rights or remedies hereunder or under any of the Security shall not constitute a waiver thereof.

The terms of this letter are open for acceptance by you by executing the duplicate copy of this letter where indicated below and returning it to Western Arres Capital Inc. and/or its assigns on or before 5:00 p.m. on May 10, 2010, after which date and time, this offer shall lapse, if it is not accepted.

Sincerely,
Western Arres Capital Inc.

Wes Serra
President

ACCEPTANCE

Acceptance of this letter provides full and sufficient acknowledgement that Western Arres Capital Inc. and/or its assigns has no obligation to advance any funds under this agreement and if, in the opinion of Western Arres Capital Inc. and/or its assigns, any material adverse change in risk occurs, including without limiting the generality of the foregoing, any material adverse change in the financial condition of the Borrowers or any affiliate or associate the approved Credit Facilities may be withdrawn or cancelled at the sole discretion of and/or its assigns.

This loan is a commercial/residential mortgage
Please indicate by circling the appropriate answer above:

We hereby accept and agree to the mortgage loan on the terms and conditions outlined by the offer of financing letter dated May 5, 2010 on this _____ day of May, 2010.

We hereby acknowledge and agree that all information and/or documentation provided to me/us by Western Arres Capital Inc. and/or its assigns is private and confidential and we agree not to disclose any of the information and/or documentation to any other party at any time either now or in the future without the prior written consent of Western Arres Capital Inc. and or its assigns.

YK PROJECTS LTD.

Per: _____

SCHEDULE B – SCHEDULE OF LANDS

PID	LEGAL DESCRIPTION	CIVIC ADDRESS
027-508-293	Lot 1 Section 31 Township 9 Osoyoos Division Yale District Plan KAP86584	Bella Vista Road, Vernon, BC
026-469-014	Lot 1 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78317, Except Plans KAP78952, KAP81473 and KAP78953	Bella Vista Road, Vernon, BC
026-469-022	Lot 2 Section 6 Township 8 and section 31 Township 9 Osoyoos Division Yale District Plan KAP78317, Except Plan KAP85528	7163 Bella Vista Road, Vernon, BC
026-469-561	Lot 5 Section 6 Township 8 and section 31 Township 9 Osoyoos Division Yale District Plan KAP78317, Except Plans KAP78953, KAP81473 and KAP87703	Bella Vista Road, Vernon, BC
026-470-527	Lot 6 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78317, Except Plan KAP87703	8600 Rising View Way, Vernon, BC
026-470-535	Lot 7 Section 6 Township 8 Osoyoos Division Yale District Plan KAP78317	Bella Vista Road, Vernon, BC
026-470-543	Lot 8 Section 6 Township 8 Osoyoos Division Yale District Plan KAP78317	Bella Vista Road, Vernon, BC
027-330-087	Lot A Section 31 Township 9 Osoyoos Division Yale District Plan KAP85528	Bella Vista Road, Vernon, BC

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026-773-660	Lot 2 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78953	364 Cordon Lane, Vernon, BC
026-773-678	Lot 3 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78953	360 Cordon Lane, Vernon, BC
026-773-881	Lot 24 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78953	524 Balsam Court, Vernon, BC
026-774-119	Lot 47 Section 31 Township 9 Osoyoos Division Yale District Plan KAP78953	495 Silversage Place, Vernon, BC
026-774-178	Lot 53 Section 31 Township 9 Osoyoos Division Yale District plan KAP78953	511 Silversage Place, Vernon, BC
026-988-585	Strata Lot 1 Section 31 Township 9 Osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	144 Silversage Terrace, Vernon, BC
026-988-631	Strata Lot 6 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	124 Silversage Terrace, Vernon, BC
026-988-640	Strata Lot 7 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	120 Silversage Terrace, Vernon, BC

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026-988-666	Strata lot 9 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	112 Silversage Terrace, Vernon, BC
026-988-682	Strata Lot 11 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	104 Silversage Terrace, Vernon, BC
027-271-846	Strata Lot 18 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	204 Silversage Ridge Lane, Vernon, BC
027-271-854	Strata Lot 19 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	208 Silversage Ridge Lane, Vernon, BC
027-271-862	Strata Lot 20 Section 31 Township 9 osoyoos Division Yale District Strata Plan KAS3178 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V	212 Silversage Ridge Lane, Vernon, BC
027-777-197	Lot A Section 31 Township 9 Osoyoos Division Yale District Plan KAP88166	Okanagan Hills Blvd, Vernon, BC
027-684-041	Lot A Section 31 Township 9 Osoyoos Division Yale District Plan KAP87703	8500 Rising View Way, Vernon, BC

000034

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027-947-050	Lot 1, Plan KAP89223	
027-947-076	Lot 2, Plan KAP89223	
027-947-092	Lot 4, Plan KAP89223	

SCHEDULE C**INVESTOR/LENDER CONFLICT OF INTEREST DISCLOSURE STATEMENT****Form 11 - Section 17.4****CAUTIONS**

1. All mortgage investments carry risk. There is a relationship between risk and return. You should very carefully assess the risk of the transaction before making a commitment.
2. You are advised to obtain independent legal advice regarding your decision to invest.
3. If you are one of several investors in this mortgage, you may not be able to enforce repayments of your investment on your own if the borrower defaults.
4. You should ensure you have sufficient documentation to support the property valuation quoted in the loan summary and any other documentation provided.
5. You should be satisfied with the borrower's ability to meet the payments required under the terms of this mortgage.
6. A mortgage broker must not administer, or arrange for another person to administer, a mortgage on your behalf unless the mortgage broker has a written agreement with you that covers matters set out in the Mortgage Brokers Act.

This information statement has not been filed with the Registrar of Mortgage Brokers. There has been no determination made by the Registrar as to whether the disclosed information complies with the Mortgage Brokers Act.

Please write or print clearly. If additional information is required, reference and attach a schedule to this form.

YK Projects LTD.

Name of Borrower:

WESLEY SERRA

403-261-9955

Name of Mortgage Broker:

Telephone:

ALLAN BECK

Name of Sub mortgage Broker:

YK Project Property

Civic address of property to be mortgaged:

See Attached Schedule "B"

Legal description of property to be mortgaged:

Name of Investor/Lender:

Date of transaction:

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Mortgage Broker's Interest in the Transaction

- be a syndicate mortgage lender with the lender/investors;

Compensation to the Mortgage Broker

The mortgage broker has been or will be compensated in this transaction by:

- Receiving a fee from the borrower, and/or deal
- By way of renewal commission, if we keep the mortgage loan enforced
- Administration fee – this is the difference between the rate on the mortgage the borrower is paying, the rate you as investors are receiving as outlined in the trust agreement.

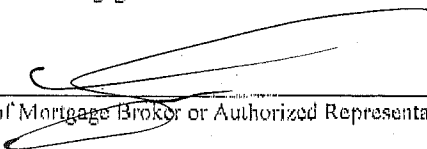

CERTIFICATION

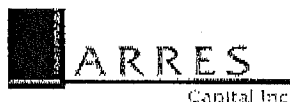
I certify that I am the mortgage broker or an authorized representative of the mortgage broker and based on my knowledge, belief and information provided by third parties, this Disclosure Statement contains no untrue statements and does not omit to state a fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in circumstances in which it was made.

Wesley Serra#204, 1324 11 Ave SW, Calgary, T3C 0M6

Full name of Mortgage Broker

Address (including Postal Code)


Signature of Mortgage Broker or Authorized RepresentativeSept 2/11
Date Signed (YYYY, MM, DD)**ACKNOWLEDGE OF RECEIPT**
SignatureBrian Sekiya
Name (Please Print)
Sept 2/11
Date Signed (YYYY, MM, DD)

SCHEDULE D – ARRES CAPITAL INCORPORATED PRIVACY POLICY**Privacy Policy****Client Information – To keep****Introduction**

The *Personal Information Protection Act* (PIPA) governs how all private sector organizations in British Columbia handle personal information of clients, employees, and others. Personal information is defined as information that can identify an individual and information about an identifiable individual.

Our firm has always protected the personal information received by us in the course of providing services to our clients and we have formalized our policies as a commitment to maintaining your privacy.

What Information We Collect and Why

We need our clients to provide us with all the relevant facts and information related to our engagement. This information will include personal information about our clients and about other individuals with whom our clients conduct transactions. This personal information may include but is not limited to Name, Address, RRSP information if applicable, telephone numbers, fax numbers, email addresses or other contact information and SIN numbers.

Consent for Collection, Use, and Disclosure

We will always try to collect personal information directly from the person to whom the information pertains where practical and we will collect personal information from other sources when necessary. If we need to collect information about individuals other than our clients, we shall do so in accordance to the provisions of PIPA. We will make reasonable efforts to ensure that the personal information we collect, use, and distribute is accurate and complete. We rely upon the accuracy of the information given to us by our clients and may ask for confirmation or updates of the information from time to time.

By engaging our firm to provide services, we consider an individual to have given our firm consent to the collection, photocopy for our records, use, and distribution of the individual's personal information. Once this consent has been obtained by our firm, we will continue to collect, use, and disclose personal information for the purpose of providing the agreed upon services without obtaining further written or verbal consent to do so. We may also collect, photocopy for our records, use, or disclose personal information about an individual without that individual's consent as permitted under PIPA.

Our firm will maintain the strictest confidence with respect to any client's or former client's information. Accordingly, confidential client information will not, without client consent, be disclosed to any individuals in our firm beyond those who are engaged in providing services to the client. This policy applies to anyone outside the firm except the lawyers, accountants required to be involved in the normal course of our business (i.e. Lawyer and Accountant). Also, except as required by law or under the Real Estate Act. In accordance with professional regulations, our

client files must periodically be reviewed by provincial practice inspectors and by other firm personnel to ensure that we have adhered to professional and firm standards. File reviewers are required to maintain confidentiality of client information.

Security and Retention

In recognition of our professional and legal obligations to protect our confidential client information, we have made arrangements to protect against unauthorized access, collection, use, disclosure, copying, modification, disposal, or destruction of personal information.

We will retain client personal information for a reasonable time period as required by our Rules of Professional Conduct and the terms of our professional liability insurance policy. When no longer required, client personal information will be disposed of in a secured manner. We note that we shred all information no longer required under those rules.

Requests for Access and Correction

Individuals have the right to ask, in writing, for access to their own personal information in the custody or under the controls of our firm as permitted under PIPA. We will respond to requests as accurately and completely as possible in a reasonable time as allowed by PIPA. However, we are entitled to refuse access in certain situation such as:

- The personal information is protected by solicitor-client privilege.
- Disclosure of the personal information would reveal confidential commercial information that could, in a reasonable person's opinion, harm the competitive position of our firm.
- The personal information was collected for an investigation or legal proceeding that has not concluded, including any appeals.
- The information was collected by a mediator or arbitrator in conducting a mediation or arbitration where the mediator or arbitrator was appointed under a collective agreement, a law, or by a court.
- Disclosure could reasonably be expected to threaten the safety or physical or mental health of another individual.
- Disclosure could reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request.
- Disclosure would reveal personal information about another individual.
- Disclosure would identify the individual who has provided personal information about another individual and that individual does not consent to disclosure of his or her identity.

PIPA also allows individuals to request in writing to our firm to correct errors or omissions. We will correct any factual error or omissions and inform other organizations to whom we have disclosed the incorrect information. If we determine there is no factual error or omission, we will annotate the record to state that a correction was requested but not made.

Contact

If you have any questions or concerns about our privacy policy, or how we have handled your personal information, please contact our privacy officer in writing at:

Arres Capital Incorporated
204, 1324 - 11 Avenue SW
Calgary, Alberta T3C 0M6

Attention: Privacy Office

**SCHEDULE E to a Loan Administration Agreement between:
Arres Capital Inc. (the "Lender" or "Mortgage Broker")**

**Western Arres Capital Inc.
And**

Brian Sekiya – Olympia Trust Acct. #78676

Dated August 31, 2011

OFFERING MEMORANDUM FOR SYNDICATED MORTGAGES (BC 45-901F)

Item 1 Non-Review

The Securities Commission has not reviewed this Offering Memorandum. No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Neither the Securities Commission nor any other regulatory authority makes any endorsement of the investment offered. It is an offence for anyone to say that the Securities Commission or any other regulatory authority has made any recommendations in respect of this offer.

Neither the Registrar of Mortgage Brokers nor any other authority of the government of the Province of British Columbia has in any way approved the merits of the matters dealt with in this information statement. This information statement has not been filed with the Registrar of Mortgage Brokers and the registrar has not determined whether or not it complies with Part 2 of the *Mortgage Brokers Act*.

There is not or may not be a market for you to sell your investment and there is no assurance that you will be able to find a buyer for this investment at a later date.

Item 2 Description of the Offering

- (1) The following is a brief description of the investment that is being offered and the legal rights of the investor, including, but not limited to the following:
 - (a) A partial interest in a mortgage in the sum of \$ 3,500,000.00 over the lands described as schedule "B" (the "Lands") to be registered as a first mortgage (the "Mortgage") subject to the terms of the loan summary. The Lender will be registered on title to the Lands as the holder/owner of the Mortgage and thereby represents the interests of all the investors. The Lender is offering partial interests in the Mortgage to investors pursuant to a Loan Administration Agreement between each investor and the Lender.

(b) Should the borrower default, the Lender, on behalf of all investors, will pursue investors' rights by initiating foreclosure proceedings against the Lands and the borrower. The investors will share in the proceeds of any recovery from the borrower, less legal and other costs incurred. The individual investor's rights will be pursued in the name of and by the Lender.

(2) This project is set out in detail in our Loan Administration Agreement of which this Offering Memorandum forms a part.

Item 3 Raising of Funds

- (1) If the funds to be raised through the offering are required to be raised in stages, the period over which the funds will be raised and the criteria to determine when they will be raised are disclosed in the Loan Administration Agreement.
- (2) If there are any arrangements under which any part of the funds raised will only become available to the borrower if certain conditions are fulfilled, those conditions and the procedure for the return of the funds to investors if the conditions are not met and any deduction or penalty imposed on the borrower or any other person for not meeting the conditions, these will be set out in the Loan Administration Agreement. The initial loan advance and the use to which investors' funds will be put, are also set out in the Loan Administration Agreement. Balances not advanced will be held in trust with our solicitors until such time as the next stage of construction and/or subdivision has been commenced / finalized and our appraiser has provided us with an up to date value of the property.

Item 4 Restrictions on Resale and Market

NOT APPLICABLE

Item 5 Other Risk Factors

- (1) **Investments in syndicated mortgages are speculative and involve a high degree of risk. Investors should be aware that this investment has not only the usual risks associated with the financial ability of the borrower to make repayments but also risks associated with financing real estate and risks associated with syndication.**
- (2) Risk factors may include:
- reliance on the ability of the borrower to make payments under the mortgage;
 - the financial strength of the personal guarantor;
 - the ability to raise further funds as progress in development or construction takes place;
 - changes in land value;
 - the ability to recover one's investment in the event of foreclosure;

- any prior encumbrances registered on the property;
- the level of ranking of the Mortgage in relation to other mortgages;
- conflicts of interest between the borrower and the mortgage broker;
- the mortgage broker's efforts, ability and experience;
- inadequate insurance coverage;
- inability to change the trustee (if any); and
- Restrictions imposed by securities legislation on the resale of the mortgage interest.

- (3) If the mortgage includes a personal covenant, guarantee or other financial commitment, investors should be aware that:

The ability of the person providing the personal covenant, guarantee or other financial commitment to perform under the personal covenant, guarantee or other financial commitment will depend on the financial strength of the person. There is no assurance that the person will have the financial ability to be able to satisfy their obligations under the personal covenant, guarantee or other financial commitment and therefore you may not receive any return from your investment, including any initial amount invested.

Item 6 Administration Agreement

Any fees or expenses that may be charged to the investor for the administration of the Mortgage by the Lender are set out in Article 2 of the Loan Administration Agreement. The Loan Administration Agreement also specifies all fees and expenses to be charged to the investor and how they are to be calculated, outlines the specific responsibilities of all parties to it, including collection responsibility for payments due under the mortgage, commencement of legal action on default, follow up on insurance expirations or cancellations and all other matters of administration.

Item 7 Loan Administration Agreement

See Executed Loan Administration Agreement of which this Offering Memorandum forms a part.

Item 8 Details of the Underlying Mortgage

The details of the Mortgage are set out in the Loan Administration Agreement and the commitment letter between the Lender and borrower.

Item 9 Accredited appraisal

The most recent assessment of the Lands and existing improvements by the British Columbia Assessment Authority contains the following values:

2011 tax assessed value-\$12,328,900.00

If an appraisal of the Land and existing improvements by a professional appraiser has been completed, its details will be summarized in the Loan Administration Agreement.

Item 10 Exemptions

This distribution of a syndicated mortgage interest is exempt from the registration and prospectus requirements of the British Columbia Securities Act pursuant to National Instrument 45-106, Part 2, Section 2.36 (Prospectus and Registration Exemptions). This is the form of offering memorandum (form 45-901F) required under section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemptions*, for a distribution of interests in a syndicated mortgage in reliance on a prospectus exemption other than the exemption contained in BC Instrument 45-501 *Mortgages*.

Item 11 Guarantees or Other Similar Financial Commitments

- (1) Not Applicable

Item 12 Organization of Mortgage Broker

The Mortgage Broker is organized under the laws of the Province of Alberta and was incorporated on May 28, 1996. The Mortgage Broker was registered extra-provincially in British Columbia under the name Western Arres Capital Inc. on July 16, 2008.

Item 13 Organization of Borrower

To the best of the Mortgage Broker's belief, based on personal knowledge and information provided by third parties, the corporate borrower is registered under the laws of the Province of B.C.

Item 14 Mortgage Broker, Partners, Directors, Officers and Principal Holders (the latter being anyone who holds, directly or indirectly, more than 50% of any class of voting securities)

- (1) The directors and principal holders of the Mortgage Broker, their municipality of residence and principal occupation for the last 5 years are:
- a) Wes Serra, Calgary, Alberta, President of Arres Capital Incorporated
- (2) None of the mortgage broker, its partners, directors, officers or principal holders, or any partner, director or officer of its principal holders, within the ten years before the date of this Offering Memorandum, has been subject to any penalties or sanctions imposed by a court, mortgage regulatory authority, real estate regulatory authority or securities regulatory authority relating to the sale, lease, promotion, or management of mortgages, real estate or securities, or to theft or fraud, and describe any penalties or sanctions imposed;

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- (3) Neither the mortgage broker, its partners, directors, officers or principal holders, or any partner, director or officer of its principal holders, within the five years before the date of this Offering Memorandum, was declared bankrupt or made a voluntary assignment in bankruptcy, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement, or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of that person;
- (4) No partner, director, officer or principal holder or any partner, director or officer of the principal holder, within the five years prior to the date of this Offering Memorandum, has been a partner, director, officer or principal holder of any other mortgage broker that, while that person was acting in that capacity,
- (a) was subject to any penalties or sanctions imposed by a court, mortgage regulatory authority, real estate regulatory authority or securities regulatory authority relating to the sale, lease, promotion, or management of mortgages, real estate or securities or to theft or fraud, and describe any penalties or sanctions imposed, or
 - (b) Was declared bankrupt or made a voluntary assignment in bankruptcy made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

Item 15 Borrower, Partners, Directors, Officers and Principal Holders

If the Borrower has been represented by a mortgage broker, the following applies:

- (1) The directors and principal holders of the Borrower, their municipality of residence and principal occupation for the last 5 years are:
- a. Steven Reilly; Businessman
 - b. Brian Sekiya; Businessman
 - c. Wes Serra; Businessman
 - d. Carlo Simonelli; Businessman
 - e. Tony Smith; Businessman
 - f. Bruce McRitchie; Businessman
 - g. Ron Medley; Businessman
 - h. Erwin Nycholat; Businessman
 - i. Allan Beck; Businessman
 - j. Lester Ikuta; Businessman
 - k. John Klarer; Businessman

- (2) To the best of the Mortgage Broker's belief, based on personal knowledge and on information provided by third parties, the Borrower, its partners, directors, officers or principal holders, has never:

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- (a) been subject to any penalties or sanctions imposed by a court, mortgage regulatory authority, real estate regulatory authority or securities regulatory authority relating to the sale, lease, promotion, or management of mortgages, real estate or securities, or to theft or fraud, and describe any penalties or sanctions imposed;
- (b) declared bankrupt or made a voluntary assignment in bankruptcy, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement, or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of that person;
- (c) Been a partner, director, officer or principal holder of any other mortgage broker that, while that person was acting in that capacity,
 - (i) was subject to any penalties or sanctions imposed by a court, mortgage regulatory authority, real estate regulatory authority or securities regulatory authority relating to the sale, lease, promotion, or management of mortgages, real estate or securities or to theft or fraud, and describe any penalties or sanctions imposed, or
 - (ii) Was declared bankrupt or made a voluntary assignment in bankruptcy made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets.

Item 16 Conflicts of Interest

The name of the Mortgage Broker is Arres Capital Incorporated. Which is registered in British Columbia as Western Arres Capital Inc. The Mortgage Broker is a minority shareholder in the borrower resulting from the CCAA plan of arrangement. The Lender and/or its affiliates may also be an investor under this mortgage.

Item 17 Borrower's Financial Information

If the borrower is a person other than an individual, please be advised that copies of the following financial statements are available upon request at the offices of the Mortgage Broker:

- (a) where the borrower has not completed one financial year, unaudited financial statements of the borrower as at a date not more than 60 days prior to the date of the Offering Memorandum;
- (b) Where the borrower has completed one or more financial years:
 - (i) Audited financial statements of the borrower for the most recent financial year, and
 - (ii) If the effective date of the statements is more than 120 days before the date of the Offering Memorandum,

unaudited financial statements for a stub period ending not more than 90 days prior to the date of the Offering Memorandum.

Item 18 Financial Forecasts or Projections

No future-oriented financial information, such as financial forecasts or projections, is used in this Offering Memorandum. National Policy 48 *Future Oriented Financial Information* has been rescinded.

Item 19 Ongoing Disclosure

The Borrower is not a reporting issuer and as such investors will not receive ongoing financial information from the borrower. The Mortgage Broker, however, may annually update investors on the progress being made under the terms of the Mortgage. See Loan Administration Agreement.

Item 20 Material Contracts

A copy of the Loan Summary and Commitment Letter are attached to the Loan Administration Agreement.

Item 21 Income Tax Consequences

Prospective investors should consult with their professional advisers regarding tax consequences applicable to them.

Item 22 Purchasers' Rights (pursuant to NI 45-106F2)

If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right – Pursuant to the B.C. *Securities Act* you can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - If there is a misrepresentation in this offering memorandum, you have a statutory right, pursuant to the B.C. *Securities Act*, to sue:

(a) The Lender to cancel your agreement to buy these securities, or

(b) For damages against the Lender, directors of the Lender, and every person who signed this Offering Memorandum.

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement (a) within 180 days after the date of the transaction that gave rise to your cause of action. If you choose (b) instead, you must commence your action for damages within 3 years after the date of the transaction that gave rise to the cause of action. In an action for damages the amount you may recover will not exceed the price that you paid for your securities.

Item 23 Borrower disclosure statement

See terms of the Loan Administration Agreement of which this Offering Memorandum forms a part.

Item 24 Registration documentation

In addition to all other material and documentation reasonably requested and mutually agreed upon, the investor should request, either from the lawyer or notary acting on the investor's behalf, or from the mortgage broker, the following documentation after the completion of registration and disbursement of the mortgage:

- (a) Copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment;
- (b) Copy of a confirmation signed by any prior encumbrances confirming the outstanding balance of the prior encumbrances and that the borrower is not in arrear with any payments;
- (c) Written confirmation of valid insurance on the property, reflecting the interest of the investor in the insurance;
- (d) Written confirmation there are no outstanding arrears or delinquent municipal property taxes on the property;
- (e) State of Title Certificate in due course (within 120 days of the date of the mortgage); and
- (f) Copy of administration agreement or Loan Administration Agreement (if applicable).

Item 25 Certification by Mortgage Broker

With respect to matters that are or should be within my personal knowledge, the foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.

With respect to matters that are not and are not required to be within my personal knowledge, I have made best efforts to ensure that the foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required

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to be stated or that is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made.



Wes Serra

President and sole director
Arres Capital Incorporated

It is an offence under the Securities Act for a person to make a statement in a document required to be filed, furnished or delivered under the Act or the Regulations that, at the time and in light of the circumstances under which it is made, is a misrepresentation as that term is defined by the Securities Act.

I have read and understand the terms of this Offering Memorandum, have either obtained, or hereby waive my right to obtain, independent legal advice and accept the terms of this Offering Memorandum.

Dated this 31st day of August, 2011



X

Brian Sekiya
601 12th Avenue N.E., Calgary, Alberta, T2E 1B2

INSTRUCTION: The Investor must sign 2 copies of this form. The Investor and the Lender must each receive a signed copy.

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**SCHEDULE F - LOAN SUMMARY AND CO-LENDER COMMITMENT
(ARRES TO INSERT)**



We Provide Unique Financial Solutions

YK Projects – Priority Mortgage \$3,500,000.00

DATE: June 24, 2010 (original funding date) – Balance to be funded as additional draws are required.
June 2011 first date of this draw request

Applicant: YK Projects Ltd.

**Applicant
Principals:**

All the former syndicated investors in the rise. They have now become the shareholders who have now elected a board of Directors to manage the project. The Board consists of: Steven Reilly, Brian Sekiya, Wes Serra, Carlo Simonelli, Tony Smith, Bruce McRitchie, Ron Medley, Erwin Nycholat, Allan Beck, Lester Ikuta and John Klarer.

**Proposed
Financing:**

PRIORITY MORTGAGE AT THE RISE – The CCAA monitor has obtained court approval for a priority mortgage in the amount of \$2,000,000.00. The monitor and court have appointed Arres Capital to raise these funds. These funds are required for preservation and operating costs which will include day to day operation of sales centre and golf course, legal costs, monitor, court costs, property taxes, trustee fees and winding up of CCAA. It is expected that this amount will carry the project through to the spring 2011 in the event that it does not sell either as a whole or piece by piece.

Update as of June 2011: The property did not sell and the 2 Million was fully funded. In June, 2011 the mortgage has now been amended and increased to 3.5 Million dollars to continue to cover the costs as outlined above. Additionally it must be noted that the Belgao lands will be seeking construction financing in an effort to get things moving on the lands. When this is in place, this mortgage of 3.5 million will be postponed to the new construction financing on the Belgao lands only.

Terms: Mortgage Amount: Now increased and amended to \$3.5 Million

Mortgage Position: 1st over all lots and land indicated on "Schedule A"
Interest Rate: 12%
Term: One Year.
Repayment: Monthly Interest only

We will collect funds on a monthly basis as operating costs are required.

- LTV:
- A) 1 % based on the last appraisal of \$109,000,000.00.
 - B) 3% given that the proposal is no longer the value due to the present economy. if you cut that appraisal in half and call the value \$54,500,000.00 (you will arrive at 3% LTV).
 - C) 2011 Tax assessed value-Total \$12,328,900.00 (Of this \$571,000.00 is the tax assessed value of the Belago lands)

No current appraisal has been done nor is an appraised value being represented.

If you are interested in this opportunity then please contact Wendy at 403-261-9955 to discuss and finalize when the next draw will be required.

Yours truly,

ARRES CAPITAL INC.

Wes Serra
President

Confidentiality: This information is intended for the use of the intended recipient(s), is confidential and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hardcopy, copying, circulation or other use of this message is strictly prohibited.

Investor/Lender Disclaimer Statement: In accordance with the Servicing Standard, Arres Capital will collect information and documentation from Borrowers and other third parties of the Loans it offers to the Co-Lender for investment, however, Arres Capital makes no representation or warranty regarding the accuracy or completeness of such information and documentation. Information provided may change as daily activity occurs.

CO-LENDER COMMITMENT**YK 3.5 Million Priority Mortgage**

I, Brian Sekiya – Olympia Trust Acct. #78676, in signing this Lender Commitment, acknowledge that I commit to fund the amount of \$75,000.00 in addition to the \$100,000 already invested towards the total mortgage amount of \$3,500,000.00 as set out and according to the terms and conditions of this loan summary.

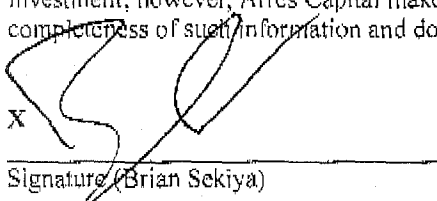
I understand and acknowledge that this funding is to take place on or about August 31, 2011 and I will be advised a minimum of two days prior to funding by Arres Capital Inc. or by the solicitor preparing the mortgage when my **certified cheque or bank draft** for the amount committed to above (made payable to THOMAS BUTLER LLP IN TRUST) will be required.

I also agree to provide to Arres Capital or the solicitor, a copy of any documentation required verifying my identity such as a copy of my driver's license or photographic identification, in accordance with the law society of Alberta.

I acknowledge and understand that as with any mortgage investment there are risks. The information provided in the summary is provided on an "as is" basis and for informational purposes only. Arres Capital Inc is presenting this information on behalf of Okanagan Hills Development Ltd. And YK Projects Ltd. and to the maximum extent permitted by applicable law, Arres Capital Inc and its members, directors, partners and business associates disclaim all warranties, fitness for a particular purpose, accuracy, and completeness. Any forward looking statements are based on management's current expectations, estimates and projections, but are not guaranteed for future results and are subject to risks, uncertainties and assumptions that are difficult to predict. By accepting this document, the reader acknowledges this disclaimer and accepts all responsibility pertaining to any related investment decisions and that there is no guarantee of return on principle, interest or participation.

Note - in accordance with the Servicing Standard, Arres Capital will collect information and documentation from borrowers and other third parties in respect of the Loans it offers to the Co-lender for investment; however, Arres Capital makes no representation or warranty regarding the accuracy or completeness of such information and documentation;

X


Signature (Brian Sekiya)
Date

Address: 601 12th Avenue N.E.
Calgary, Alberta
T2E 1B2

Phone Number: (403)230-3930

33

SCHEDULE G - RISK ACKNOWLEDGMENT UNDER BLANKET ORDER 31-505*Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions*Name of Issuer: Arres Capital IncName of Seller: Arres Capital Inc**I acknowledge that**

- The person selling me these securities is not registered with a securities regulatory authority and is prohibited from telling me that this investment is suitable for me;
- the person selling me these securities does not act for me;
- this is a risky investment and I could lose all my money; and,
- I am investing entirely at my own risk.

August 31, 2011
DateX
Signature of Purchaser (Brian Sekiya)Brian Sekiya
Print name of PurchaserWes Serra
Name of salesperson acting on behalf of seller

Sign two copies of this document. Keep one copy for your records.

National Instrument 45-106 *Prospectus and Registration Exemptions* may require you to sign an additional risk acknowledgement form.

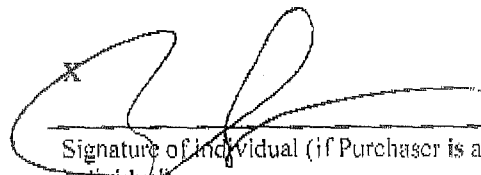
If you want advice about the merits of this investment and whether these securities are a suitable investment for you, contact a registered adviser or dealer.

ACCREDITED INVESTOR FORM

(Capitalized terms not specifically defined in this Form have the meaning ascribed to them in the Subscription Agreement to which this Form is attached.)

In connection with the execution of the Subscription Agreement to which this Form is attached, the undersigned (the "Purchaser") represents and warrants to the Issuer and its counsel that the Purchaser is purchasing the Shares as principal for own account or complies with terms and conditions of the Subscription Agreement, was not created or used solely to purchase or hold securities as an accredited investor as described in Category 13 of this Accredited Investor Form, and satisfies one or more of the categories indicated below (please place an "X" on the appropriate line(s)):

- Category a Canadian financial institution, or a Schedule III bank
1
- Category the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada)
2
- Category a subsidiary of any person referred to in Category 1 or 2, if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary
3
- Category a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador)
4
- Category an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in Category 4
5
- Category the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada
6
- Category a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montreal or an intermunicipal management board in Québec
7
- Category any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government
8
- Category a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada
9
- ☒ Category an individual who, either alone or with a spouse, beneficially owns, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000
10
- Category an individual whose net income before taxes exceeded \$200,000 in each of the two (2) most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the two (2) most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year
11
- (Note: If individual accredited investors wish to purchase through wholly owned holding companies or similar entities, such purchasing entities must qualify under Category 20 below, which must be initialled.)
- Category an individual who, either alone or with a spouse, has net assets of at least \$5,000,000
12


Signature of individual (if Purchaser is an individual)

Authorized signatory (if Purchaser is not an individual)

Brian Sekiya

Name of Purchaser (please print)

Name of authorized signatory (please print)

Official capacity of authorized signatory (please print)

Appendix A

Risk Acknowledgement under BLANKET ORDER 31-505 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions*Name of Issuer: Arres Capital IncName of Seller: Arres Capital Inc

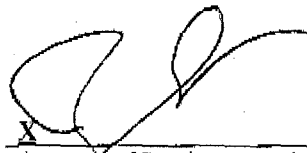
I acknowledge that

- the person selling me these securities is not registered with a securities regulatory authority and is prohibited from telling me that this investment is suitable for me;
- the person selling me these securities does not act for me;
- this is a risky investment and I could lose all my money; and,
- I am investing entirely at my own risk.

Date

Sept 2/11

Signature of Purchaser (Brian Sekiya)

Brian Sekiya
Print name of PurchaserWes Serra
Name of salesperson acting on behalf of seller

Sign two copies of this document. Keep one copy for your records.

National Instrument 45-106 *Prospectus and Registration Exemptions* may require you to sign an additional risk acknowledgement form.

If you want advice about the merits of this investment and whether these securities are a suitable investment for you, contact a registered adviser or dealer.

Form 10
[Rule 3.25]

COURT FILE NUMBER

1301-10892

COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS

RICHCROOKS ENTERPRISES (2000) LTD. AND
RICHCROOKS HOLDINGS LTD., 515476 ALBERTA
LTD., DEMEL FINANCIAL CORP, GREENMAR
HOLDINGS INC., ACCESS MORTGAGE INVESTMENT
CORPORATION (2004) LIMITED., 4-A PROFESSIONAL
SERVICES LTD., TEMPEST MANAGEMENT INC.,
HUDSON PRINCIPLE INVESTMENTS LTD., SWARTZ
BROS. LIMITED, CHRISTOPHER SCHULTZ
CONSULTING INC., CURLEW FINANCE, PAUL
KORNYLO, MAX FELDMAN, SONYA SMITH, NORMAN
MARTIN, BERNICE MARTIN, R. BRUCE CARSON,
DELORES CARSON, LEELA KRISHNOMOURTHY,
MARGUERITE MCRITCHIE, PRITI GAUR, MADHU
GAUR, WENDY MCKENNA, JANET LORRAINE
WATSON, JIM WATT, GASTON RAJAKARUNA,
SHIRLEY RAJAKARUNA, GARY DREFFS, ROBERT
ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ,
KEVIN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO
SEKIYA, HOLLY SEKIYA AND STEVEN OGG

DEFENDANTS

ARRES CAPITAL INC. and WESLEY SERRA

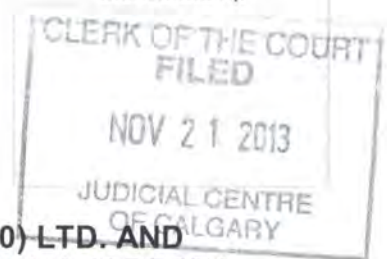
DOCUMENT

AMENDED STATEMENT OF
CLAIM

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,146 LVH

Clerk's Stamp



NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:

The Parties

1. The corporate plaintiffs, Richcrooks Enterprises (2000) Ltd., Richcrooks Holdings Ltd., 515476 Alberta Ltd., Demel Financial Corp, Greenmar Holdings Inc., Access Mortgage Investment Corporation (2004) Limited, 4-A Professional Services Ltd., Tempest Management Inc., Hudson Principle Investments Ltd., Swartz Bros. Limited and Christopher Schultz Consulting Inc. are corporations registered in the Province of Alberta.
2. The Plaintiff, Curlew Finance, is a registered partnership in the Province of Alberta.
3. The individual plaintiffs, Paul Kornylo, Max Feldman, Sonya Smith, Norman Martin, Bernice Martin, R. Bruce Carson, Delores Carson, Leela Krishnomourthy, Marguerite McRitchie, Priti Gaur, Madhu Gaur, Wendy McKenna, Janet Lorraine Watson, Jim Watt, Gaston Rajakaruna, Shirley Rajakaruna, Gary Drefs, Robert Armstrong, Michael Kurtz, Marlene Kurtz, Kevin R. Pedersen, Susan Fine, Carol Kimiyo Sekiya, and Holly Sekiya each reside in Calgary, Alberta. The Plaintiff, Steven Ogg, resides in the State of New York, USA
4. The defendant, Arres Capital Inc. ("Arres"), is a corporation registered in the Province of Alberta and carries on business in Calgary, Alberta as a mortgage broker and trustee, managing syndicated loans funded by investors, including the Plaintiffs, provided to third party borrowers; securing such loans through land mortgages and other security; and managing the collection of loan payments

from the third party borrowers and distributing those loan payments amongst the investors, less Arres' costs in administering the loans, all in accordance the terms and provisions of written trust agreements between Arres and the investors.

5. Arres arranged a syndicated loan to Graybriar Land Company Ltd. and Graybriar Greens Inc. (collectively "Graybriar") funded by multiple investors. The plaintiffs are investors in the syndicated loan to Graybriar administered and serviced by Arres pursuant to a written agreement dated July 30, 2008 and styled "Trust Agreement Graybriar Greens Inc. – Phase 2" (the "Trust Agreement"). [^] The Trust Agreements between each Plaintiff and Arres are identical or substantially similar in form and content such that they are not materially different in regard to the issues in this matter.
6. The Graybriar loan was secured through land mortgages and other security with Arres managing the collection of loan payments from Graybriar and distributed those loan payments amongst the investors, less Arres' costs in administering the loan, all in accordance the terms and provisions of the Trust Agreement.
7. The Graybriar loan was to fund the subdivision of lands and the construction and sale of condominium units on those lands located in or near the Town of Stony Plain.
8. The defendant, Wesley Serra ("Serra"), resides in Calgary, Alberta and at all material times was the sole director and controlling mind of Arres.
9. At all material times, one or both of the defendants were licensed, registered and authorized as a "mortgage broker" pursuant to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and thereby subject to that Act and the rules and bylaws constituted thereunder applicable to mortgage brokers.

The Trust Agreement

10. The Trust Agreement imposes upon Arres the following material obligations:
 - a. Arres must exercise its powers and discharge its duties at all times honestly, in good faith and in the best collective interest of the plaintiffs and other Graybriar investors participating in the syndicated loan to Graybriar, exercising the care, diligence and skill that a reasonably prudent lender would exercise in comparable circumstances;
 - b. Arres must maintain proper records and accounts showing all receipts, payments and disbursements with respect to the Graybriar loan and to provide the plaintiffs with a periodic accounting of the loan, including interest earned and payments received from Graybriar; and
 - c. Arres must remit to the plaintiffs on a monthly basis each plaintiff investor's proportionate share (being each plaintiff investor's investment amount compared with the total syndicated loan to Graybriar) of all amounts received by Arres from Graybriar less any expenses or disbursements properly payable to Arres by each plaintiff investor with regard to the Graybriar loan.
11. Under the Trust Agreement, the plaintiffs are entitled to receive interest on its investment at the rate of 15% per annum. Graybriar was charged interest on the syndicated loan at the rate of 15% per annum. The consideration to Arres under the syndicated loan to Graybriar was limited to a lender fee of \$20,000 and reimbursement of Arres' actual expenses and disbursements in administering and servicing the loan.
12. Under the Trust Agreement, Arres is subject to contractual, equitable and fiduciary duties owed to the plaintiffs of fidelity, honesty and utmost good faith

with a requirement to avoid any conflicts of interests and at all times to act in the best interests of the plaintiffs and other Graybriar syndicated loan investors. All funds received by Arres from Graybriar must be received by Arres in trust for the benefit of the plaintiffs and other Graybriar investors with the right of Arres to make only such deductions as are provided for under the terms and provisions of the Trust Agreement.

Background to the Claim

13. Graybriar Land Company Ltd. owns property located in or near the Town of Stony Plain legally described as Plan 0520941, Block 1, Lot C (the "Graybriar Lands"). Arres arranged to syndicate a loan to Graybriar to be secured with a mortgage against the Graybriar Lands in the amount of \$9,700,000 (the "Graybriar Mortgage"). ^
14. The loan funds provided by Arres to Graybriar pursuant to the Graybriar Mortgage were obtained by Arres from various financial contributions received from investors (the "Graybriar Investors"), including the plaintiffs, pursuant to Trust Agreements which designated Arres as a bare trustee for each investor. Consequently, Arres is the bare trustee for the plaintiffs to the extent of their proportionate contributions towards the total funds loaned to Graybriar under the Graybriar Mortgage, rendering the plaintiffs beneficial owners of a portion of the Graybriar Mortgage.
15. The Graybriar Mortgage funds advanced to Graybriar by Arres were used for the purpose of subdividing the Graybriar Lands and constructing a condominium development. During the course of construction, Graybriar became insolvent, went into receivership and Arres commenced foreclosure proceedings to enforce the Graybriar Mortgage.
16. At no time during the course of Arres prosecuting the Graybriar foreclosure did

Arres ever claim or advise the Graybriar investors that there were any mortgage renewal fees owing by Graybriar that were payable to Arres. Affidavits of Default sworn and filed by Arres in the foreclosure did not claim any unpaid mortgage renewal fees as owing by Graybriar under or in connection with the Graybriar Mortgage.

17. The plaintiffs were advised by Arres that those foreclosure proceedings ultimately resulted in arrangements to incorporate a new company that would assume ownership of the Graybriar Lands and the Graybriar Investors would become shareholders in the new corporation in the same proportion to their proportionate share in the Graybriar Mortgage. The plaintiffs were advised by Arres that 1655801 Alberta Ltd. was the new corporation intended to take title to the Graybriar Lands.
18. The plaintiffs were advised by Arres that as the Graybriar condominium units were sold, the sale proceeds would be applied against the indebtedness owing under the Graybriar Mortgage, and the net sale proceeds, after Arres made deductions for its actual expenses and disbursements in administering and servicing the loan, would be distributed to the Graybriar Investors, with the plaintiffs receiving their respective proportionate share of those funds.
19. Despite Arres advising the plaintiffs repeatedly that the Graybriar Lands would be transferred to 1655801 Alberta Ltd., such transfer never occurred. Eventually the Graybriar Lands were "condominiumized" with Arres managing the sale of the individual condominium units, thereby resulting in Arres maintaining control over the receipt, disbursement and distribution of monies realized from the sale of Graybriar condominium units.
20. In or about October 2012 legal counsel for Arres sent \$998,079.69 to Arres in conjunction with the sale of several condominium units that were sold. Arres

reported to the plaintiffs that it had received \$988,079.69 and accounted for that amount to the Graybriar Investors. No explanation has been provided by Arres to the plaintiffs regarding the missing \$10,000.

21. Notwithstanding that Arres had deducted expenses and disbursements associated with administering and servicing the Graybriar Mortgage during the course of the mortgage being paid down and thereafter in connection with the sale of condominium units, by correspondence dated November 10, 2012, Arres disclosed to the plaintiffs that it had total expenses and disbursements of \$473,050.30 of which only \$183,420.54 had been paid to Arres, resulting in a balance claimed owing to Arres of \$289,629.76.
22. Moreover, by correspondence dated July 4, 2013, Arres informed the plaintiffs it was holding back from net sale proceeds associated with a condominium unit recently sold the amount of \$115,000 for "New Home Warranty Coverage" and \$10,000 for future progress payments. Such holdbacks are not provided for in the Trust Agreement.
23. By letter dated October 18, 2013 from Arres to the plaintiffs and other Graybriar investors, Arres advised that it had taken and retained \$481,829.23, comprising virtually all of the net sale proceeds from the recent sale of two Graybriar condominium units. Arres retained these funds claiming a mortgage renewal fee of \$738,181.26 relating to the renewal of the Graybriar mortgage back in 2008.
24. Additionally, approximately \$80,000 was taken by Arres from the trust account of legal counsel associated with the sale of the Graybriar condominium units that has not been accounted for to the Graybriar Investors.
25. The plaintiffs dispute:
 - a. Arres' deduction and retention, from the net sale proceeds derived from

Graybriar condominium units sold, of amounts totaling \$665,249.77 purportedly relating to Arres' expenses and disbursements associated with administering and servicing the Graybriar Mortgage and claimed 2008 mortgage renewal fee that was undisclosed until October 18, 2013;

- b. Arres' claim that additional monies are owing by the Graybriar investors, comprised of expenses and disbursements of \$289,629.76 associated with administering and servicing the Graybriar Mortgage;
 - c. Arres retaining \$90,000 associated with the sale of Graybriar condominium units, which amount has not been accounted for to the Graybriar Investors; and
 - d. Arres holding back from distribution to the Graybriar investors the amounts of \$115,000 for "New Home Warranty Coverage" and \$10,000 for future progress payments.
26. The plaintiffs dispute Arres' ability under the Trust Agreement to unilaterally hold back monies from distribution to the Graybriar Investors.

The Claims

27. The plaintiffs seek a full accounting from Arres under the Trust Agreement regarding monies received and disbursed relating to the Graybriar Mortgage and sale of Graybriar condominium units. To the extent Arres has wrongfully taken monies that would otherwise be payable to the Graybriar Investors, the plaintiffs claim for reimbursement of their proportionate share of those monies wrongfully taken.
28. Arres has wrongfully misappropriated and converted the following improper

deductions taken from monies received under the Graybriar Mortgage or pursuant to the sale of Graybriar condominium units:

- a. Claimed expenses and disbursements totaling \$665,249.77 purportedly relating to an alleged 2008 mortgage renewal fee owing to Arres and Arres generally administering and servicing the Graybriar Mortgage;
- b. New Home Warranty Coverage holdback of \$115,000;
- c. Future progress payments holdback of \$10,000; and
- d. Funds in the amount of approximately \$80,000 taken by Arres from the trust account of legal counsel associated with the sale of the Graybriar condominium units that have not been accounted for to the Graybriar Investors.

- 29. The plaintiffs, Richcrooks Enterprises (2000) Ltd. and Richcrooks Holdings Ltd., through legal counsel have demanded in writing in September 2013 a full accounting from Arres as well as copies of all records, whether in paper or digital / computer form, in the possession of Arres related to that accounting. Arres has failed to comply with that demand, which constitutes a further breach of Arres' contractual, legal and equitable duties owed to the plaintiffs of fidelity, honesty and utmost good faith.
- 30. The plaintiffs assert that the conduct of Arres regarding its receipt, distribution, deduction and wrongful misappropriation and conversion of funds relating to the Graybriar Mortgage payments and sale of Graybriar condominium units is particularly egregious, was done with malice intent and in clear breach of the terms and provisions of the plaintiffs' Trust Agreement and Arres' contractual, equitable and fiduciary duties owed to the plaintiffs such that aggravated, exemplary and punitive damages are justified.
- 31. Additionally, Arres' conduct in connection with the receipt and disbursement of payments made under the Graybriar Mortgage and sale proceeds from the sale of Graybriar condominium units:

- a. Has been contrary to the terms in the plaintiffs' Trust Agreement;
- b. Has breached Arres' contractual, equitable and fiduciary duties owed to the plaintiffs;
- c. Has been contrary to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and rules and bylaws constituted thereunder applicable to mortgage brokers; and
- d. Has benefitted the interests of the Defendants to the detriment and prejudice of the plaintiffs, thereby creating an irreconcilable conflict of interest.

In addition, Arres is subject to bankruptcy proceedings which gives rise to the right of the plaintiffs under the Trust Agreement to terminate Arres as trustee for their respective investments in the Graybriar condominium project and mortgage. Consequently, Arres can no longer continue to act as trustee for and on behalf of the plaintiffs pursuant to the Trust Agreement.

32. Serra had full knowledge of the plaintiffs' Trust Agreement and Arres' contractual, equitable and fiduciary duties and obligations owed to the plaintiffs and nevertheless, with malice intent and forethought, directed and caused Arres to breach those duties and obligations as described above, and as a result of such breaches Serra personally benefited by receiving some or all of the monies misappropriated and wrongfully converted by Arres from the Graybriar Mortgage payments and proceeds of sales of Graybriar condominium units. Consequently, Serra has:

- a. unlawfully induced Arres to breach the Trust Agreement and breach its contractual, equitable and fiduciary duties owed to the plaintiffs, and
- b. unlawfully interfered with the legal and economic relations between Arres and the plaintiffs and other Graybriar Investors,

for which Serra is jointly and severally liable for all damages suffered by the plaintiffs as a result, including aggravated, exemplary and/or punitive damages.

33. The plaintiffs propose that the trial of this action be held before the Court of Queen's Bench at the Calgary Courts Centre at 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7 and in the opinion of the plaintiffs the trial is not expected to exceed 25 days.

Remedy sought:

34. A temporary and permanent injunction enjoining Arres from continuing to act as trustee for the plaintiffs in connection with the Trust Agreement and requiring Arres to fully and properly account to the plaintiffs for all monies received and disbursed relating to the Graybriar Mortgage and sale of Graybriar condominium units.
35. Judgment against the Defendants jointly and severally for the total amount of funds misappropriated and wrongfully converted by Arres from the Graybriar Mortgage payments and sale of Graybriar condo units that would be otherwise payable to the plaintiffs pursuant to the Trust Agreement.
36. Judgment against the Defendants jointly and severally for aggravated, exemplary and/or punitive damages in the total amount of \$250,000 or such other amount as proven at the trial of this action.
37. Interest on the proven losses and damages suffered by the plaintiffs, both before and after trial, in accordance with the Trust Agreement or at such rate and for such period of time as this Honourable Court determines appropriate.

38. Costs to the plaintiffs on a solicitor-client, full indemnity basis or at such level as this Honourable Court determines appropriate.
39. Such further and other relief as counsel may advise and this Honourable Court may permit.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Form 10
[Rule 3.25]

COURT FILE NUMBER

1201-16440

COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS

**KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
BECK, THERESE F. DALEY, LINDA JAEGER,
ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
STEVEN OGG, LESTER S. IKUTA PROFESSIONAL
CORPORATION, LESTER IKUTA, MICKEY IKUTA,
BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER,
MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK**

DEFENDANTS

ARRES CAPITAL INC. and WESLEY SERRA

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,004 LVH

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:The Parties

1. The Plaintiffs each reside in Calgary, Alberta, save Steven Ogg who resides in the State of New York, USA, and are parties to separate written agreements

each styled as a "Loan Administration Agreement" between each Plaintiff and the Defendant, Arres Capital Inc. ("Arres"). All of the Loan Administration Agreements between each Plaintiff and Arres are identical or substantially similar in form and content such that they are not materially different in regard to the issues in this matter.

2. Arres is a corporation registered in the Province of Alberta and extraprovincially registered in the Province of British Columbia using the assumed name of Western Arres Capital Inc. Arres carries on business as a mortgage broker and trustee, managing syndicated loans funded by individual investors, including the Plaintiffs, provided to third party borrowers; securing such loans through land mortgages and other security; and managing the collection of loan payments from the third party borrowers and distributing those loan payments amongst the individual investors, less Arres' costs in administering the loans, all in accordance the terms and provisions of the Loan Administration Agreements.
3. Arres' conduct under the Plaintiffs' Loan Administration Agreements is subject to an overriding "Servicing Standard" that requires Arres to act at all times with complete honesty and in good faith in exercising the care, skill, prudence and diligence of a licensed mortgage broker and trustee
4. Consequently, Arres is subject to contractual, equitable and fiduciary duties owed to the Plaintiffs of fidelity, honesty and utmost good faith with a requirement to avoid any conflicts of interests and at all times to act in the best interests of the Plaintiffs and other syndicated loan investors. All funds received by Arres from third party borrowers relating to syndicated loans funded in whole or in part by the Plaintiffs must be received by Arres in trust for the benefit of the Plaintiffs and other investors with the right of Arres to make only such deductions as are provided for under the terms and provisions of the Loan Administration Agreements.

5. The Defendant, Wesley Serra ("Serra"), resides in Calgary, Alberta and at all material times was the sole director and controlling mind of Arres.
6. One or both of the Defendants are authorized as a "mortgage broker" pursuant to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and thereby subject to that Act and the rules and bylaws constituted thereunder applicable to mortgage brokers.

Background to the Claim

7. Y-K Projects Inc. ("Y-K") owns property located in British Columbia (the "Y-K BC Lands"). Arres arranged to syndicate a loan to Y-K to be secured with a mortgage against the Y-K BC Lands in the face amount of \$3,500,000 (the "Y-K Mortgage"). The Plaintiffs each provided funds to Arres pursuant to Loan Administration Agreements in order to participate in the syndicated Y-K Mortgage. The total amount due and owing under the Y-K Mortgage as of August 31, 2012 was \$2,542,105.05. Arres, using the assumed name of Western Arres Capital Inc. in BC, is the mortgagee in respect of the Y-K Mortgage registered on title to the Y-K BC Lands.
8. The specific original amounts invested by and owing to each Plaintiff in respect of the Y-K Mortgage are as follows:

a.	Kenzie Financial Investments Ltd.	\$125,000.00
b.	Shelly Beck	\$100,000.00
c.	Therese F. Daley	\$250,000.00
d.	Linda Jaeger	\$120,000.00
e.	Andrew and Laurie Little	\$100,000.00
f.	Agnes M. Oberg	\$100,000.00
g.	Steven Ogg	\$200,000.00
h.	Lester S. Ikuta Professional Corporation	\$180,000.00

i.	Lester Ikuta (Olympia Trust - #80714)	\$17,628.00
j.	Mickey Ikuta (Olympia Trust - #80709)	\$14,977.00
k.	Sandra Sommer (Olympia Trust - #21957)	\$8,500.00
l.	Brian Sekiya (Olympia Trust - #78676)	\$175,000.00
m.	Holly Sekiya	\$105,000.00
n.	Marion Sommer (via Shelly Beck)	\$55,000.00
o.	Allan and Sandra Sommer	\$300,000.00
p.	Steven Reilly	\$350,000.00
q.	Swarts Bros. Limited	\$50,000.00
r.	Clara Mae Woroschuk	\$140,000.00

=====

TOTAL PLAINTIFFS' CONTRIBUTIONS \$2,391,105.00

9. The funds provided by Arres to Y-K pursuant to the Y-K Mortgage were obtained by Arres from various financial contributions received from individual investors (the "Y-K Mortgage Investors"), including the Plaintiffs, pursuant to Loan Administration Agreements which designated Arres as a trustee for each investor. Consequently, Arres is the trustee for the Plaintiffs to the extent of their respective proportionate contributions towards the total funds loaned to Y-K under the Y-K Mortgage, rendering each Plaintiff a beneficial owner of a portion of the Y-K Mortgage. Moreover, some of the Plaintiffs are also shareholders and directors of Y-K and so have an added interest in ensuring Arres acts reasonably, properly, honestly and in good faith regarding the administration by Arres of the Y-K Mortgage and Arres' receipt and disbursement of Y-K Mortgage payments in accordance with the Plaintiffs' respective Loan Administration Agreements.
10. The Y-K Mortgage matured and was due and owing in full on May 21, 2012 and from that point forward, Y-K was working towards making arrangements to fully payout the Y-K Mortgage.

11. With the intent to provide the Plaintiffs and other Y-K Mortgage Investors with the consideration agreed to by each of them pursuant to a plan of corporate debt restructuring and to thereby effect the discharge of the Y-K Mortgage from the Y-K BC Lands, Y-K delivered to Arres funds in the amount of \$1,787,526.05 (the "Y-K Mortgage Payout Funds") under cover of correspondence dated August 31, 2012; with Y-K purporting to impose an express trust condition upon Arres that these funds were to be used only to pay certain Y-K Mortgage Investors in accordance with an attached payout spreadsheet.
12. The full principal balance plus interest owing under the Y-K Mortgage to August 31, 2012, was \$2,542,105.05. Y-K had arranged with some of the Plaintiffs and other Y-K Mortgage Investors that these individual investors were prepared to accept, as an alternative to payment, a direct security interest in the Y-K BC Lands rather than receiving the return of their financial contribution initially provided to Arres and incorporated into the overall amount advanced to Y-K under the syndicated Y-K Mortgage (the "Y-K Direct Security Investors"), resulting in a total of \$780,000 payable to these Y-K Direct Security Investors to be rolled into and converted to a direct security interest over the Y-K BC Lands. With interest owing in the amount of \$25,421.05 for the month of August and the arrangements made between Y-K and the Y-K Direct Security Investors, this had the effect of reducing the amount of funds required to fully payout and retire the Y-K Mortgage down from \$2,542,105.05 to \$1,787,526.05, this reduced amount being equivalent to the Y-K Mortgage Payout Funds.
13. Consequently, the Y-K Mortgage Payout Funds were sufficient to fully reimburse those Plaintiffs and other Y-K Mortgage Investors seeking the return of their respective financial contributions to Arres included within the overall amount advanced to Y-K under the Y-K Mortgage. In the result, with the Y-K Direct Security Investors, whose financial contributions provided to Arres and incorporated into the Y-K Mortgage totaled \$780,000, willing to roll or convert their respective financial contributions into a direct security interest in the Y-K BC

Lands, the Y-K Mortgage Payout Funds provided to Arres were sufficient to effectively payout the entire principal balance plus interest owing under the Y-K Mortgage to the end of August 2012.

14. Following Y-K paying to Arres the Y-K Mortgage Payout Funds on August 31, 2012, Arres provided to Y-K on September 5, 2012 a Y-K Mortgage payout statement dated September 1, 2012 which indicated that the principal balance owing as of September 1, 2012 was \$2,542,105 plus additional interest of \$27,539.47 for the month of September as well as additional charges totaling \$269,296.55 (the "Y-K Mortgage Additional Charges").

15. The Y-K Mortgage Additional Charges asserted by Arres in its September 1, 2012 Y-K Mortgage payout statement include the following amounts:

a.	Outstanding Borrower Costs	\$15,510.08
b.	Renewal Fee as of May 21, 2012:	\$105,000.00
c.	Interest Outstanding on Renewal Fee:	\$3,786.47
d.	Legal Fees and Litigation Costs:	\$45,000.00
e.	Legal Holdback:	\$100,000.00
		=====
	TOTAL:	\$269,296.55

16. Prior to September 1, 2012, Y-K had never received any prior indication from Arres of the Y-K Mortgage Additional Charges or any additional charges whatsoever. The Y-K Mortgage had not been renewed in or about May 2012 so no renewal fee was owed and had never been the subject matter of any litigation prior to Arres claiming legal fees and litigation costs of \$45,000.
17. Y-K has disputed the Y-K Mortgage Additional Charges and has commenced a separate action against Arres seeking a determination and declaration regarding

what amounts, if any, remain due and owing by Y-K to Arres under the Y-K Mortgage as well as other consequential relief.

The Claims

18. Upon Arres receiving the Y-K Mortgage Payout Funds, it refused to comply with the trust condition purportedly imposed by Y-K on the permissible use of those funds by Arres. The courts determined on October 4, 2012 the trust condition Y-K attempted to impose upon Arres was not enforceable and thereafter Arres made substantial deductions from the Y-K Mortgage Payout Funds and retained those deducted funds contrary to and in breach of the terms and provisions of the Plaintiffs' Loan Administration Agreements with Arres. Therefore, Arres misappropriated from the Plaintiffs their respective proportionate shares of the deducted funds and thus wrongfully converted such deducted funds to Arres' sole use and benefit; with Arres thereby breaching its contractual, equitable and fiduciary duties owed to the Plaintiffs.
19. Specifically, Arres claimed and wrongfully misappropriated and converted the following improper deductions taken from the Y-K Mortgage Payout Funds:
 - a. Claimed litigation costs of \$52,000;
 - b. Claimed internal costs of Arres in the amount of \$150,000 purportedly associated with the administration of the Y-K Mortgage;
 - c. Claimed Y-K Mortgage renewal fee of \$108,000 when the Y-K Mortgage was not renewed by Y-K and for which the Plaintiffs are not liable in any event; and
 - d. Funds in the amount of \$100,000 purportedly associated with future legal and litigation matters and withheld by Arres from distribution to the Plaintiffs and other Y-K Mortgage Investors.

The total amount deducted and retained by Arres from the Y-K Mortgage Payout Funds comes to \$410,000.

20. The Plaintiffs' Loan Administration Agreements with Arres permit Arres to deduct and retain "Costs" that are defined as "all costs or expenses incurred by the Trustee [Arres] in enforcing or preserving or otherwise protecting the Security [Y-K Mortgage] or the Real Property the title of which is encumbered by the Security [Y-K BC Lands]".
21. The Plaintiffs assert the litigation costs of \$52,000 deducted by Arres from the Y-K Mortgage Payout Funds do not constitute "Costs" under the Plaintiffs' Loan Administration Agreements or litigation costs that can otherwise be legally deducted from the Y-K Mortgage Payout Funds and that this amount was thereby wrongfully misappropriated and converted by Arres. The Plaintiffs' proportionate share of this amount is \$46,867.83.
22. The Plaintiffs' Loan Administration Agreements define "Internal Costs" as either the "Spread Rate" (being 1%); or if the Spread Rate is not being used to determine Arres' fees, then 1%; "multiplied in either case by the face value of the Mortgage every 12 months from the date upon which a Loan goes into default or, if the default continues for a portion of a 12-month period, a pro rata portion of each 12-month period during which the default continues until such time as the Loan has been recovered or all enforcement proceeding have been concluded".
23. Considering the Y-K Mortgage went into default on or about May 21, 2012, the Internal Costs of Arres should be limited to no more than 1% of the Y-K Mortgage balance of \$2.5M more or less, prorated for the approximately 4 - 5 months that mortgage had been in default when the Y-K Mortgage Payout Funds were paid to Arres by Y-K, resulting in Internal Costs of no more than \$10,500.
24. Internal costs of \$150,000 claimed and deduced by Arres from the Y-K Mortgage Payout Funds greatly exceed the "Internal Costs" as provided for in the Plaintiffs' Loan Administration Agreements and the Plaintiffs claim Arres has wrongfully

misappropriated and converted approximately \$140,000 otherwise payable to the Plaintiffs and other Y-K Mortgage Investors. The Plaintiffs' proportionate share of this amount is \$126,182.61

25. As the Y-K Mortgage was not renewed by Y-K, the \$108,000 mortgage renewal fee deducted and retained by Arres from the Y-K Mortgage Payout Funds was wrongfully misappropriated and converted by Arres. The Plaintiffs' proportionate share of this amount is \$97,340.87.
26. The \$100,000 deducted and withheld by Arres from distribution to the Plaintiffs and other Y-K Mortgage Investors purportedly for future "legal and litigation matters" is contrary to and in breach of the terms and provision of the Plaintiffs' Loan Administration Agreement, such that Arres has wrongfully misappropriated and converted these funds. The Plaintiffs' proportionate share of this amount is \$90,130.44.
27. The Plaintiffs' Loan Administration Agreements clearly indicate that all rights, monies, payments, profits and advantages related to the Plaintiffs' participating interest in the Y-K Mortgage belong to and shall be held for the use, benefit and advantage of the Plaintiffs subject to the provisions of the agreement.
28. In addition to the Plaintiffs contesting Arres deducting the \$108,000 mortgage renewal fee and \$100,000 legal and litigation withholding, some of the Plaintiffs have demanded in writing in October 2012 a full accounting from Arres regarding the claimed, deducted and wrongfully misappropriated and converted litigation costs of \$52,000 and internal costs of \$150,000, including copies of substantiating legal invoices or bills and court records in connection with these claimed litigation costs as well as copies of all records, whether in paper or digital / computer form, in the possession of Arres related to these claimed internal costs. Arres has failed to comply with that demand, which constitutes a further

breach of Arres' contractual, legal and equitable duties owed to the Plaintiffs of fidelity, honesty and utmost good faith.

29. The Plaintiffs' assert that the conduct of Arres regarding its receipt, distribution, deduction and wrongful misappropriation and conversion of funds relating to the Y-K Mortgage Payout Funds is particularly egregious, was done with malice intent and in clear breach of the terms and provisions of the Plaintiffs' Loan Administration Agreements and Arres' contractual, equitable and fiduciary duties owed to the Plaintiffs such that aggravated, exemplary and punitive damages are justified.
30. Additionally, insofar as Arres' conduct in connection with the receipt and disbursement of the Y-K Mortgage Payout Funds has:
 - a. been contrary to the "Servicing Standard" set forth in the Plaintiffs' Loan Administration Agreements;
 - b. breached Arres' contractual, equitable and fiduciary duties owed to the Plaintiffs;
 - c. been contrary to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and rules and bylaws constituted thereunder applicable to mortgage brokers; and
 - d. benefitted the interests of the Defendants to the detriment and prejudice of the Plaintiffs, thereby creating an irreconcilable conflict of interest;

Arres can no longer continue to act as trustee for and on behalf of the Plaintiffs regarding the Y-K Mortgage.

31. Serra had full knowledge of the Plaintiffs' Loan Administration Agreements and Arres' contractual, equitable and fiduciary duties and obligations owed to the Plaintiffs and nevertheless, with malice intent and forethought, directed and

caused Arres to breach those duties and obligations as described above, and as a result of such breaches Serra personally benefited by receiving some or all of the monies misappropriated and wrongfully converted by Arres from the Y-K Mortgage Payout Funds. Consequently, Serra has:

- a. unlawfully induced Arres to breach its respective Loan Administration Agreements with each Plaintiff and breach its contractual, equitable and fiduciary duties owed to the Plaintiffs, and
- b. unlawfully interfered with the legal and economic relations between Arres and Y-K and between Arres and each Plaintiff,

for which Serra is jointly and severally liable for all damages suffered by the Plaintiffs as a result, including aggravated, exemplary and/or punitive damages.

- 32. The Plaintiffs propose that the trial of this action be held before the Court of Queen's Bench at the Calgary Courts Centre at 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7 and in the opinion of the Plaintiffs the trial is not expected to exceed 25 days.

Remedy sought:

- 33. A determination and declaration regarding what amounts, if any, may be properly deducted by Arres from the Y-K Mortgage Payout Funds.
- 34. A temporary and permanent injunction enjoining Arres from continuing to act as trustee for the Plaintiffs in connection with the Y-K Mortgage and requiring Arres to fully and properly account to the Plaintiffs for all monies deducted and withheld by Arres from distribution to the Plaintiffs with respect to the Y-K Mortgage Payout Funds.

35. Judgment against the Defendants jointly and severally for the total amount of funds misappropriated and wrongfully converted by Arres from the Y-K Mortgage Payout Funds that would be otherwise payable to the Plaintiffs pursuant to their respective Loan Administration Agreements.
36. Judgment against the Defendants jointly and severally for aggravated, exemplary and/or punitive damages in the total amount of \$250,000 or such other amount as proven at the trial of this action.
37. Interest on the proven losses and damages suffered by the Plaintiffs, both before and after trial, pursuant to the *Judgment Interest Act* (Alberta) or at such rate and for such period of time as this Honourable Court determines appropriate.
38. Costs to the Plaintiffs on a solicitor-client, full indemnity basis or at such level as this Honourable Court determines appropriate.
39. Such further and other relief as counsel may advise and this Honourable Court may permit.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

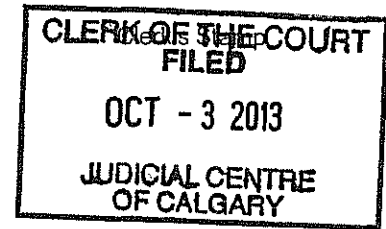
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

COURT FILE NUMBER 1201-16440
 COURT COURT OF QUEEN'S BENCH
 OF ALBERTA
 JUDICIAL CENTRE CALGARY



APPLICANTS
 (PLAINTIFFS)

KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
 BECK, THERESE F. DALEY, LINDA JAEGER,
 ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
 STEVEN OGG, LESTER S. IKUTA PROFESSIONAL
 CORPORATION, LESTER IKUTA, MICKEY IKUTA,
 BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER,
 MARION SOMMER, ALLAN SOMMER, STEVEN
 REILLY, SWARTS BROS LIMITED and CLARA MAE
 WOROSCHUK

RESPONDENTS
 (DEFENDANTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD
 PARTY DEFENDANTS)

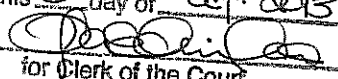
Y-K PROJECTS LTD., ALLAN BECK and SHELLY
 BECK

DOCUMENT

ORDER

ADDRESS FOR SERVICE
 AND
 CONTACT INFORMATION
 OF
 PARTY FILING THIS
 DOCUMENT

SUGIMOTO & COMPANY
 Barristers & Solicitors
 204, 2635 – 37th Avenue NE
 Calgary, Alberta, T1Y 5Z6
 Solicitor of Record: Loran V. Halyn
 Direct: 403-219-4213
 Fax: 403-291-4099
 Email: lhalyn@sugimotolaw.com
 File: 15,054 LVH

I hereby certify this to be a true copy of
 the original ORDER
 Dated this 3 day of Oct. 2013

 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

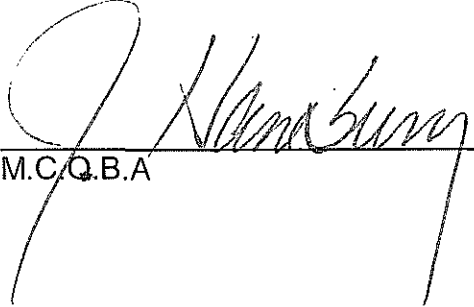
AMENDED ORDER

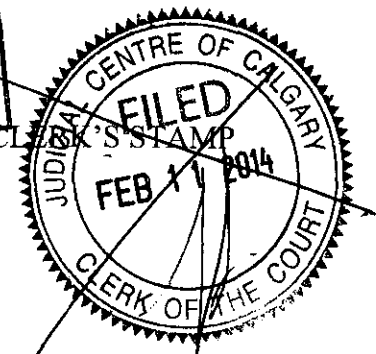
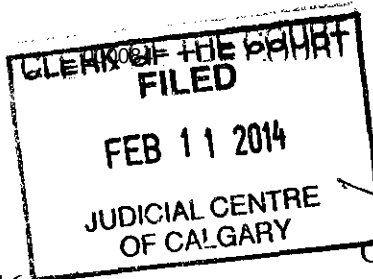
UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C./Q.B.A



COURT FILE NUMBER 1201-16440

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT CONSENT ORDER

ADDRESS FOR SERVICE AND CONTACT PELLETIER LAW
350, 444 – 5th Avenue SW
Calgary, Alberta T2P 2T8
Main: 403.407.2600
Fax: 403.407.2601

Ryan P. Pelletier
Direct: 403.407.2630
File: 13002.008

I hereby certify that the original is filed in Court File #
the original _____ day of February 2014
Dated this _____
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 11, 2014

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Wilkins

LOCATION WHERE THIS ORDER WAS MADE: Calgary

UPON noting the defendant, Arres Capital Inc. ("Arres"), has appealed the Amended Order of the Learned Master L. Laycock pronounced July 17, 2013 and filed October 3, 2013 (the "Amended Order") by Notice of Appeal of Master's Order filed October 4, 2013 (the

"Appeal"); AND UPON noting the consent of counsel for the Plaintiffs and Third Party Defendants, who are collectively the Respondents on the Appeal of Master's Order (together the **"Respondents")**;

IT IS HEREBY ORDERED THAT:

1. Arres shall forthwith pay the amount of \$235,000 into Court to the credit of this Action (the **"Secured Funds"**).
2. Upon payment into Court of the Secured Funds, the Amended Order is stayed pending a final judicial determination of the Appeal.
3. Upon a final judicial determination of the Appeal, including any further appeal by either party, the Secured Funds shall be released in accordance with such final judicial determination.
4. This Consent Order may be consented to in counterpart and by facsimile or electronic mail.

"Justice Wilkins"
J.C.C.Q.B.A

CONSENTED TO:

Suginoto & Company

Per: 

Loran V. Halyn
Counsel for the Respondents on the
Appeal, being both the within Plaintiffs
and the Third Party Defendants

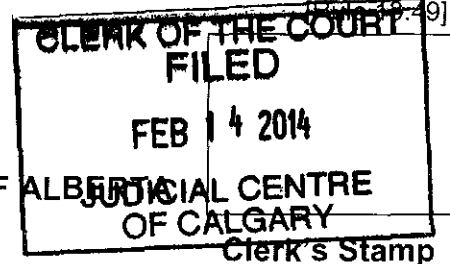
COURT FILE NUMBER: 1201-16440

COURT:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

CALGARY



APPLICANTS
(PLAINTIFFS)

KENZIE FINANCIAL INVESTMENTS LTD.,
SHELLY BECK, THERESE F. DALEY, LINDA
JAEGER, ANDREW LITTLE, AGNES M.
OBERG, STEVEN OGG, LESTER S. IKUTA
PROFESSIONAL CORPORATION, LESTER
IKUTA, MICKEY IKUTA, BRIAN SEKIYA,
HOLLY SEKIYA, SANDRA SOMMER, MARION
SOMMER, ALLAN SOMMER, STEVEN REILLY,
SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK

RESPONDENTS
(DEFENDENTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS(THIRD
PARTY DEFENDENTS)

Y-K PROJECTS LTD., ALLAN BECK and
SHELLY BECK

DOCUMENT:

MONEY PAID INTO COURT

ADDRESS FOR SERVICE and
CONTACT INFORMATION of
PARTY FILING THIS
DOCUMENT:

Pelletier Law
Ryan P. Pelletier
350, 444 – 5 Avenue SW
Calgary, Alberta T2P 2T8
Main: 403.407.2600
Fax: 403.407.2601
-

File No. 13002.008

NOTICE TO COURT CLERK

You have received money paid into Court.

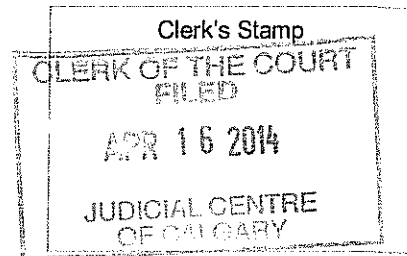
Go to the end of this document to see what you must do.

\$235,000 is paid into Court in accordance with the Order of Justice Wilkins granted on February 11, 2014 in respect to the within action.

NOTICE TO COURT CLERK

You must give a receipt for the money paid into Court and, unless otherwise ordered, deposit the money into an account in a bank or treasury branch.

COURT FILE NUMBER 1201-16440
 COURT COURT OF QUEEN'S BENCH
 OF ALBERTA
 JUDICIAL CENTRE CALGARY



RESPONDENTS
 (PLAINTIFFS)

**KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
 BECK, THERESE F. DALEY, LINDA JAEGER,
 ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
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 MARION SOMMER, ALLAN SOMMER, STEVEN
 REILLY, SWARTS BROS LIMITED and CLARA MAE
 WOROSCHUK**

APPELLANTS
 (DEFENDANTS)

ARRES CAPITAL INC. and WESLEY SERRA

RESPONDENTS (THIRD
 PARTY DEFENDANTS)

**Y-K PROJECTS LTD., ALLAN BECK and SHELLY
 BECK**

DOCUMENT

ORDER

ADDRESS FOR SERVICE
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 OF
 PARTY FILING THIS
 DOCUMENT

SUGIMOTO & COMPANY
 Barristers & Solicitors
 204, 2635 – 37th Avenue NE
 Calgary, Alberta, T1Y 5Z6
 Solicitor of Record: Loran V. Halyn
 Direct: 403-219-4213
 Fax: 403-291-4099
 Email: lhalyn@sugimotolaw.com
 File: 15,054 LVH

I hereby certify this to be a true copy of
 the original Order

Dated this 16 day of April 2014
[Signature]
 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: April 16, 2014

NAME OF JUSTICE WHO MADE THIS ORDER:

C.L. Kenny

LOCATION WHERE THIS ORDER WAS MADE:


Calgary

ORDER


UPON THE Defendant, Arres Capital Inc. ("Arres"), appealing the Amended Order of the Learned Master L. Laycock pronounced July 17, 2013 and filed October 3, 2013 in this action (the "Amended Order"); AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra, responses to undertakings deriving therefrom and the proceedings before Learned Master L. Laycock; AND UPON CONSIDERING the submissions of Counsel for the Defendants and Counsel for the Plaintiffs / Third Party Defendants;

IT IS HEREBY ORDERED THAT:

1. The appeal of the Amended Order is dismissed.
2. The funds paid into court by Arres to the credit of this action in the amount of \$235,000.00 pursuant to the Consent Order of The Honourable Mr. Justice Wilkins pronounced and filed on February 11, 2014, shall be paid out forthwith by the Clerk of the Court to the lawyers representing the Plaintiffs / Third Party Defendants at the following address:

 , SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Attention: Loran V. Halyn

3. The Plaintiffs and Third Party Defendants are awarded costs of this application in accordance with Column 3 of Schedule C of the Alberta Rules of Court payable forthwith in any event of the cause.

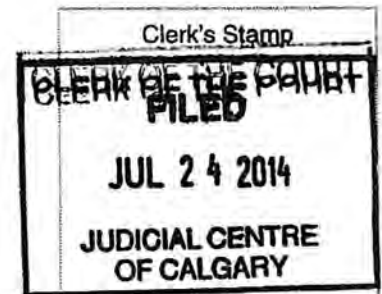


J.C.Q.B.A

COURT FILE NUMBER 1201-16440

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

NON-PARTIES (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Bishop & McKenzie LLP
Barristers & Solicitors
1700, 530 – 8th Avenue SW
Calgary, Alberta, T2P 3S8
Attention: Kerry Lynn Okita
Phone: 403-237-5550
Fax: 403-263-3423
File No. 100672-003 (KLO/pw)

I hereby certify this to be a true copy of
the original _____
Dated this _____ day of _____, 2014
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: WEDNESDAY, JULY 23, 2014

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: J.J. STREKAF

UPON the application of the Terrapin Mortgage Investment Corp.; UPON noting the cross application of the Plaintiffs; AND UPON hearing counsel for the Plaintiff, Defendant, and Terrapin Mortgage Investment Corp.:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Affidavit of G. Forrest, filed May 2, 2014, in action Nos. 0903-17685 and 09103-17684, is admitted within this action.
2. Terrapin Mortgage Investment Corp. is hereby granted intervenor status in the within action with respect to the issue of the \$235,000.00 held in Court.

3. Terrapin Mortgage Investment Corp. is granted the following parameters of participation in the above noted matter:

- a. The ability to present new evidence to the Court;
- b. The ability to advance arguments and issues not advanced by other parties; and
- c. The ability to bring Applications in the within action.

4. The cross application of the Plaintiffs ~~for release of funds is dismissed.~~ ^{is adjourned sine die pending the determination of the Stay Order in Action Numbers 0903-17684 and 0903-17685.}

- ✓ 5. Terrapin shall be awarded \$1,000.00 in costs.

6. Other costs claims arising out of today's application can be dealt with at a later date. ✓

JUSTICE IN CHAMBERS

In the Court of Appeal of Alberta

Citation: Richcrooks Enterprises (2000) Ltd. v Arres Capital Inc., 2015 ABCA 40

Date: 20150129

Docket: 1501-0006-AC

Registry: Calgary

Between:

**Richcrooks Enterprises (2000) Ltd. and Richcrooks Holdings Ltd.,
515476 Alberta Ltd., Demel Financial Corp, Greenmar Holdings Inc.,
Access Mortgage Investments Corporation (2004) Limited, 4-A Professional
Services Ltd., Tempest Management Inc., Hudson Principle Investments Ltd.,
Swartz Bros. Limited, Christopher Schultz Consulting Inc., Curlew Finance,
Paul Kornylo, Max Feldman, Sonya Smith, Norman Martin, Bernice Martin,
R. Bruce Carson, Delores Carson, Leela Krishnomourthy, Marguerite McRitchie,
Priti Gaur, Madhu Gaur, Wendy McKenna, Janet Lorraine Watson, Jim Watt,
Gaston Rajakaruna, Shirley Rajakaruna, Gary Drefs, Robert Armstrong, Michael
Kurtz, Marlene Kurtz, Kevin R. Pedersen, Susan Fine, Carol Kimiyo Sekiya,
Holly Sekiya and Steven Ogg**

Applicants

- and -

Arres Capital Inc.

Respondent

- and -

**Terrapin Mortgage Investments Corp. and
1798583 Alberta Ltd.**

Respondents

- and -

**Graybriar Land Company Ltd. and
Graybriar Greens Inc.**

Not a Party to the Application

**Oral Reasons for Decision of
The Honourable Mr. Justice J.D. Bruce McDonald**

Application for a Stay Pending Appeal

**Oral Reasons for Decision of
The Honourable Mr. Justice J.D. Bruce McDonald**

Introduction

[1] The applicant Access Mortgage Investment Corporation (2004) Limited (Access Mortgage) brings on its own behalf and on behalf of other investors, an application pursuant to rule 14.48 for a stay pending appeal of the order granted by Madam Justice Strekaf on December 17, 2014 (the Strekaf Order) which order vacated an earlier order of the Court of Queen's Bench granted by Justice Hillier on February 14, 2014 (the Hillier Order).

Facts

[2] The facts giving rise to this application for a stay pending appeal are somewhat convoluted. Suffice it to say for our purposes however, Access Mortgage and a number of other persons (both corporate and individual) were investors in a \$9,000,000 syndicated loan arranged for by Arres Capital Inc. (hereinafter referred to as Arres). Wes Serra was at the time the owner and principal of Arres.

[3] The syndicated loan was secured by a mortgage granted by two companies, Graybriar Land Company Ltd. and Graybriar Greens Inc. (collectively referred to as Graybriar) and was used to fund the subdivision of lands, and then the construction and sale of condominium units on those lands. Arres was the registered mortgagee on behalf of the investors.

[4] At the time that the syndicated loan agreement was entered into between Arres and the various investors (including of course Access Mortgage), Arres was registered as a mortgage broker pursuant to the provisions of the *Real Estate Act* RSA 2000, c R-5. Its registration as a mortgage broker was terminated effective November 3, 2013.

[5] Arres, *inter alia*, managed the collection of the loan repayments from Graybriar and then distributed those funds (less deductions for its administration fees, etc.) to the investors. In October 2013, Arres made substantial deductions from the loan proceeds. The investors decided that these were not proper deductions and, as a result, commenced an action against Arres shortly thereafter to recover those funds. The total amount being claimed in that lawsuit was in excess of \$870,000.

[6] The Graybriar mortgage had gone into foreclosure in 2009. By February 1, 2014, only seven condominium units, out of the original 48, remained unsold. On February 3, 2014 without any notice to the syndicate investors (including Access Mortgage), counsel for Arres applied for and obtained an order from Master Breitzkreuz (the Breitzkreuz Order) which, *inter alia*, directed that the remaining seven condominium units in the Graybriar project be sold to Arres for an amount in excess of \$1.8 million.

[7] However, by the terms of the Breitkreuz Order, Arres was not required to pay cash for its acquisition of these units; rather the amount of the stated purchase price was to be paid by way of a set-off against the amount outstanding under the Graybriar loan. No mention was made to Master Breitkreuz at the time that the Breitkreuz Order was obtained that Arres was taking the position, *vis-a-vis* the investors, that it was owed a large amount by them and was therefore entitled to undertake the action that it did.

[8] Arres made arrangements to have a total of four of these seven condominium units transferred to another company 1798582 Alberta Ltd. (179). This company was in turn owned by another company, 875892 Alberta Ltd. (875) which was in turn owned by Wes Serra's wife, Staci

[9] Arres attempted to justify the transfer of the four condominium units to 179 on the basis that on September 30, 2010, it had entered into an assignment of accounts receivable with 875 which was the shareholder of 179. The stated consideration for that assignment was \$97,500.

[10] At the time that Arres had applied for and obtained the Breitkreuz Order on February 3, 2014, it was no longer licensed as a mortgage broker in the Province of Alberta. Section 17 of the *Real Estate Act* provides as follows:

No person shall ... deal as a mortgage broker ... unless that person holds the appropriate authorization for that purpose issued by the council.

[11] Access Mortgage and the other investors were not advised by counsel for Arres of the Breitkreuz Order either before he applied for and obtained it nor were they advised of its existence after the fact. Rather, in some roundabout way, it came to their attention and as a result, an emergency application was made before Mr. Justice Hillier on February 14, 2014, which resulted in the Hillier Order.

[12] Paragraph 3 of the Hillier Order provided:

The February 3, 2004 Order of the Learned Master W. Breitkreuz [the Breitkreuz Order], as amended by the February 7, 2014 Order of the Learned Master L. A. Smart, is stayed pending further Order of this Honourable Court or the consent of the parties hereto.

[13] Paragraph 7 of the Hillier Order went on to provide:

The Applicants' Application is returnable on March 14, 2014, or such later date as is agreed between the parties hereto, or directed by this Honourable Court, in Justice Chambers at the Court Centre in Calgary at which time this Order shall expire and be of no further force or effect unless extended by the court.

Page: 3

[14] At the time of the Hillier Order, title to the seven condominium units had not yet been transferred from Graybriar. Notwithstanding that however, 179 had made arrangements with Terrapin Mortgage Investment Corp. (Terrapin) to mortgage the four condominium units that it was to receive from Arres. Notwithstanding that 179 did not have registered title to the four condominium units in question, it obtained mortgage proceeds in the amount of \$425,000 from Terrapin before the Hillier Order had been granted.

[15] From the amount of \$425,000, the sum of \$138,000 was received by 179 with the balance of monies paid into court to the credit of an action that had been commenced against Arres by Kenzie Financial Investments Ltd.

[16] On February 28, 2014 Arres applied for and obtained, with the consent of counsel for the applicants, an order accepting an offer to purchase condominium unit number 55 from two bona fide third party purchasers. The purchase price was \$269,900 and title to the condominium unit was subsequently transferred into the names of the purchasers.

[17] This matter then proceeded in fits and starts and was argued before Justice Strekaf on September 15, 2014. At that time, Justice Strekaf in effect continued for a time the stay granted by the Hillier Order and directed that the matter return to the commercial list on October 7, 2014. She directed that several steps be taken by the applicants (including Access Mortgage) prior to the return date.

[18] The most significant of those steps was the filing and serving of an Undertaking as to Damages in a form satisfactory to the court. On September 30, 2014 a written Undertaking as to Damages was filed in the court of Queen's Bench on behalf of the various investors represented by Access Mortgage.

[19] When the parties reattended before Justice Strekaf on October 7, 2014 she held that the Undertaking that had been given was not acceptable. She then extended the terms of the Hillier Order but indicated that a proper Undertaking as to Damages had to be given. As a result of that direction, a subsequent Undertaking as to Damages was given.

[20] Eventually on December 17, 2014 the parties again reattended before Justice Strekaf who held that the second Undertaking as to Damages proffered by the applicant Access Mortgage was not an Undertaking satisfactory to the court and as a result she directed that the Hillier Order "shall be vacated and [be] of no force or effect as of January 15, 2015". By agreement between the parties, the Hillier Order was extended to January 20, 2014 and by my direction on January 20, 2015 was extended again to January 23, 2015.

Analysis and Decision

[21] The issue on this appeal is a narrow one, namely whether either Undertaking as to Damages given on behalf of the investors in question (including Access Mortgage), is sufficient as a matter of law, given the factual matrix of this case?

[22] The position of the applicant/appellant is that the Undertaking is, as a matter of law, proper given the factual matrix of this case and in particular the fact that the investors in this case represent approximately 61 percent by value of the amount loaned and are accordingly owed approximately 61 percent of the amount paid and to be paid under the Graybriar mortgage. In effect therefore they have a claim upon approximately 61 percent of the net sale proceeds of the six remaining condominium units and the purchase price that was paid into court with respect to the sale of the seventh.

[23] Counsel for Arres, as well as counsel for 179 and counsel for Terrapin argue against the application for the stay.

[24] As indicated at the outset, this application is brought pursuant to rule 14.48 of the current Rules of Court which is the successor to rule 508 under the previous Rules. A stay of a proceedings pending appeal may only be granted if the applicant (which in this case is Access Mortgage on behalf of itself and the other investors it represents) satisfies me as a judge of this court that :

- there is an arguable issue to be determined on appeal;
- that the applicant will suffer irreparable harm if the stay is not granted; and
- that the balance of convenience favours the granting of the stay.

[25] Although counsel for Arres argued that the appeal is devoid of merit, counsel for 179 more realistically and reasonably conceded that this application does meet the rather modest requirements of the first step of the tripartite test.

[26] Certainly I am satisfied that there is an arguable issue on this appeal given its factual matrix. However I decline to delve any further into the merits since the merits must be decided by a panel of this court.

[27] In the submissions of counsel for 179, and of course in the submission of both counsel for Arres and counsel for Terrapin, this application fails on the on the second part of the tripartite test namely that the applicant has not established that irreparable harm will be suffered by it and the other investors it represents should the stay not be granted. The effect of a stay of the Strekaf Order would be to continue the provisions of the Hillier Order which has operated as a stay of the Breitkreuz Order since February 14, 2014.

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[28] Counsel for the applicant argued that irreparable harm will be suffered by his client because Arres is hopelessly insolvent and therefore would be unable to respond to any monetary judgement rendered against it.

[29] It should also be pointed out that there have been two significant summary judgments obtained against Arres. The first was for an amount in excess of \$1 million and this was obtained by Access Mortgage. This summary judgment was subsequently upheld on appeal by this court. During oral submissions before me, I was informed that a total of \$50,000 has in some fashion or another been paid towards this judgment.

[30] The second summary judgment is for approximately \$245,000 rendered in favour of Kenzie Investments and that a portion of the proceeds from the mortgage provided by Terrapin has been paid into court to the credit of that judgment.

[31] Furthermore, as indicated previously, Arres had long ago assigned all of its accounts receivable on the Graybriar project to 875 by virtue of the written assignment agreement dated September 30, 2010.

[32] The effect of the Hillier Order has been that title to the six remaining condominium units remains in the name of the mortgagor, Graybriar. Counsel for the applicant points out that under the terms of the Breitzkreuz Order, title to all seven condominium units was to have been transferred to Arres or to such other transferees as directed by counsel for Arres. Arres had directed that title to four of the condominium units was to be registered in the name of 179, the company beneficially owned by Wes Serra's wife.

[33] It should be borne in mind that the Strekaf Order vacated the earlier Hillier Order which was the only legal impediment to the hopelessly insolvent Arres Capital from obtaining title to the seven remaining condominium units and then transferring four of those condominium units for no cash whatsoever to 179. What would have been the fate of the three remaining condominium units were it not for the Hillier Order must remain a matter of conjecture to say the least.

[34] It is clear to me that any monetary judgement obtained against Arres will go unsatisfied and this therefore constitutes irreparable harm: *Laube v Juchli*, (1997) 209 AR 67 (CA) at paras 3 - 5. As a result, I am satisfied that the applicant has established that it and the other investors it represents will suffer irreparable harm in the event that the Strekaf Order is not stayed pending the hearing of this appeal.

[35] With respect to the third element of the tripartite test, namely the balance of convenience, it must be reiterated that subsequent to the Hillier Order, the parties did consent to the sale of one of the seven condominium units to bona fide purchasers. Curiously, that condominium unit was one of the units that was to have been transferred to 179.

Page: 6

[36] Counsel for the applicant in submissions before this court made it abundantly clear that his client desires to have the remaining six condominium units sold as soon as reasonably possible and in a commercially prudent fashion, with the proceeds being held in court pending further court order or agreement of the parties. This makes obvious good sense to me and quite frankly I am surprised that the parties have not been able to reach accord on this point long before now.

[37] In any event, I find that the balance of convenience under these circumstances favours the granting of the application for a stay of the Strekaf Order.

Conclusion

[38] In the result, I hold that the applicant has satisfied the three requirements of the tripartite test and accordingly I grant an order to stay the Strekaf Order pending the determination of the within appeal by this court or further court order. As an ancillary matter, I do also order that paragraphs one through six of the Hillier Order are to remain in full force and effect until vacated or varied by an order of this court.

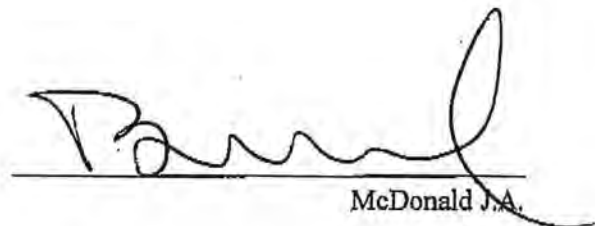
Costs

[39] After hearing submissions from the parties regarding costs, I do hereby award costs in the amount of \$2,500 to the applicant, said costs to be paid jointly and severally by Arres, Terrapin and 179. These costs are awarded in any event of the appeal but payable only at the conclusion of the appeal.

Application heard on January 20, 2015

Reasons filed at Calgary, Alberta
this 29th day of January, 2015




McDonald J.A.

Page: 7

Appearances:

L.V. Halyn and T. Akbar
for the Applicant

R.P. Pelletier
for the Respondent Arres Capital Inc.

K. L. Okita
for the Respondent Terrapin Mortgage Investment Corporation.

J.D. Burke
for the Respondent 1798583 Alberta Ltd.

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fax1

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09:24:51 a.m. 12-16-2015

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Registrar's Office
TransCanada Pipelines Tower
2600, 450 - 1st ST SW
Calgary AB T2P 5H1

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COURT OF APPEAL OF ALBERTA

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Edmonton AB T5J 0R2

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Deputy Registrar: I. Moore

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Deputy Registrar: D.L. Umrysh

<https://albertacourts.ca>

December 15, 2015

L.V. Halyn
Sugimoto & Company
Fax No. 403-291-4099

J.D. Burke
DLBH Law
Fax No. 403-263-8529

R.P. Pelletier
Pelletier Law
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K.L. Okita
Bishop & McKenzie LLP
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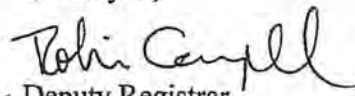
Re: *Richcrooks Enterprises (2000) Ltd. and others v. Arres Capital Inc.*
Appeal No. 1501-0006AC

This will confirm that the reserved judgment in the above named case will be released the morning of **Wednesday, December 16, 2015**. On that day, **between 9:30 a.m. and 10:00 a.m.**, a copy of the judgment will be faxed to you at the fax number listed above.

That same day, the judgment will also be sent to the Canadian Legal Information Institute (CanLII) at 10:00 a.m. for publishing to its website, which may occur that same day. Any concerns with on-line judgments should be raised directly with CanLII.

If you have any concerns about the judgment being faxed to you as set out above, please contact our office as soon as possible to make alternate delivery arrangements.

Thank you,


for Deputy Registrar
Court of Appeal – Calgary
/rc

☐ Date: December 16, 2015

As indicated above, attached is the judgment which was released today.

Thank you.

In the Court of Appeal of Alberta

Citation: Arres Capital Inc v Richcrooks Enterprises (2000) Ltd, 2015 ABCA 392

Date: 20151216
Docket: 1501-0006-AC
Registry: Calgary

Between:

Arres Capital Inc.

Respondent
(Plaintiff)

- and -

Richcrooks Enterprises (2000) Ltd. and Richcrooks Holdings Ltd., 515476 Alberta Ltd., Demel Financial Corp., Greenmar Holdings Inc., Access Mortgage Investment Corporation (2004) Limited, 4-A Professional Services Ltd., Tempest Management Inc., Hudson Principle Investments Ltd., Swartz Bros. Limited, Christopher Schultz Consulting Inc., Curlew Finance, Paul Kornlyo, Max Feldman, Sonya Smith, Norman Martin, Bernice Martin, R. Bruce Carson, Delores Carson, Leela Krishnomourthy, Marguerite McRitchie, Priti Gaur, Madhu Gaur, Wendy McKenna, Janet Lorraine Watson, Jim Watt, Gaston Rajakaruna, Shirley Rajakaruna, Gary Drefs, Robert Armstrong, Michael Kurtz, Marlene Kurtz, Kevin R. Pedersen, Susan Fine, Carol Kimiyo Sekiya, Holly Sekiya and Steven Ogg

Appellants
(Plaintiffs/Applicants)

- and -

Graybriar Land Company Ltd. and Graybriar Greens Inc.

Not a Party to the Application
(Defendants)

- and -

Terrapin Mortgage Investment Corp. and 1798583 Alberta Ltd.

Respondents
(Respondents)

The Court:

**The Honourable Chief Justice Catherine Fraser
The Honourable Mr. Justice Jack Watson
The Honourable Madam Justice Patricia Rowbotham**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Order by
The Honourable Madam Justice J. Strekaf
Dated the 17th day of December, 2014
Filed on the 5th day of January, 2015
(Dockets: 0901-02753; 0901-03332)

**Memorandum of Judgment
Delivered from the Bench**

Fraser C.J.A. (for the Court):

[1] This appeal concerns the decision of the chambers judge to require an undertaking from the appellants in support of orders which affected earlier orders for foreclosure of seven condominium units and her refusal to accept the undertaking offered. It also concerns the ability of the chambers judge and the Queen's Bench to act to prevent the respondent trustee, Arres Capital Inc, from proceeding to take into hand the proceeds of judicial sales of four of those units and to influence the proceeds of sale of the others. The appellants say that allowing Arres to do so would continue misappropriation, conversion, breach of fiduciary duty, and breach of trust agreements by Arres.

[2] In the order under appeal, the chambers judge sought to back up her earlier direction that the appellants give an undertaking that is "meaningful" in order to justify the limitations on the earlier orders for foreclosure. We have concluded that the chambers judge erred in rejecting the undertaking offered by Access Mortgage Investment Corporation (2004) Limited.

[3] We are persuaded that the chambers judge's original assessment of the character of the events before her was flawed. The material before her gave rise to a serious basis to question Arres's entitlement to maintain control of the foreclosure process and to receive, in priority to the appellants, any of the proceeds of judicial sales under the foreclosure orders. The chambers judge proceeded on the assumption that the appellants had no interest in the condominium units. But this is not so. The appellants are the beneficial owners of the units, at least to the extent of representing 61% of the value of those units. In addition, the claims of Arres were disputed and facially disputable. Further, the appellants were prepared to have all the proceeds of sale of the units kept in trust pending resolution of the outstanding litigation. Seen in that light, we are satisfied that in the unique circumstances of this case, the undertaking offered was sufficient.

[4] Without commenting on the merits, we conclude that it would be contrary to the interests of justice to allow the foreclosures to proceed unrestricted and for the proceeds of judicial sales of the units to be distributed without control of the Court. The most appropriate course for all concerned, including the creditor Terrapin Mortgage Investment Corp. who advanced money on the strength of the foreclosure order, is to require that the proceeds of judicial sales of the seven units be paid into Court and then have the Court determine who has the rights to such proceeds and whose rights have priority.

[5] Accordingly, we allow the appeal. We order that the units be sold under judicial approval in the manner agreed to by a consent order made in October, 2015 which this Court has examined. However, we order that the proceeds of such judicially approved sales be paid into Court and disbursed only in accordance with further Court order.

Page: 2

[6] We encourage the parties to proceed to resolve their outstanding litigation with dispatch. To this end, we encourage the appointment of a case manager over all disputes as well as exploration of the possibility of judicial dispute resolution.

Appeal heard on December 9, 2015

Memorandum filed at Calgary, Alberta
this 16th day of December, 2015



Fraser C.J.A.

Page: 3

Appearances:

R. P. Pelletier

for the Respondent Arres Capital Inc.

T. Akbar and L. V. Halyn

for the Appellants Richcrooks Enterprises and others

J. D. Burke

for the Respondent 1798583 Alberta Ltd.

K. L. Okita

for the Respondent Terrapin Mortgage Investment Corp.

COURT FILE NUMBER 0903 17685

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ARRES CAPITAL INC.

DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and
GRAYBRIAR GREENS INC.

DOCUMENT **ORDER – SALE TO PLAINTIFF**

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DUNCAN CRAIG LLP
Lawyers Mediators
2800 Scotia Place
10060 Jasper Avenue
Edmonton, Alberta T5J 3V9

Lawyer: DOUGLAS P. GAHN, QC
Telephone: (780) 441-4304
Fax: (780) 969-6370
Email: dpgahn@dclp.com
File Number: 20-166013

DATE ON WHICH ORDER WAS PRONOUNCED: February 3, 2014

LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON, ALBERTA

NAME OF MASTER WHO MADE THIS ORDER: W. Breitkreuz

UPON THE APPLICATION of the Plaintiff; AND UPON the Court determining that it is not necessary to attempt a public sale of the secured property; AND UPON HEARING Counsel for the Plaintiff; AND UPON

WB ✓ X no one appearing for the Defendants

 hearing from the Defendants

 hearing from Counsel for the Defendants

IT IS HEREBY ORDERED AND DECLARED THAT:

1. In this Order the secured property is the following:

CONDOMINIUM PLAN 0827766
UNIT 48
AND 83 UNDIVIDED ONE TEN THOUSANDTH
SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
UNIT 55
AND 83 UNDIVIDED ONE TEN THOUSANDTH
SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
 UNIT 63
 AND 83 UNDIVIDED ONE TEN THOUSANDTH
 SHARES IN THE COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
 UNIT 65
 AND 83 UNDIVIDED ONE TEN THOUSANDTH
 SHARES IN THE COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
 UNIT 67
 AND 83 UNDIVIDED ONE TEN THOUSANDTH
 SHARES IN THE COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
 UNIT 68
 AND 83 UNDIVIDED ONE TEN THOUSANDTH
 SHARES IN THE COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766
 UNIT 69
 AND 83 UNDIVIDED ONE TEN THOUSANDTH
 SHARES IN THE COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

2. The mortgage described in the Statement of Claim is a valid and enforceable mortgage over the secured property.
3. The Plaintiff's offer to purchase the secured property as follows:
 - a) Unit 48 for \$250,000.00,
 - b) Unit 55 for \$275,000.00;
 - c) Unit 63 for \$266,000.00;
 - d) Unit 65 for \$270,000.00;
 - e) Unit 67 for \$270,000.00;
 - f) Unit 68 for \$270,000.00; and
 - g) Unit 69 for \$265,000.00

be and is hereby approved and accepted.

4. The Plaintiff is not required to pay the purchase price into Court but may set off the purchase price against the amount outstanding under the mortgage.
5. The Registrar of Land Titles shall cancel the existing Certificate of Title to the secured property and issue a new Certificate of Title in the name of Arres Capital Inc., 204, 1324 - 11 Ave SW, Calgary, Alberta, T3C 0M6 the Plaintiff (or such other transferee as

directed by the Plaintiff's Counsel in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear from the Plaintiff's Mortgage Number «Reg_Number» and all subsequent encumbrances but subject to:

- a) n/a.
- 6. If the secured property is or becomes vacant then the Plaintiff is entitled to immediate possession. If the secured property is not vacant then the Defendants, any tenants, and any other occupants, shall deliver up to the Plaintiff vacant possession of the secured property thirty (30) days after service of this Order upon them. Service of this Order may be made on the occupants by posting same to the main entrance door to the secured property. A Civil Enforcement Agency has authority thirty (30) days after service of this Order has been effected, to evict any occupant of the secured property.
- 7. The requirement for service of documents prior to entry of this Order, set out in Rule 9.35(1)(a), is hereby waived.
- 8. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.
- 9. With respect to the annexed Statement of Secured Indebtedness:
 - a) where nothing is claimed with respect to a listed category, the word "nil" shall be inserted opposite, and
 - b) where amounts are claimed for any of items 4 through 12, documents substantiating such claims shall be provided in Affidavit form to the assessment officer for review prior to the entry of this Order.



MASTER IN CHAMBERS

COURT FILE NUMBER 0903-17685 and 0903-17684

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS ARRES CAPITAL INC.

DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

DOCUMENT ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta T1Y 5Z6
Taimur (Ty) Akbar
Phone: (403) 219-4211; Fax: (403) 291-4099
File: 15146

CLERK'S STAMP

I hereby certify this to be a
true copy of the original.
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 14, 2014

NAME OF JUSTICE WHO MADE THIS ORDER: S. D. Hillier

LOCATION WHERE THIS ORDER WAS MADE: EDMONTON

UPON hearing from Counsel for Arres Capital Inc. in the within Actions as well as in Action No. 1301-10892 ; AND UPON hearing from Counsel for the Applicants, being the Plaintiffs in Action No. 1301-10892 (the "Applicants" and the "Related Action"); AND UPON being advised that the within Defendants are not a party to this Application or this Order;

IT IS HEREBY ORDERED THAT:

1. The time for service of materials for the hearing of the Application for this Order is abridged.
2. The land relevant to this Order is as follows:

CONDOMINIUM PLAN 0827766

UNIT 48

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 55

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 63

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 65

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 67

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 68

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 69

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

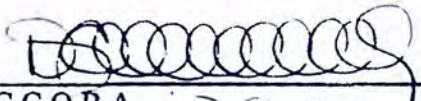
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively the "Land")

3. The February 3, 2014 Order of the Learned Master W. Breitkreuz (the "Foreclosure Order"), as amended by the February 7, 2014 Order of the Learned Master L.A. Smart,

is stayed pending further Order of this Honourable Court or the consent of the parties hereto.

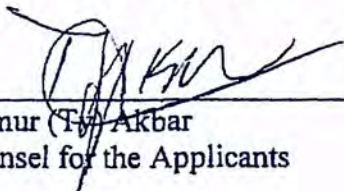
4. This Order shall be registered by the Land Titles Office in respect of the Land forthwith and in priority to the above noted Foreclosure Order, notwithstanding the Land Titles registration process.
5. The Applicants are granted leave to register their interest in the Land by way of a Caveat registered on title to that Land in accordance with and subject to the relevant provisions of the *Land Titles Act*.
6. The Registrar of Land Titles shall comply with this Order notwithstanding Section 191(1) of the *Land Titles Act*.
7. The Applicants' Application is returnable on March 10, 2014, or such later date as is agreed between the parties hereto or directed by this Honourable Court, in Justice Chambers at the Court Centre in Calgary at which time this Order shall expire and be of no further force or effect unless extended by the Court.
8. Costs of this Order shall be spoken to by the parties to this Order and set down by this Honourable Court at a later date.
9. This Order may be approved in counterpart and by facsimile or electronic mail.


 J.C.C.Q.B.A. D. Shelley
 for Hillier J

APPROVED AS TO FORM AND CONTENT:


Sugimoto & Company

Per:


 Taimur (T) Akbar
 Counsel for the Applicants

Pelletier Law

Per:


 Ryan P. Pelletier
 Counsel for Arres Capital Inc. in the
 Related Action

COURT FILE NUMBER 1401 - 12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LIMITED

DEFENDANT ARRES CAPITAL INC.

DOCUMENT **FIRST REPORT OF THE RECEIVER**

October 11, 2017

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

ALVAREZ & MARSAL CANADA INC.
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, Alberta T2P 3H7
Attention: Orest Konowalchuk/Tim Reid
Telephone: (403) 538-4736 / (403) 538-4756
Email: okonowalchuk@alvarezandmarsal.com
treid@alvarezandmarsal.com

COUNSEL

MCCARTHY TETRAULT LLP
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Calgary, Alberta T2P 4K9
Attention: Sean F. Collins/Walker W. MacLeod/Amelia Tritter
Phone: (403) 260-3531 / 3710 / 3613
Fax: (403) 260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca /
atritter@mccarthy.ca

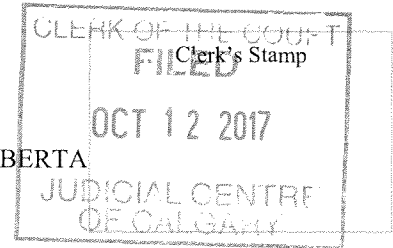


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APPENDIX E	Arres Communication
APPENDIX F	Statutory Declaration
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APPENDIX H	The Rise Assignments
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APPENDIX J	Memorandum on Exigible Property
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INTRODUCTION

1. On July 26, 2017, the Court of Queen's Bench of Alberta (the "**Court**") entered an Order (the "**Receivership Order**") whereby Alvarez & Marsal Canada Inc. ("**A&M**") was appointed receiver (the "**Receiver**") of Arres Capital Inc. ("Arres", the "**Company**" or the "**Debtor**") pursuant to Part 9 of *Civil Enforcement Act* ("**CEA**"), R.S.A. 2000, c. C-15. The effective date of the Receivership Order (date of pronouncement) was February 13, 2015 (the "**Receivership Proceedings**").
2. Pursuant to paragraph 2 of the Receivership Order, the Receiver is appointed, without security, of all the Company's current and future Exigible Property, as defined in the Receivership Order, wherever situated, including all proceeds thereof. For purposes of the Receivership Order, "Debtor's Property" shall mean all of the property of the Company, of every nature or kind whatsoever, including without limitation, real property and personal property, interests in mortgages, debt instruments, security agreements, negotiable instruments, accounts receivable, and cash, whether held legally by or beneficially for the Company and whether or not such property has been assigned or purposed to have been assigned by the Company property of the Company to any third party since May 1, 2009.
3. Subject to the Receiver's determinations in paragraph 4 of this Order (as discussed in greater detail in this report), the Company shall have sole authority to operate and conduct its business including the administration of trust agreements and mortgage administration agreements that may currently be in force and to prosecute actions as a plaintiff or defend actions brought against the Company. In the event of a disagreement as to whether or not a trust agreement or mortgage administration agreement may currently be in force, the Receiver shall be at liberty to apply to the Court for advice and directions.
4. Pursuant to paragraph 3 of the Receivership Order, "Exigible Property" shall mean any of the Company's Property that the Receiver has determined is not

exempt from writ proceedings or distress proceedings (collectively, the **“Property”**).

5. The Receiver, with the assistance of its counsel, has now determined that for purposes of the Receivership Order, all of Arres Property is considered “Exigible Property” and as such, the Receivership Proceedings are an “all asset” receivership. This determination of the Receiver is supported by the Applicants (Access Mortgage Capital (2004) Inc. (**“Access”**)), but is not supported by Arres.
6. On July 26, 2017, the Court also granted an Order (the **“Bankruptcy Order”**) to adjudge Arres into Bankruptcy and A&M was appointed as trustee (the **“Trustee”**) of the estate of the Arres, without security. On August 4, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed. Accordingly the Bankruptcy Order is stayed and A&M is taking no steps in the bankruptcy. A copy of the Bankruptcy Order and Civil Notice of Appeal is attached as Appendix A to this Report.
7. The purpose of this first report of the Receiver (the **“First Report”** or **“this Report”**) is to provide this Honourable Court with information in respect of the following:
 - a) a brief overview and update of Arres since July 26, 2017;
 - b) the activities, generally, of the Receiver since July 26, 2017;
 - c) the cash flow for the period from July 26, 2017 to October 6, 2017 (the **“Reporting Period”**) and forecast fees and costs of the Receiver;
 - d) the Receiver’s determination of Exigible Property;
 - e) the Receiver’s request for advice and direction from this Honourable Court with respect to amending the current Receivership Order to the Alberta Model Order based on its determination of Exigible Property;

- f) the Receiver's recommendations with respect amending to amending the current Receivership Order to the Alberta Model Order; and
 - g) the Receiver's next steps.
8. Capitalized words or terms not defined or ascribed a meaning in the First Report are as defined or ascribed a meaning in the Receivership Order.
 9. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

10. In preparing this First Report, the Receiver has relied primarily upon the representations of Arres' management, stakeholders involved in various Arres' projects, as well as certain financial information contained in Arres' books and records. The Receiver has not performed an audit, review or other verification of such information.

BACKGROUND

11. Arres is a corporation registered to carry on business in the Province of Alberta and is owned 100% by Mr. Wesley Serra. Arres is also registered to carry on business in the Province of British Columbia and operates under the name Western Arres Capital Inc. (collectively referred to as "Arres"). Western Arres Capital Inc. is an assumed name of Arres Capital Inc. for the purposes of section 26 of the Business Corporations Act (British Columbia) and is not a separate legal entity.
12. Arres is a full service mortgage brokerage firm specializing in unconventional financing solutions, which would include but not limited to all types of residential and commercial, first and second mortgages, builders mortgages, debt consolidations and interim financing. As part of its business, Arres arranges mortgage loans with borrowers, raises the mortgage funds through a group of private investors and then administers the mortgages (trustee) on behalf of the investors.

13. **Arres acts as a trustee** and is a registered mortgage broker for certain projects in British Columbia and also has interests in various other projects in Alberta, but is currently not registered as a mortgage broker in Alberta.
14. Further background to Arres and its operations is contained in the materials filed in support of and relating to the Receivership Order. These documents and other relevant information has been posted by the Receiver on its website at: www.alvarezandmarsal.com/arrescapital (the “**Receiver’s Website**”).

OVERVIEW OF ARRES

Location

15. Arres’ head office is located in Alberta at 126 Spring Valley Way S.W., Calgary, Alberta at the personal residence of Mr. Wes Serra. The Receiver met with Mr. Serra and gained access to Arres’ head office on August 1, 2017. Mr. Serra and his associate assisted the Receiver in identifying and securing all of the books and records of the Company from August 1 to 4, 2017. The Receiver was unable to gain access to Arres’ office on July 26, 2017, as Mr. Serra was not available to allow the Receiver access to his personal residence until this point due to personal family matters.

Books and Records

16. The physical files collected by the Receiver from Arres were stored in various banker boxes and filing cabinets located in Mr. Serra’s garage (personal residence) and were in no particular filing order. The files that were collected mainly included various trust agreements, loan administrative agreements, banking records and limited financial statements and other information.
17. The electronic files of Arres were stored on one computer hard drive, which was a “shared” hard drive that contained certain personal information of Mr. Serra and books and records of his other companies. The Receiver engaged the services of an accredited IT forensic specialist to obtain a forensic and/or logical image of all

the electronically stored information from the computer hard drive and Mr. Serra's smart phone. In addition, the Receiver obtained a working copy of the Company's electronic data that related solely to Arres, which included a copy of the Company's accounting information.

18. It was agreed with the Company and its counsel that the Receiver's IT specialist contractor would be allowed to download all of the information from the Arres hard drive and smart phone, but access to this information could only be retrieved once a protocol was established between the parties on how and what type of information can be extracted (i.e. only Arres relate information could be extracted). The Receiver anticipates establishing such a protocol with Company's counsel in the coming weeks.

Projects

19. The Receiver understands that there are several "projects" where Arres raised mortgage funds for borrowers from a group of investors and then (in certain cases) administered these mortgages (as a trustee) on behalf of the various investors over the years.
20. The following is a list of projects that Mr. Serra believes Arres still has an interest in. In particular, Mr. Serra believes he is still owed monies with respect to outstanding brokerage fees, renewal fees, interests and other costs, in Arres' capacity as the administrator of these loans and/or trustee:
 - a) Graybriar Greens Inc. ("Graybriar")
 - b) Jervis Inlet Resort ("Jervis")
 - c) Coppertree Meadows - Millet ("CT Millet")
 - d) Copper Oaks – Millet ("CO Millet")
 - e) Copperhorn Chateau ("Chateau")

- f) Copperhorn Chalets Koeller-Holms (“**Koeller**”)
- g) Timber Creek Mobile Home (“**Timber Creek**”)
- h) **Chestermere - Dockman & Associate (“Dockman”)**
- i) Strathmore (“**Strathmore**”); and
- j) Okanagan Hills Corporation Ltd. (the “**Rise**”)

(collectively referred to as the “**Projects**”)

21. **The Receiver understands that the majority of these Projects have either been sold and/or Arres is no longer the trustee or broker on these projects, with the exception of a few of the Projects.**
22. The Receiver is currently reviewing in greater detail Arres’ interest in the Projects. **Based on the Receiver’s preliminary review, and for the reasons further explained below, the Receiver believes that any interest Arres has with respect to the Projects is considered Exigible Property for purposes of the Receivership Order.**

Purported Project Receivables

23. Since the date of the Receivership, the Receiver has met with Mr. Serra and his associate on several occasions and enquired about the operations of the Company to obtain an understanding of the relationship between Arres, the Projects and the investors involved on these Projects. Arres provided the Receiver with multiple files and documents to review, which included several, Microsoft excel files that identified and calculated what Mr. Serra believes is owing to Arres with respect to various brokerage fees, interest and costs from the above-mentioned Projects (the **“Purported Project Receivables”**).
24. The total outstanding obligations Mr. Serra believes is owing to Arres with respect to the **Purported Project Receivables total approximately \$21.2 million.**

As discussed further below, the Receiver has not been able trace the Purported Project Receivables to the Company's accounting records and/or to any of physical back-up (invoices), other than certain of the trust agreements that outline specific fees, costs and interest % rates Arres may be permitted to charge investors. The various fees, interest and costs calculated on the excel files with respect to the Purported Project Receivables dates back largely to July 2008 and is calculated to May 2017.

25. The Receiver provided a copy of the various excel files that calculate the Purported Project Receivables to Access for their comment. Access and certain of its investors advise that they strongly disagree as to the accuracy of Mr. Serra's position that the Purported Project Receivables are valid and collectible. Access and various other investors advised the Receiver that they were never provided invoices, accounting information, etc. from Arres to substantiate these claims that are alleged to have occurred several years ago. Access is currently an investor on various projects Arres (among other independent investors) has or had an interest in and/or when Arres was the trustee and/or loan administrator on certain of the Projects. The Purported Project Receivables are amounts Mr. Serra is claiming to be owed by its investors on the various Projects, which include Access as an investor.
26. The Receiver continues to review the Purported Project Receivables identified on the excel files provided by Mr. Arres to determine their validity and collectability. In particular, the Receiver is attempting to locate physical documents (i.e. invoices, etc.) that should have been sent to its investors to substantiate the receivables outstanding, but has not been able to locate these documents to date. The Receiver cautions that it currently has no authority to recover on these assets because it does not have the power under the Receivership Order, to initiate, prosecute or defend proceedings involving the Company or to enforce any rights (by way of example, security or set-off rights) that the Company may have in respect of such assets.

Accounting Records

27. As discussed above, the Receiver continues to review the accounting records of Arres. Based on the Receiver's preliminary review, the books and records are incomplete and are not up to date.
28. The last set of financial statements prepared by Arres, which the Receiver has in its possession, was for year-ending July 31, 2013. A copy of these financial statements is attached as Appendix B to this Report.
29. The Receiver further reviewed the electronic accounting records of Arres and based on its preliminary review of these records, the last accounting entries recorded by Arres in the accounting system were on July 31, 2014. The Receiver was able to generate Arres' balance sheet as at July 31, 2014 from its electronic accounting records and this statement is attached as Appendix C to this Report. The Receiver is not confident that the financial figures identified in the July 31, 2014 balance are accurate and complete. Notwithstanding, the following are highlights of Arres' internal July 31, 2014 balance sheet:
 - a) Assets: no cash, no Purported Project Receivables or other accounts receivables, approximately \$13,300 net book value in fixed assets (computers); and a large significant "due from" Arres Holdings (a related company owned by Mr. Serra) of approximately \$337,000; and
 - b) Liabilities: approximately \$309,000 and \$99,400 "due to" Arres Holdings Inc. and Arres Management Inc. (related entities), respectively, and certain miscellaneous liabilities totaling approximately \$14,000.
30. Based on July 31, 2014 balance sheet, it would appear that the Purported Project Receivables, which includes certain assigned account receivables as discussed below, is not recorded in the Company's accounting records. In addition, the outstanding obligation (judgement creditor) of Access for approximately \$1

million (as discussed below) is also not recorded in the Company's books and records.

31. The Receiver will continue its review the accounting records of Arres to determine the validity and collectability of the Purported Project Receivables and/or any other receivables or assets of Arres.

Access Judgement and Assignments

Overview

32. Access obtained summary judgment order against the Debtor on May 24, 2013, in the amount of approximately \$1.028 million, less any amounts that had been paid by the Debtor to the Plaintiff. The Debtor's appeal of the summary judgement order was dismissed on September 29, 2014. A copy of the summary judgement order, appeal of the summary judgement order and the memorandum of judgement issued by the Court of Appeal of Alberta are attached as Appendix D to this Report.
33. On November 8, 2013, the Receiver understands that Arres prepared written communication to Access and/or its investors advising that the Company did not have enough equity to satisfy the "summary judgement" of ~\$1 million and that based on historical information, the Company does not anticipate having cash flow that will satisfy the judgement after operating costs. A copy of the Arres communication is attached as Appendix E to this Report.
34. On October 20, 2014, Mr. Serra (a representative of the Debtor) reported on a statutory declaration, pursuant to section 35.10 of the CEA, indicating that Arres has a significant asset of outstanding accounts receivables owed to the Company of approximately \$9.7 million from the various Projects. A copy of the statutory declaration is attached at Appendix F to this Report. The Receiver understands that there is currently a dispute between the Plaintiff and the Debtor relating to the \$9.7 million in accounts receivables. In particular, the \$9.7 million listed on the statutory declaration form was purportedly assigned either to Mr. Serra's spouse,

a corporation controlled by Mr. Serra's spouse or a third party, as discussed further below. The dates of these "assignments" were made in the period March 2010 to July 2012, which was prior to the statutory declaration being made by Mr. Serra (the "**Assigned AR**"). The statutory declaration makes no mention that these receivables were assigned to a third party and therefore are not assets of the estate. The Receiver is advised by Mr. Serra that the Assigned AR forms part of the Purported Project Receivables.

Assignments

35. As discussed above, the Receiver is in possession of various assignments made by Arres to his wife and/or a company owned and controlled by her (875892 Alberta Ltd.) and another party since March 2010 to July 2012 with respect to the various project receivables, which largely relate to the Purported Project Receivables and Assigned AR (the "**Assignments**"). A copy of the Assignments are attached as Appendix G to this Report. Based on the Receiver's initial review of the attached Assignments, any or all monies that are owed on certain project receivables were assigned to Ms. Serra, 875892 Alberta Ltd. and/or another third party. The Assignments would suggest that the total payment and/or consideration given by Ms. Serra or her Company totalled approximately \$776,000, but the Receiver has not been able to confirm if payment was actually received by Arres.
36. Pursuant to paragraph 4 of the Receivership Order, the Receiver is to inquire and determine the extent to which any property owned by Arres or in which property that Arres as an interest in has been assigned to any third party and the validity and priority of these Assignments.
37. The Receiver requested Mr. Serra and his associate to assist in providing the Receiver with specific supporting information to determine whether the consideration paid regarding the Assignments (if any) was paid by Ms. Stacia Serra (who the Receiver understands is Mr. Wes Serra's spouse), 875892 Alberta Ltd. or the other third party for these Assignments. The Receiver was advised by of Mr. Serra that Ms. Serra and/or her 875892 Alberta Ltd. provided significant

funding and/or advances of cash to Arres over the years for its operations and the Assignments were appropriate for the consideration received by these parties. The Receiver has not yet been provided with this information or documentation from Mr. Serra showing that these advances were made to determine the validity and total quantum of these considerations made by Mr. Serra's wife, her company or the third party. Further, the Receiver has not yet been able to identify independently by reviewing the books and records of the Company if these advances/payments were made by Ms. Serra, 875892 Alberta Ltd. or the third party. The Receiver will continue to review the books and records in this regard and as required pursuant to paragraph 4 of the Receivership Order. If the Assignments are valid and enforceable and proper consideration is due to Arres, pursuant to the Assignments the estate will be entitled to collect any amounts that remain due to Arres from the Assignments. Alternatively, if it is determined that the Assignments are not valid and enforceable and/or proper consideration was not paid to Arres in respect of the Assignments, the estate will be entitled to collect the Purported Project Receivables (which includes the Assigned AR) or advance a claim relating to the improper assignment of the Purported Project Receivables (and Assigned AR) through the Assignments. The Receiver again cautions that, in either scenario it may be necessary to initiate legal proceedings or compromise claims to secure recovery and the Receiver does not presently have any authority under the Receivership Order to pursue recovery (should it determine it is required for the general benefit of all stakeholders) on these assets.

38. On September 29, 2017, the Receiver was copied on communication between Mr. Serra and the Trustee on the Rise Project, further requesting clarification on purported amounts outstanding to Mr. and Ms. Serra and to also advise that an additional assignment of Arres' brokerage and other fees from Arres to both Wes Serra and Ms. Serra was executed. These assignments were made on September 27, 2017 and January 1, 2009 (the "Rise Assignments"). A copy of the Rise Assignments is attached as Appendix H to this Report. The Receiver has not reviewed the Rise Assignments in detail as to its validity and priority, but again, the Receiver cautions that it does not presently have any authority under the

Receivership Order to prevent Mr. Serra in further making assignments on behalf of Arres to himself, Ms. Serra or any other third party.

Corporate Minute Book

39. On September 20, 2017, legal counsel to Arres delivered to the Receiver the corporate minute book of Arres. The Receiver continues to review the corporate minute book and other information provided by its counsel. Upon initial review of the corporate minute book, the Company filed, among other things, a 'Resolution of the Sole Director of Arres Capital Inc.' with respect to approving the corporations' financial statements for multiple fiscal year ends, including fiscal year-end 2014 through to 2017. The fiscal year-end financial statements as at July 31, 2017 appear to have been approved by Arres Capital Inc. on September 20, 2017 (after the date the Receivership Order was granted on July 26, 2017). On September 22, 2017, the Receiver asked Mr. Serra and its counsel if they could provide a copy of the financial statement and accounting information (if it exists) relating to fiscal year ends 2014 through to 2017 to support the executed "resolutions", as discussed above. The Receiver has not yet received a response specifically on this request.
40. The Receiver understands that another set of corporate minute books is located with Arres' counsel in British Columbia. The Receiver has been in contact with Arres' counsel and is attempting to make arrangements for the delivery of these records to the Receiver. Due to the amount of information requested and required to be delivered by the Receiver, counsel to Arres indicated that although he was willing to assist the Receiver in its request, counsel to Arres would require confirmation that the Receiver would pay for the time spent by counsel in retrieving this information. The Receiver cautions that it currently does not have sufficient funds available to fulfil this request, nor does it presently have the power to borrow funds to pay such costs (and other costs) pursuant to the Receivership Order.

INITIAL ACTIVITIES OF THE RECEIVER

41. Since the July 26, 2017, the Receiver's activities have included the following, but are not limited to:

- a) attending the head office location of Arres located at Mr. Serra's personal residence and taking possession and control of the books and records, as well as obtaining a copy of all known electronic copies of accounting software and other electronic information from Arres computer hard drive;
- b) confirming all known corporate bank accounts of Arres and providing the respective bank representatives to determine if any funds were available to be forwarded to the Receiver's trust account. The Company current has two bank accounts that are both in minor overdraft positions. The accounts have been frozen for "deposit only";
- c) reviewing Arres' various trust agreements with respect to the Projects and organizing the books and records of Arres;
- d) engaging the services of an IT forensic accountant to "ghost image" Arres' computer hard drive and smart phone;
- e) attending multiple meetings with representatives of Arres, Access and other Project investors with respect to Arres' operations;
- f) attending a meeting with the board of the Rise to gain a better understanding of Arres' involvement on this project and obtain information that refutes the Purported Project Receivable with respect to the Rise;
- g) multiple calls with the borrower, Mr. Serra, Access and other investors and interested parties with respect to the Jarvis Property. The Receiver is advised that a potential offer(s) is coming on the

Jervis Property and given Arres' role as trustee on the file, the borrower is seeking advisement as to the Receiver's ability to accept an offer on the Property. Currently, the Receiver does not have the authority to sell or convey the Jervis Property or to apply for vesting orders in respect of any such transactions pursuant to the Receivership Order. Obtaining such authority to sell, convey and/or apply for a vesting order may bring significant realizations into the estate with respect to the collections of outstanding fees and costs of Arres as trustee of the Jervis Property for the general benefit of all stakeholders;

- h) entertaining multiple calls from Access, Arres and the Township of Radium Hot Springs (the "**Township**") with respect to delinquent property taxes outstanding on the Timber Creek property. The Receiver understands that the only interest Arres has in this property is for unpaid trust agreements fees and costs and if the delinquent taxes were not paid by September 25, 2017 at 10am PT, the Timber Creek property would be placed up for immediate tax sale. The delinquent tax outstanding was approximately \$3,600. The owner of the property (the borrower) is 0731543 BC Ltd., which the Receiver is advised by Mr. Serra is owned by Ms. Stacia Serra; however, the Receiver has not been able to confirm this yet in reviewing the BC corporate minute books. Mr. Wes Serra did advise that he will arrange to pay these taxes prior to the tax sale deadline; however, out of abundance of caution and to preserve the value on the Timer Creek Property, the Receiver decided to pay these delinquent taxes by close of Friday, September 22, 2017. This payment was supported by the Applicant (Access). As at October 11, 2017, the Township advised that no other payment was received for outstanding taxes, other than the payment made by the Receiver.

- i) organizing, analyzing, and evaluating the books and records as well as information pertaining to the various Arres projects;
- j) retaining and providing instructions to the Receiver's independent legal counsel, McCarthy Tetrault LLP ("**McCarthy**"), in respect of the Receivership Proceedings, generally; and
- k) attending numerous and on-going meetings and discussions with the Debtor, Access and their respective legal counsels regarding the Receivership Proceedings, generally, and discussion on the Receiver's interpretation of Exigible Property.

Employees and Consultants

42. The Receiver understands that there are no employees of Arres, but only one contractor on a part-time basis. Pursuant to the Receivership Order, Arres continues to "operate" the Company and the Receiver has not retained nor terminated any contractors of Arres at this time.

Canada Revenue Agency (Priority Claims)

43. The Receiver is advised by the Canada Revenue Agency ("**CRA**") that Arres has a GST account but does not have any GST remittances outstanding. In addition, the Receiver confirmed that there is no payroll account opened with CRA and the last filed corporate tax return filed is year-ending July 31, 2015. The Receiver is currently in possession and will be reviewing a copy of this tax return and certain prior year tax returns for the inclusion of any or all accounts receivables and other financial information.

Statutory Mailing by Receiver

44. The Receiver has completed and delivered the notice required by sections 245 and 246 of the BIA (the "**Receiver's Statement**") to Arres' known creditor and the Trustee in Bankruptcy (A&M) on August 4, 2017. The Receiver understands that although the Receiver is not appointed pursuant to the BIA, the Receiver is

subject to the requirements of Part XI of the BIA by operation of section 243(2)(b)(ii) of the BIA, including the requirement to file a statement for the purposes of section 246 of the BIA. Section 125(b) of the Bankruptcy and Insolvency General Rules requires that this statement include the book value of each item of the Exigible Property that is possessed or controlled by the Receiver.

45. A copy of the Receiver's Statement can be found on the Receiver's Website and is attached as Appendix I to this Report.

Corporate Insurance

46. The Receiver is advised by Mr. Serra that the Company does not have, nor requires corporate insurance with respect to its operations.

RECEIPTS AND DISBURSMENTS – JULY 26, 2017 TO OCTOBER 6, 2017

Overview

47. The following is a statement of the Receiver's receipts and disbursements during the Reporting Period:

Arres Capital Inc. - In Receivership Statement of Receipts & Disbursements CAD\$, unaudited July 26, 2017 - October 6, 2017		
	Notes	Total
Opening Cash Balance		\$ -
Receipts		\$ 65,000
		\$ 65,000
Disbursements		
Storage costs		\$ 252
Contractor services		\$ 260
Municipal property taxes		\$ 3,576
General & Administrative		\$ -
Professional Fees		\$ -
GST Paid		\$ 26
		\$ 4,113
Remaining Balance		\$ 60,887

48. There was no opening cash available as at July 26, 2017. Mr. Serra advised that its two bank accounts did not contain any cash balance. The Receiver verified this with the bank, froze Arres' operating bank account effective on the July 26, 2017 (for "deposit only") and opened a new Receiver's trust bank account.
49. The Receiver collected \$65,000 in receipts owing to Arres with respect to a settlement agreement between Arres and another party prior to the Receivership Proceedings. Arres and its counsel, Access and its counsel did not object that these funds could be delivered to and used by the Receiver for its purposes and pursuant to the Receivership Order. The Receivership Order does allow for the Receiver to collect upon any or all receipts due to Arres.
50. The Receiver disbursed approximately \$4,100, as follows:
- a) Approximately \$250 in storage costs to store the books and records of Arres at a secure storage facility;

- b) \$260 in contractor service fees with respect to the moving of the books and records to the storage facility;
- c) Approximately \$3,600 in delinquent property taxes outstanding with respect to the Timber Creek Project, as discussed above. The Receiver understands that there remains a further \$7,539.00 in outstanding property taxes (not delinquent taxes) relating to 2016 and 2017. The Township advises that if the 2016 property taxes of approximately \$3,800 are not paid by January 2018, these arrears will move to “delinquent status” and the property will be subject to tax sale again in September 2018 (while accruing interest and penalties); and
- d) There were no professional fees and costs and general administrative expenses paid during the Reporting Period; however, amounts were incurred during the Reporting Period and are expected to be paid in the coming weeks, as discussed further below.

51. Total cash on hand held by the Receiver as at October 6, 2017 is \$60,877.

Forecast Costs and Funding Requirements

52. The Receiver has incurred certain fees and costs throughout the administration of the estate that remain unpaid. The fees and costs incurred, but not paid, total approximately \$86,500 (before GST), which largely relate to the following:

- a) Storage, transportation and accounting software fees of approximately \$1,100;
- b) IT specialist fees and costs of approximately \$3,500; and
- c) Outstanding professional fees and costs of the Receiver and its legal counsel for the period July 26, 2017 to September 30, 2017 of approximately \$82,000, broken down as follows:

- i. Receiver's fees and costs of approximately \$52,000, which relates to fees and costs incurred during the period of September 1 to 30, 2017. After the Reporting Period, the Receiver received payment directly from the Applicant for its first invoice for covering the period July 26 to August 31, 2017 of approximately \$52,279.
 - ii. McCarthy fees and costs of approximately \$30,000, which comprises of its first invoice for August 2017 of approximately \$9,000 and another invoice for September 2017 of approximately \$21,000.
- 53. As previously discussed, the Receiver currently does not have adequate funds available to cover the current and future costs to administer this estate in the Receivership Proceedings.
- 54. The Receivership Order currently does not provide the authority for the Receiver to borrow funds to operate the business, pursue recovery on the Exigible Property or otherwise fund the ongoing administration of the estate of the Debtor.
- 55. If the Receiver is unable to borrow or secure funding to administer the estate and seek to maximize realizations for the stakeholders, the Receiver may have no alternative but to terminate its review of its continued review of the Exigible Property pursuant to the Receivership Order and apply for its immediate discharge.

EXIGIBLE PROPERTY DETERMINATION

- 56. Paragraph 4 of the Order requires the Receiver to determine and calculate which of the Debtor's Property is Exigible Property.
- 57. The Receiver, in consultation with its legal counsel, has determined that the Exigible Property consists of all the assets, properties and undertakings that the Debtor has an interest in. In particular, the Exigible Property includes any (a) debts payable to Arres and (b) causes of action. A memorandum prepared by the

Receiver's legal counsel, which concludes that the Exigible Property consists of all the Debtor's assets, properties and undertakings, including, without limitation, all rights that the Debtor has arising under trust agreements and loan administrative agreements, is attached as Appendix J to this Report.

58. As previously discussed above, the Receiver has calculated the book value of the Exigible Property based on the information available in the books and records of the Debtor and as required by the Bankruptcy and Insolvency Act and is included in this Report (Appendix I).

59. The Receiver has also made inquiries in respect of the specific factors enumerated in paragraph 4 of the Order in the time period May 1, 2009 and following. The Receiver reports to this Honourable Court on those inquiries as follows:

a) an initial listing of all the property that the Receiver has been able to identify as being owned by the Debtor or which the Debtor has a potential interest in is listed above and defined as Property. In addition, the Receiver identified the receivable collected as identified in the statement of receipts and disbursements. **Lastly, the Receiver may also have a property interest in the form of either a right to be paid amounts due on the Purported Project Receivables (including the Assigned AR) or a cause of action on the Assignments, depending on the results of the continuing investigation regarding the Purported Project Receivables and Assignments;**

b) the Receiver is in possession of records that evidence an assignment of accounts receivable due to the Debtor in certain mortgage investments to third-parties (i.e. the "Assignments" and the "Rise Assignments"). The Assignments occurred in the period March 2010 to July 2012, whereas the Rise Assignments occurred largely on January 1, 2009 and September 27, 2017. As discussed above, it is unclear as to whether consideration was exchanged in respect of the Assignments or whether the Debtor has collected any consideration

that was due to it pursuant to the Assignments. The Receiver understands the assignee is the spouse of Mr. Serra, who is the sole director and officer of the Debtor, and a numbered company (875892 Alberta Ltd.) that is controlled by Ms. Serra and a third party. A copy of the 875892 Alberta Ltd. corporate search is attached as Appendix K to this Report;

- c) the Receiver has not yet been able to determine the validity or priority of any assignment of the assigned Property that may have been completed, including the Assigned AR with respect to the amounts identified in Mr. Serra's statutory declaration sworn on October 20, 2014;
- d) the Debtor operates as a mortgage brokerage firm and acts as a manager, administrator or trustee for persons who have an interest in mortgages issued by the Debtor. As noted above, the Receiver has not yet been able to determine the validity or priority of any assignment of the assigned Property that may have been completed. The Receiver does note that, on the information presently known to it, an assignment made to a related party would not appear to be a transaction made in the ordinary course of the Debtor's business; and
- e) the Receiver has no ability to enforce any rights of the Debtor on valid accounts receivable owed to the Debtor on the current terms of the Order (and regardless of same arise through ordinary course business transactions or transactions giving rise to litigation claims).

60. The Receiver notes that, on the current terms of the Order, it is unable to secure funding to undertake further investigation on these or related issues relating to the Exigible Property or to pursue recoveries on any litigation claims that may comprise part of the Exigible Property.

ADVICE AND DIRECTION ON MODEL ORDER

61. The Receiver is seeking advice and direction with respect to its application to amend the Receivership Order to a form of order based on the Alberta Model Order (the “**Model Order**”).
62. The Receiver has the following concerns in respect of the current version of Receivership Order:
 - a) As required by the Receivership Order, the Receiver has determined, based on advice from its legal counsel, that all of Debtor’s Property constitutes the Exigible Property. The Receiver therefore is in a situation where it is or should be administering all the assets of the estate but does not have the standard powers provided to it under the Receivership Order;
 - b) the Debtor’s right to operate and conduct its business under the Order is “...*subject to the Receiver’s determinations in paragraph 4 of this Order.*” The Receiver is of the view that it has made such determination as explained in this Report. The Receiver therefore has a duty to consider whether it is in the interests of stakeholders to operate the business, but it does not have the authority to do so under the Receivership Order. By extension, the Receiver does not have the express authority to take basic steps that may be required to operate the business, such as entering into agreements or incurring ordinary course obligations. As discussed above, Mr. Serra continues to act on behalf of the Company, communicate to various stakeholders directly and execute documents (i.e. “Resolutions” and the “Rise Assignments”) on behalf of Arres. Finally, and while the Receivership Order suggests that the Receiver is to operate the business after making the Exigible Property determination, the Receiver does not have the express authority to cease to operate the

business even though the Receiver may determine that same is an advisable course of action;

- c) it is evident that at least a portion of the Exigible Property, and potentially a significant and valuable portion of the Exigible Property, consist of intangibles in the form of either accounts receivable or litigation claims. The Receiver currently has no ability to recover on these assets because it does not have the power to initiate, prosecute or defend proceedings involving the Debtor or to enforce any rights (by way of example, security or set-off rights) that the Debtor may have in respect of such assets. For clarity, the Receiver does not seek the authority to settle or compromise claims between the plaintiff and the defendant unless further authorized by order of this Honourable Court;
- d) the Receiver does not have the authority to sell, convey, lease or assign the Exigible Property or to apply for vesting orders in respect of any such transactions. In the course of administering the Exigible Property, the Receiver may determine that certain of the Exigible Property should be sold, transferred or conveyed if it will maximize value for stakeholders but the Receiver is unable to complete such transactions on the current terms of the Receivership Order;
- e) the Receiver does not have the authority to borrow funds to operate the business, pursue recovery on the Exigible Property or otherwise fund the ongoing administration of the estate of the Debtor;
- f) there is only a limited stay of proceedings imposed on three Alberta Court of Queen's Bench actions and there is no stay of any type in respect of the Exigible Property. The Receiver therefore faces the circumstance where an action or proceeding may be commenced against the Debtor or involving the Exigible Property and the Receiver will have neither:

- i. the authority to respond to such proceedings; or
 - ii. funding to protect the Debtor and the Exigible Property in such proceedings;
- 63. Due to the foregoing issues, the Receiver does not believe that it can properly administer the estate of the Debtor on the current terms of the Receivership Order. In particular, the Receiver is concerned that the Exigible Property is at risk of a material and irreparable loss of value if the relief sought by the Receiver amending the Receivership Order to a form based on the Model Order is not granted. Any uncertainty on either the scope of the Exigible Property or the Receiver's authority to act in respect thereof will result in significant and unnecessary increased cost in the administration of the estate of the Debtor.

RECOMMENDATIONS

- 64. The Receiver's recommendation to amend the Receivership Order to the Model Order is, in addition to the concerns expressed above, either based upon or following:
 - a) receiving advice from its legal counsel;
 - b) consulting with representatives of both the plaintiff and the Debtor;
 - c) its past expertise in administering estates of debtor companies as a licensed trustee in bankruptcy under the BIA;
 - d) its review and identification of the Exigible Property and the steps it anticipates will be required to preserve and protect the Exigible Property as it continues the administration of the estate of the Debtor; and
 - e) its view that an amendment to the Order to a form of order based on the Model Order will maximize recoveries for creditors and is in the best interests of the Debtor and its various stakeholders.

RECEIVER'S NEXT STEPS

65. The Receiver will continue to complete the remaining reporting requirements pursuant to paragraph 4 of the Receivership Order, in particular, reviewing the validity, priority and existence of the Assigned AR, Purported Project Receivables and the various assignments.
66. The Receiver will require the continued funding from the Applicants to pay for administration of the estate pursuant to paragraph 24 of the Receivership Order. It is the Receiver's respectful preference for this Honourable Court grant a Borrowing Charge to allow the Receiver to borrow monies pursuant to a Receiver's Certificate to ensure it has the available funds to pay ongoing costs to administer the estate and to also provide an appropriate charge over the Company's assets to protect the Applicants interests while it continue to funds the administration of the estate.

All of which is respectfully submitted this 11th day of October, 2017.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver of Arres Capital Inc. and not in
its personal or corporate capacity**



Tim Reid, CPA, CA, CIRP, LIT
Senior Vice-President



Orest Konowalchuk, CPA, CA, CIRP, LIT
Vice-President

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK,
THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE,
LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S.
IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA,
MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA
SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

Plaintiffs

and

ARRES CAPITAL INC. and WESLEY SERRA

Defendants

and

Y-K PROJECTS LTD., ALLEN BECK AND SHELLY BECK

Third Party Defendants

1401-12431

ACCESS MORTGAGE CORPORATION (2004) LIMITED

Plaintiff

and

ARRES CAPITAL INC.

Defendant

PROCEEDINGS
(Excerpt)

Calgary, Alberta
June 4, 2018

Transcript Management Services
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Calgary, Alberta T2P 5P7
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre,
2 Calgary, Alberta

5 June 4, 2018 Afternoon Session

7 The Honourable Court of Queen's Bench
8 Madam Justice Romaine of Alberta

10 W.W. MacLeod	For Access Mortgage Corporation
11 P. Kyriakakis	For Access Mortgage Corporation
12 K. L. Okita	For Terrapin Mortgage Investment
13 J. Burke	For Terrapin Mortgage Investment and 1798583
14	Alberta Ltd.
15 L. Halyn	For Richcrooks Enterprises and Kenzie
16	Financial
17 (No Counsel)	For N. Thompson
18 R. Neale	Court Clerk

21 (PORTION OF PROCEEDINGS OMITTED BY REQUEST)

23 **Decision**

25 THE COURT: Okay, the receiver applies for an order today
26 directing that the funds held in court arising from the Graybriar sales and the funds held
27 in court arising from the Kenzie action be paid out to the receiver to conduct a claims
28 process and to be subject to the receiver's charge and borrowing charge. This is opposed,
29 of course, by Terrapin Mortgage, by the related parties and rather than referring to them
30 as the Graybriar Investments, I am just going to refer to them as your clients and Mr.
31 Thompson, I gather you are not opposing today? You are just here for information?

33 MR. THOMPSON: Well, I was here for information and to oppose.

35 THE COURT: Okay. Okay.

37 There is an issue about whether the receiver's charge cannot have priority over property
38 subject to trust claims. I am satisfied from the case of *Re Residential Warranty Company*
39 *of Canada Inc. (Bankrupt)*, 2006 ABQB 236, for the proposition that the court may
40 impose such a charge on the basis of its inherent jurisdiction, where as I am satisfied as
41 the case here, the receiver's charge will secure the administration of a claims process that

1 will benefit all claimants and provide some certainty and finality.

2
3 Terrapin submits that the property over which it asserts its trust claim is already subject
4 to a judicial process that has not been displaced by the receivership. I have to say the
5 history and the facts of this matter speak strongly to that. This litigation has been
6 prolonged and complex and the relative claims of Terrapin, the related parties and the
7 Graybriar Investments have still not been resolved.

8
9 The Court of Appeal said in 2014:

10
11 We conclude that it would be contrary to the interests of justice to
12 allow the foreclosures to proceed unrestricted and for the proceeds
13 of judicial sales of the units to be distributed without control of the
14 Court. The most appropriate course for all concerned, including the
15 creditor, Terrapin Mortgage, would advance money on the strength
16 of the foreclosure order, is to require that the proceeds of judicial
17 sale of the seven units be paid into court, and then have the Court
18 determine who has the rights to such proceeds and whose rights have
19 priority.

20
21 Almost four years later, this determination still has not been made. We have the
22 opportunity now to do this under the control of a court approved receiver.

23
24 The facts identified in the *Kingsway General Insurance Company v. Residential*
25 *Warranty Company of Canada Inc. (Trustee of)*, 2006 ABCA 293 (CanLII), case all
26 support the receiver's application.

27
28 The trust claim being asserted by Terrapin is weak, as is the claim asserted by the related
29 parties. The stage of proceedings is right for the determination of the priority of claims.
30 This process supports the integrity of the insolvency system. While the Y-K investors and
31 the Graybriar investors involved in the Graybriar action also oppose the receiver's
32 application. They concede if the receiver's proposal is not accepted, the Terrapin claim
33 and the related party claims must still be resolved.

34
35 As the receiver notes it sees no other alternative other than for it to quarterback the
36 administration of the Graybriar funds, so that the competing claims may be determined.
37 The receiver seeks assurance that it will be paid for its reasonable time and effort
38 expended in respect of the claims process, and is only then prepared to administer the
39 claims process on this basis. I agree that absent a viable alternative process which for
40 clarity, as the receiver indicates, should be more than creditors racing to seek release of
41 the Graybriar funds without accounting for persons with competing entitlement. The

1 claims process represents the only method of breaking out of the current quagmire in
2 respect of the Graybriar funds.

3
4 And I am going to allow the order, but on the understanding that the funds are to be used
5 to determine the priority of claims against the Graybriar funds and the Kenzie funds only,
6 and not with respect to the other projects that might be in the receivership. If the receiver
7 determines that it wishes to proceed with those other projects, it must give notice to the
8 parties here today so that there can be some determination of whether that is appropriate.
9

10 MR. MACLEOD:

That's no problem at all, My Lady.

11
12 THE COURT:

Okay.

13
14 MR. MACLEOD:

And just so you understand, the claims process
15 is only in relation to the Graybriar funds. They can't be funds --
16

17 THE COURT:

Right. Did I include the others?

18
19 MR. MACLEOD:

Yeah.

20
21 THE COURT:

I am sorry.

22
23 MR. MACLEOD:

You might have, but I think it speaks to your
24 point, because this how we are -- you want things segregated and --
25

26 THE COURT:

Right.

27
28 MR. MACLEOD:

-- we are proposing to segregate, so the Kenzie
29 funds will then fall into the general administration of the estate and the parties can make
30 claims through them through the bankruptcy process. We don't need an independent
31 process on them.
32

33 THE COURT:

Okay.

34
35 MR. MACLEOD:

So...

36
37 THE COURT:

Okay.

38
39 MR. MACLEOD:

So I will just go through the orders with you,
40 My Lady.
41

1 THE COURT: Sure.

2

3 MR. MACLEOD: Perhaps I will start with -- there is two of them.
4 The first one is -- both of them are appended to the application. I've fixed it o the best --

5

6 THE COURT: Okay.

7

8 MR. MACLEOD: -- but I have not made a material change.

9

10 MR. HALYN: Yeah. Again, I don't want to interrupt my friend
11 Mr. Walker, but his comment that he just made seems to be a little different than I
12 understood what you were saying and that is that if I am understanding him correctly,
13 he's taking the position that Kenzie Financial 235 in court, just gets paid into general
14 administration of the receiver trustee.

15

16 MR. MACLEOD: Yeah.

17

18 MR. HALYN: And I am -- my position was, I think it should
19 be limited only to investigations and determinations of priority of competing claims, vis-
20 à-vis those funds and that if the receiver determines that there is no other competing
21 claims, that would disrupt the judgment creditors' otherwise entitlement to those funds,
22 then those investors, those judgment creditors can make an application or can otherwise
23 come back to the court to have those funds released back to that group, rather than being
24 just general money in the receivership to the benefit of all potential creditors, so I want to
25 make sure we are clear on that.

26

27 THE COURT: Okay. Mr. MacLeod.

28

29 MR. MACLEOD: So the Graybriar funds we say they are trust
30 funds for the benefit of his investors, subject to, you know, determination of the
31 competing claims quantification and all that.

32

33 THE COURT: Right.

34

35 MR. MACLEOD: They are segregated.

36

37 The 235 was posted by Arres Capital. No trust relationship with it whatsoever. It just
38 took the money and put it into court --


39

40 THE COURT: Right.

41

1 MR. MACLEOD: -- as in relation to an unsecured judgment, so
2 that's why it falls back not into the trust pot of Graybriar, but just the general
3 administration of the estate.
4

5 THE COURT: However, even if it is in the general
6 administration of the estate, you are only going to use it to investigate claims and priority
7 with respect to that amount, is that correct?
8

9 MR. MACLEOD:  Yeah, can I consult with Mr. Konowalchuk on
10 that?
11

12 THE COURT: Yes, of course. Yes, in other words -- I know
13 you have to -- okay.
14

15 MR. MACLEOD: Yes, so there is a significant portion of the fees
16 that are outstanding, and you will see in your order that you are, you know, saying that
17 we have first charge on the both the Graybriar funds and the court funds. With that
18 understanding, and we will have to come back and get fees approved at a later date and
19 that's part of what we are doing today. That's fine to the receiver. As long as we have the
20 priority, we are happy then to adjudicate claims to the 235 based on entitlement. I suspect
21 we are going to see a bunch of property claims in the bankruptcy estate and so we will
22 have to then deal with that.
23

24 THE COURT: Okay.
25

26 MR. MACLEOD: So that is where the focus is going to be.
27

28 THE COURT: I am assuming, and I can't -- I don't see any
29 evidence to the contrary that those fees outstanding were incurred with respect to the
30 determination of the claims with respect to these two pots of money.
31


32 MR. MACLEOD: Yeah.
33

34 THE COURT: Yes, okay.
35

36 MR. MACLEOD: The vast -- I couldn't say it is everything, My
37 Lady, because there is just the usual general administration.
38

39 THE COURT: Yes.
40

41 MR. MACLEOD: But the vast majority certainly fit in that pot.

- 1
- 2 THE COURT: Okay.
- 3
- 4 MR. MACLEOD: Either one. Either one of them.
- 5
- 6 THE COURT: Okay.
- 7
- 8 MR. MACLEOD: And we will be cognizant at this point forward.
- 9
- 10 At some point we are going to have to come back and justify the fees and that's one point.
- 11 We are doing an interim fee equivalent a day.
- 12
- 13 THE COURT: Yes.
- 14
- 15 MR. MACLEOD: So at some point this is all going to be such to
- 16 final court supervision. I don't want to be entirely hamstrung with the 235 in the general
- 17 estate is I think what I am saying, My Lady.
- 18
- 19 THE COURT: Okay. I think on that basis, Mr. Halyn, I am --
- 20
- 21 MR. HALYN: Well, again, not being difficult, My Lady, but it
- 22 would seem to me that what is being proposed is that for the fees and expenses of the
- 23 trustee or receiver up to this point in time, they are saying, Well, we've worked on all of
- 24 these different matters, including the Graybriar matters, but we'd like to pay all of that
- 25 from the Kenzie Financial funds that are being paid into their hands if I understand what
- 26 he is saying.
- 27
- 28 If I am misunderstanding, then please correct me.
- 29
- 30 MR. MACLEOD: I --
- 31
- 32 THE COURT: Can you segregate the outstanding fees between
- 33 the Graybriar matter and the Kenzie matter?
- 34 
- 35 MR. MACLEOD: Yeah, we -- we can do that for sure, My Lady.
- 36
- 37 THE COURT: Okay.
- 38
- 39 MR. MACLEOD: So...
- 40
- 41 MR. HALYN: And then so long as we can see that segregation

1 both looking back and going forward, I guess then that would be fine.

2

3 THE COURT: Yes. Okay.

4

5 MR. HALYN: Okay.

6

7 MR. MACLEOD: We will -- when we go back to do the fees next,
8 we will break it down a little bit more, My Lady.

9

10 THE COURT: Okay.



11
12 MR. MACLEOD: Did I pass up the first order?

13

14 THE COURT: You did.

15

16 MR. MACLEOD: On page 2 it says order directing against the
17 Graybriar funds and the court funds and confirming receivership charges. So services in
18 order My Lady.

19

20 THE COURT: Right.

21

22 MR. MACLEOD: The release of the six funds in court, that is A,
23 B, C, D, E, F. The release of the funds from Bishop McKenzie, that's paragraph 4, those
24 are the Graybriar funds.

25

26 THE COURT: Right.

27

28 MR. MACLEOD: The release of the court funds is 5, confirmation
29 of the receivership charges is 6. Approval of fees and conduct. Again, that's in the report
30 and we've just added that, and so that is there.

31

32 THE COURT: Yes. Yes. Action and conduct.

33

34 MR. MACLEOD: I am going to say, My Lady, just on the fees
35 because I sense we are going to come back on it at some point, absent a change in the
36 position of stakeholders, this is going to be an expensive estate. There is just no doubt
37 about that whatsoever, and hopefully that will change. But we are going to litigate, you
38 know --

39

40 THE COURT: Yes.

41

1 MR. MACLEOD: -- adjudication of the claims process like we
2 have today in two plus hours. It is going to get expensive, so...

3
4 THE COURT: I understand. Okay. Thank you.

5
6 MR. MACLEOD: And then the claims process order, again, the
7 only changes My Lady are some nicks; we got an action number wrong or what's in there.
8 It's a somewhat unique claim process order. We don't have the concept of a claims bar
9 date, right?

10
11 THE COURT: Okay.

12
13 MR. MACLEOD: Because there is really no really post filing
14 payments. They've got the funds sitting in court.

15
16 THE COURT: Okay.

17
18 MR. MACLEOD: There is nothing to service going forward and it
19 is just designed to sort of capture priority entitlements to those. We've got the underlying
20 claims processed against Arres in the Bankruptcy, so we don't need an Arres claims
21 process. We've got that. We need to segregate and drive direction at these assets.

22
23 We will utilize -- you know we are going to send claims to known claimants. We are
24 going to advertise all that stuff, My Lady, but the standard stuff as you described, My
25 Lady, so...

26
27 THE COURT: Okay. Okay, thank you.

28
29 MR. MACLEOD: Thank you.

30
31 THE COURT: Okay, I think that's it.

32
33 MS. OKITA: Oh, just a quick comment if I may, sorry?

34
35 THE COURT: Sure.

36
37 MS. OKITA: Similar to Mr. Halyn, not to be difficult, but we
38 are looking just to keep those Kenzie funds segregated to preserve any trust claims that
39 we have, and so we are wondering if that can be written into the Court -- into this, so that
40 these will be -- they won't be comingled. And is that what we've already established?

41

1 MR. MACLEOD: Yes. As long as the charge ranks in priority on
2 them, we will be able to deal with allocation at the end of the piece.
3

4 THE COURT: Right.
5

6 MR. MACLEOD: I think we are happy to have them in two
7 separate accounts at Alvarez.
8

9 THE COURT: Okay. Okay, thank you.
10

11 MS. OKITA: Thank you.
12
13

14
15 PROCEEDINGS CONCLUDED
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Certificate of Record

I, Rena Neale, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench Court, held in courtroom 1602 at Calgary, Alberta, on the 4th day of June, 2018, and that I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2

3 I, C. Emblin, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability, and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

11

12 C. Emblin, Transcriber

13 Order Number: AL-JO-1003-0740

14 Dated: May 2, 2019

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COURT FILE NUMBER 1401-12431
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT ACCESS MORTGAGE CORPORATION
 (2004) LIMITED
 RESPONDENT ARRES CAPITAL INC.



- and -
 COURT FILE NUMBER 0903-17684 and 0903-17685
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 RESPONDENT (PLAINTIFF) ARRES CAPITAL INC.

I hereby certify this to be a true copy of
 the original Order
 Dated this 05 day of June 2018
 for Clerk of the Court

NON-PARTICIPANTS (DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

RESPONDENTS (NON-PARTIES) RICHCROOKS ENTERPRISES (2000) LTD., RICHCROOKS HOLDINGS LTD., 515476 ALBERTA LTD., DEMEL FINANCIAL CORP., GREENMAR HOLDINGS INC., ACCESS MORTGAGE INVESTMENT CORPORATION (2004) LIMITED, 4-A PROFESSIONAL SERVICES LTD., TEMPEST MANAGEMENT INC., HUDSON PRINCIPLE INVESTMENTS LTD., SWARTZ BROS. LIMITED, CHRISTOPHER SCHULTZ CONSULTING INC., CURLEW FINANCE, PAUL KORYLO, MAX FELDMAN, SONYA SMITH, NORMAN MARTIN, BERNICE MARTIN, R. BRUCE CARSON, DELORES CARSON, LEELA KRISHNOMOURTHY, MARGUERITE MCRITCHIE, PRITI GAUR, MADHU GAUR, WENDY MCKENNA, JANET LORRAINE WATSON, JIM WATT, GASTON RAJAKARUNA, SHIRLEY RAJAKARUNA, GARY DREFS, ROBERT ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ, KEVEN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO SEKIYA, HOLLY SEKIYA and STEVEN OGG

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

- and -

COURT FILE NUMBER 1201-16440

COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK
DEFENDANTS	ARRES CAPITAL INC. and WESLEY SERRA
THIRD PARTY DEFENDANTS	Y-K PROJECTS LTD., ALLEN BECK and SHELLY BECK
DOCUMENT	ORDER (Directing Release of the Graybriar Funds and the Court Funds and Confirming the Receivership Charges)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCARTHY TÉTRAULT LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Walker W. MacLeod / Pantelis Kyriakakis Telephone: 403-260-3710 / 3536 Facsimile: 403-260-3501 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:	June 4, 2018
LOCATION OF HEARING:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	Justice B.E.C. Romaine

UPON the application of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Second Report of the Receiver, dated May 29, 2018 (the "**Second Receiver's Report**"), and the

Affidavit of Service of Katie Doran, sworn on June 1, 2018, all filed (the "**Service Affidavit**");
AND UPON hearing counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of the Application and the Second Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Second Receiver's Report.
2. Any and all capitalized terms used herein and not otherwise defined are hereby given the meaning that such terms have under and pursuant to the Receivership Order.

RELEASE OF GRAYBRIAR FUNDS

3. The Clerk of the Court is hereby directed to pay out to the Receiver all funds and all interest accrued thereon (collectively, the "**Graybriar Court Funds**") held under Court File Numbers 0903-17684 and 0903-17685 (the "**Graybriar Actions**"), derived from the sale of the units (individually, a "**Unit**", collectively, the "**Units**") under Condominium Plan 0827766 (the "**Condo Plan**"), which Graybriar Court Funds are comprised of:
 - (a) all funds held by this Court and derived from the sale of Unit 48 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master K. Laycock granted on February 1, 2016;
 - (b) all funds held by this Court and derived from the sale of Unit 63 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on March 10, 2016;
 - (c) all funds held by this Court and derived from the sale of Unit 65 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master J. Farrington granted on June 14, 2016;
 - (d) all funds held by this Court and derived from the sale of Unit 69 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on August 25, 2017;

- (e) all funds held by this Court and derived from the sale of Unit 67 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on November 1, 2017 and subsequently amended pursuant to an Amended Order of Master J.L. Mason granted on December 15, 2017; and,
- (f) all funds held by this Court and derived from the sale of Unit 68 and paid into Court, under the Graybriar Actions, pursuant to the Consent Order of Master J.L. Mason granted on December 15, 2017,

(collectively, the "**Graybriar Sale Approval Orders**").

- 4. Bishop & McKenzie LLP is hereby directed to pay to the Receiver all funds and all interest accrued thereon derived from the sale of Unit 55 of the Condo Plan (collectively, along with the Graybriar Court Funds, referred to as, the "**Graybriar Funds**").

RELEASE OF COURT FUNDS

- 5. The Clerk of the Court is hereby authorized, empowered, and directed to pay out to the Receiver the \$235,000 and all accumulated interest thereon (the "**Court Funds**") currently held under Court File Number 1201-16440 and paid into Court on February 14, 2014, pursuant to and in accordance with the Order of the Honourable Justice Wilkins issued on February 11, 2014.

CONFIRMATION OF RECEIVERSHIP CHARGES

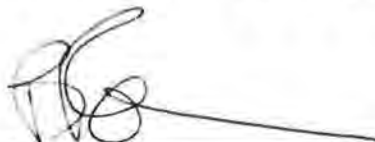
- 6. The Graybriar Funds and the Court Funds (collectively, the "**Funds**") are subject to each of the Receiver's Charge and the Receiver's Borrowings Charge. Each of the Receiver's Charge and the Receiver's Borrowing Charge shall form a first charge on the Funds in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the *Bankruptcy and Insolvency Act* (Canada), and the Receiver is authorized and empowered to apply the Funds against current or future indebtedness owing on either the Receiver's Charge or the Receiver's Borrowing Charge, as applicable.

APPROVAL OF CONDUCT, FEES AND DISBURSEMENTS

7. The actions and conduct of the Receiver, as of the date of the Second Receiver's Report and based upon the evidence contained in the Second Receiver's Report, be and are hereby approved.
8. The interim accounts of the Receiver and its legal counsel, as summarized at paragraphs 65 and 66 of the Second Receiver's Report, be and are hereby approved.

GENERAL

9. Service of this Order on the persons comprising the Service List shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons, other than those on the Service List, are entitled to be served with a copy of this Order.

**J.C.C.Q.B.A.**

COURT FILE NUMBER 1401-12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ACCESS MORTGAGE CORPORATION
(2004) LIMITED

RESPONDENT ARRES CAPITAL INC.

DOCUMENT **ORDER (Graybriar Funds Claims Process Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker W. MacLeod / Pantelis Kyriakakis
Telephone: 403-260-3710 / 3536
Facsimile: 403-260-3501
Email: wmacLeod@mccarthy.ca /
pkyriakakis@mccarthy.ca



DATE ON WHICH ORDER WAS PRONOUNCED: June 4, 2018

LOCATION OF HEARING: Calgary, Alberta

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

UPON the application of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Second Report of the Receiver, dated May 29, 2018 (the "**Second Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on June 1, 2018, all filed (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Receiver and counsel for any other persons present;

I hereby certify this to be a true copy of
the original Order
Dated this 5 day of June 2018
[Signature]
for Clerk of the Court

IT IS HEREBY ORDERED AND DECLARED THAT:**DEFINED TERMS**

1. Capitalized terms used herein or not otherwise defined shall have the meaning ascribed hereto in the Claims Process attached as Appendix "A" hereto (the "**Claims Process**").

APPROVAL OF CLAIMS PROCESS

2. The Claims Process for determining any and all Claims in respect of the Graybriar Funds is hereby approved and the Receiver is authorized and directed to implement the Claims Process.
3. The form of Proof of Claim, Newspaper Notice, and Notice of Revision or Disallowance, all as set forth in the attached Appendix "B", Appendix "C", and Appendix "D", respectively, are approved.

CLAIMS BAR DATE

4. Any Creditor who has a Claim against the Graybriar Funds or against the Debtor in connection with such Graybriar Funds and who has not, as of the Claims Bar Date, submitted a Proof of Claim to the Receiver in respect of a Claim, in accordance with this Claims Process, shall be forever barred, estopped and enjoined from asserting such Claim against the Graybriar Funds and such Claim shall be forever extinguished, unless otherwise ordered by the Court.

NOTICE OF TRANSFEREES

5. If a Creditor or any subsequent holder of a Claim who has been acknowledged by the Debtor as the holder of the Claim transfers or assigns that Claim to another Person, the Receiver shall not be required to give notice to or to otherwise deal with the transferee or assignee of the Claim as the holder of such Claim unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been delivered to the Receiver. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such Claim and shall be bound by notices given and steps taken in respect of such Claim in accordance with the provisions of the Claims Process.

6. If a Creditor or any subsequent holder of a Claim who has been acknowledged by the Receiver as the holder of the Claim transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Receiver shall not, in each such case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim provided such Creditor may, by notice in writing delivered to the Receiver, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and, in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Creditor in accordance with the provisions of the Claims Process.

NOTICE AND COMMUNICATION

7. Except as otherwise provided herein, the Receiver may deliver any notice or other communication to be given under this Order to Creditors or other interested Persons by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or email to such Creditors or Persons at the address last shown on the books and records of the Debtor, and that any such notice by courier, personal delivery, facsimile or email shall be deemed to be received on the next Business Day following the date of forwarding thereof, or, if sent by ordinary mail on the third Business Day after mailing within Alberta, the fifth Business Day after mailing within Canada, and the tenth Business Day after mailing internationally.
8. Any notice or other communication to be given under this Order by a Creditor to the Receiver shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by registered mail, courier, email (in PDF format), personal delivery or facsimile transmission and addressed to:


Alvarez & Marsal Canada Inc., Receiver of Arres Capital Inc.
Attention: Bryan Krol
Alvarez & Marsal Canada Inc.
Bow Valley Square 4
Suite 1110, 250 6th Avenue SW
Calgary, Alberta, T2P 3H7
E mail: bkrol@alvarezandmarsal.com

Fax: 403-538-7551

9. In the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

GENERAL

10. The Receiver is authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Proofs of Claim are submitted, completed and executed and may, if satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of the Claims Process and this Order as to the submission, completion and execution of Proofs of Claim.
11. References in this Order to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.
12. Notwithstanding the terms of this Order, the Receiver or any interested Person may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or modify the Claims Process or this Order as the Receiver may seek advice and directions with respect to the administration of the Claims Process or the distribution of the Graybriar Funds or Proven Claims.
13. Service of this Order on the service list by email, facsimile, registered mail, courier, or personal delivery shall constitute good and sufficient service of this Order, and no Persons, other than those on the service list, are entitled to be served with a copy of this Order. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
14. Service of this Order on any party not attending this application is hereby dispensed with.



J.C.C.Q.B.A.

**APPENDIX "A" TO CLAIMS PROCESS ORDER
CLAIMS PROCESS**

DEFINITIONS

1. For purpose of this Claims Process the following terms shall have the following meanings:
 - (a) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Calgary, Alberta;
 - (b) **"Claim"** means any right, interest or claim of any Person that may be asserted or made in whole or in part against, over, in or to any of the Graybriar Funds, in any capacity, whether or not asserted or made, including but not limited to in connection with any indebtedness, liability or obligation of any kind whatsoever of any Person, and any interest accrued thereon or costs payable in respect thereof, whether at law or in equity, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any equity interest, assignment, right of ownership, title to, trust or deemed trust (statutory, express, implied, resulting, constructive, equitable or otherwise) of, over, in or to the Graybriar Funds, and together with any enforcement costs or legal costs associated with any such claim, and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, warranty, surety or otherwise, but shall not include Excluded Claims;
 - (c) **"Claims Bar Date"** means 5:00 p.m. (Mountain Time) on July 16, 2018 or such other date as may be ordered by the Court;
 - (d) **"Claims Package"** means the document package which shall include a Proof of Claim and such other materials as the Receiver considers necessary or appropriate;
 - (e) **"Claims Process"** means the procedures outlined herein in connection with the assertion of any Claim against the Debtor;

- (f) **"Claims Process Order"** means the Order pronounced by Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta on June 4, 2018 approving this Claims Process;
- (g) **"Court"** means the Court of Queen's Bench of Alberta;
- (h) **"Creditor"** means any Person asserting a Claim;
- (i) **"Debtor"** means Arres Capital Inc.;
- (j) **"Excluded Claim"** means all Claims that are secured by either:
 - (i) the Receiver's Charge; or
 - (ii) the Receiver's Borrowing Charge;
- (k) **"Graybriar"** means Graybriar Land Company Ltd. and Graybriar Greens Inc.;
- (l) **"Graybriar Funds"** has the meaning ascribed to it in the Order (Directing Release of the Graybriar Funds and the Court Funds and Confirming the Receivership Charges) issued by the Justice B.E.C. Romaine on June 4, 2018 in Court File Number 1401-12431;
- (m) **"Graybriar Investors"** means the claims of the various persons who invested in the following mortgages: (i) a Mortgage, dated November 5, 2006, as granted by Graybriar to and in favour of the Debtor, as security for the repayment of \$2,8000,000; and, (ii) a Mortgage, dated August 15, 2007, as granted by Graybriar to and in favour of the Debtor, as security for the repayment of \$9,700,000;
- (n) **"Graybriar Sale Approval Orders"** has the meaning ascribed to it in the Order (Directing Release of the Graybriar Funds and the Court Funds and Confirming the Receivership Charges) issued by the Justice B.E.C. Romaine on June 4, 2018 in Court File Number 1401-12431;
- (o) **"Lien Claimants"** means any Person who had a builders' lien vested pursuant to any of the Graybriar Sale Approval Orders;

- (p) **"Newspaper Notice"** means the notice of the Claims Process to be published in the newspapers in accordance with the Claims Process in substantially the form attached to the Claims Process Order as Appendix "C";
- (q) **"Notice of Revision or Disallowance"** means the form sent by the Receiver revising or disallowing a Proof of Claim submitted by any Person, which notice shall be substantially in the form attached to the Claims Process Order as Appendix "D";
- (r) **"Person"** shall be broadly interpreted and includes an individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, corporation, unincorporated association or organization, syndicate, committee, the government or a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, however designated or constituted, and the trustees, executors, administrators, or other legal representatives of any individual;
- (s) **"Proof of Claim"** means the form setting forth a Creditor's Claim, which proof of claim shall be substantially in the form attached to the Claims Process Order as Appendix "B";
- (t) **"Proven Claim"** means the quantum and classification of the Claim of a Creditor as finally determined in accordance with the Claims Process, provided that a Proven Claim will be "finally determined" in accordance with the Claims Process when: (i) it has been accepted by the Receiver; (ii) the applicable time period for challenging a Notice of Revision or Disallowance issued by the Receiver has expired and the Creditor has not taken the steps required by this Claims Process to challenge such Notice or Revision as Disallowance; or (iii) any court of competent jurisdiction has made a determination with respect to the classification and quantum of the Claim and no appeal or motion for leave to appeal therefrom shall have been taken or served on either party, or if any appeal(s) or motion(s) for leave to appeal or further appeal shall have been taken therefrom or served on either party, any and all such appeal(s) or motion(s) shall have been dismissed, determined or withdrawn;

- (u) **"Receiver"** means Alvarez & Marsal Canada Inc., in its capacity as the Court appointed receiver and manager of the Debtor, and not in its personal capacity or corporate capacity;
- (v) **"Receiver's Borrowing Charge"** has the meaning ascribed to it in the Receivership Order;
- (w) **"Receiver's Charge"** has the meaning ascribed to it in the Receivership Order;
- (x) **"Receivership Order"** means the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017;
- (y) **"Website"** means the website established by the Receiver and located at <https://www.alvarezandmarsal.com/arrescapital>.

NOTICE OF CLAIMS PROCESS

2. The Receiver shall cause a Claims Package to be sent to all Graybriar Investors and Lien Claimants by regular prepaid mail, courier, facsimile or email on or prior to June 8, 2018, 2018.
3. The Receiver shall cause the Claims Package to be posted on the Website on or prior to June 8, 2018.
4. The Receiver shall cause the Newspaper Notice to be published in a newspaper determined to be advisable to the Receiver, on or prior to June 22, 2018.
5. The Receiver shall cause a copy of a Proof of Claim to be sent to any Person requesting such material as soon as practicable.

PERSONS ASSERTING CLAIMS

6. Any other Person who has a Claim to, in or against the Graybriar Funds and who wishes to assert such Claim to, in or against the Graybriar Funds shall, on or before the Claims Bar Date, send a completed Proof of Claim to the Receiver setting out the classification and quantum of its Claim.

7. Any Person who fails to comply with Paragraph 6 of this Claims Process shall be forever barred, enjoined and estopped from asserting such Claim to, in or against the Graybriar Funds and such Claim shall be forever extinguished, except as otherwise may be ordered by the Court.

RESOLUTION OF CLAIMS

8. The Receiver shall review any Proof of Claim that is submitted to it on or before the Claims Bar Date and, subject to the terms of this Order, may accept, revise or disallow the Proof of Claim.
9. The Receiver may attempt to consensually resolve the classification or quantum of any Proof of Claim submitted by any Person prior to the Receiver accepting, revising or disallowing such Proof of Claim.
10. In the event that the Receiver elects to accept the quantum and classification of the Claim as set forth in the Proof of Claim, the Creditor shall have a Proven Claim in the quantum and with the classification specified in the Proof of Claim submitted by that Person.
11. In the event that the Receiver elects to revise or disallow the Proof of Claim, the Receiver shall send a Notice of Revision or Disallowance setting out the revision or disallowance of the Proof of Claim.
12. Any Person who wishes to dispute the Notice of Revision or Disallowance received from the Receiver shall, within fifteen days of receipt of the Notice of Revision or Disallowance from the Receiver, file an Application before the Court for the determination of its Claim.
13. Any Person who receives a Notice of Revision or Disallowance from the Receiver and who fails to comply with Paragraph 12 of this Claims Process shall be deemed to have accepted the classification and quantum of its Claim as set forth in the Notice of Revision or Disallowance, shall have a Proven Claim to the Graybriar Funds in the quantum and with the classification specified in the Notice of Revision or Disallowance and shall be forever barred, enjoined and estopped from challenging the classification and quantum of its Claim to the Graybriar Funds as set forth in the Notice of Revision or

Disallowance delivered to it by the Receiver, except as otherwise may be ordered by the Court.

CURRENCY OF CLAIMS

14. Any Claim set out in a Proof of Claim shall be denominated in Canadian dollars, failing which such Claim shall be converted to and shall constitute obligations in Canadian dollars and such calculation will be effected using the noon spot rate of the Bank of Canada as of the date of the Claims Process Order.

**APPENDIX "B" TO CLAIMS PROCESS ORDER
PROOF OF CLAIM AGAINST ARRES CAPITAL INC. (THE "DEBTOR") WITH RESPECT TO
THE GRAYBRIAR FUNDS**

(See Reverse for Instructions)

Regarding the claim of _____ (referred to in this form as "the creditor")
(name of creditor)

All notices or correspondence regarding this claim to be forwarded to the creditor at the following address:

Telephone: _____ Fax: _____

I, _____ residing in the _____
(name of person signing claim) (city, town, etc.)

of _____ in the Province of _____
(name of city, town, etc.)

Do hereby certify that:

1. ☐ I am the creditor

OR ☐ I am _____ of the
creditor.
(if an officer or employee of the company, state position or title)

2. I have knowledge of all the circumstances connected with the claim referred to in this form.

3.A The debtor was, as at the date hereof, and still is indebted to the creditor in the sum of \$ _____ as shown by the statement of account attached hereto. If a creditor's claim is to be reduced by deducting any counter claims to which the Debtor is entitled and/or amounts associated with the return of equipment and/or assets by the Debtor, please specify.

The statement of account must specify the vouchers or other evidence in support of the claim including the date and location of the delivery of all services and materials. Any claim for interest must be supported by contractual documentation evidencing the entitlement to interest.

B The indebtedness referred to in paragraph 4.A is in the following currency:

- ☐ Canadian Dollars
- ☐ United States Dollars

4.A ☐ **Trust claim.** \$ _____. In respect to the said debt, the creditor claims that the Debtor holds the Graybriar Funds in trust for its benefit:

***Provide full particulars of the nature of the trust claim,** including the nature of the equitable interest and any agreements or other records relevant thereto.*

B ☐ **Secured claim.** \$ _____. In respect of the said debt, the creditor holds assets of the Debtor valued at \$ _____ as security:

***Provide full particulars of security,** including the statement pursuant to which the security is claimed or the date on which the security was given and the value at which the creditor assesses the security together with the basis of valuation, and attach a copy of the security documents.*

C ☐ **Other claims.** \$ _____.

Dated at _____, this _____ day of _____, 2018.

Witness

Must be signed and witnessed

Instructions for Completing Proof of Claim Forms

In completing the attached form, your attention is directed to the notes on the form and to the following requirements:

Proof of Claim:

1. The form must be completed by an individual and not by a corporation. If you are acting for a corporation or other person, you must state the capacity in which you are acting, such as, "Credit Manager", "Treasurer", "Authorized Agent", etc., and the full legal name of the party you represent.
2. The person signing the form must have knowledge of the circumstances connected with the claim.
3. A. A Statement of Account containing details of claims, and if applicable, of the amount due in respect of property claims, and must be attached and marked Schedule "A". Any amounts claimed as interest should be clearly noted as being for interest.
B. Tick the appropriate currency.
4. The nature of the claim must be indicated by ticking the type of claim which applies. e.g.
—

Ticking (A) indicates the claim is a trust claim;

Ticking (B) indicates the claim is secured, such as a builders' lien, a mortgage, lease or other security interest, and the value of which the creditor assesses the security must be inserted, together with the basis of valuation. Details of each item of security held should be attached and submitted with a copy of the chattel mortgage, conditional sales contract, security agreement, etc.;

Ticking (C) indicates the claim is of a difference notice or type.

A creditor may have separate claims in different categories, in which case a separate claim form must be submitted for each claim.

5. The person signing the form must insert the place and date in the space provided, and the signature must be witnessed.

Send a copy of the completed Proof of Claim, by 5:00 pm (MST) on July 16, 2018, to the Receiver at the below addresses:

Alvarez & Marsal Canada Inc.
Attn: Bryan Krol
Bow Valley Square 4
Suite 1110, 250 6th Avenue SW
Calgary, Alberta, T2P 3H7
Email: bkrol@alvarezandmarsal.com
Fax: 403-538-7551

Additional information regarding the Debtor's proceedings, as well as copies of claims documents may be obtained at <https://www.alvarezandmarsal.com/arrescapital>. If there are any questions in completing the Proof of Claim, please contact Bryan Krol of Alvarez & Marsal Canada Inc. at 403-538-7523.

**APPENDIX "C" TO CLAIMS PROCESS ORDER
NEWSPAPER NOTICE**

**NOTICE TO CREDITORS OF ARRES CAPITAL INC. WITH CLAIMS IN, TO OR AGAINST
THE GRAYBRIAR FUNDS**

On October 23, 2017, Arres Capital Inc. (the "**Debtor**") applied for and received protection from its creditors under the *Bankruptcy and Insolvency Act* (the "**BIA**") by order of the Court of Queen's Bench of Alberta (the "**Court**") initially granted on February 13, 2015 and subsequently amended on October 23, 2017, wherein Alvarez & Marsal Canada Inc. was appointed as the receiver and manager (the "**Receiver**") of all of the Debtor's property, assets, and undertakings.

On June 4, 2018 the Court granted further orders establishing a process by which the identity and status of all creditors with claims to the Graybriar Funds (the "**Claims Process Order**"). A copy of the Claims Process Order may be viewed at <https://www.alvarezandmarsal.com/arrescapital>, or may be obtained by contacting the Receiver at 403-538-7523.

Pursuant to the Claims Process Order the Receiver was required, by July 16, 2018, to send a Claims Package to each known Graybriar Investor and Lien Claimant of the Debtor (the "**Notice to Creditor**").

ANY CREDITOR HAVING A CLAIM IN, TO OR AGAINST THE GRAYBRIAR FUNDS MUST FILE A PROOF OF CLAIM WITH THE RECEIVER IN THE PRESCRIBED FORM BEFORE 5:00 PM (MST) ON JULY 16, 2018. CLAIMS NOT PROVEN IN ACCORDANCE WITH THESE PROCEDURES SHALL BE DEEMED TO BE FOREVER BARRED AND EXTINGUISHED AND MAY NOT BE ADVANCED IN, TO OR AGAINST THE GRAYBRIAR FUNDS, EXCEPT AS MAY BE OTHERWISE ORDERED BY THE COURT.

All claims must be made in the prescribed "Proof of Claim" form together with the required supporting documentation and be received by the Receiver on or before the Claims Bar Date, being 5:00 pm (MST) on July 16, 2018.

The prescribed "Proof of Claim" form may be found at <https://www.alvarezandmarsal.com/arrescapital> or can otherwise be obtained by contacting:

Alvarez & Marsal Canada Inc.
Attn: Bryan Krol
Bow Valley Square 4
Suite 1110, 250 6th Avenue SW
Calgary, Alberta, T2P 3H7

Phone: 403-538-7523
Fax: 403-538-7551

Alvarez & Marsal Canada Inc., in its capacity
as Receiver of Arres Capital Inc.

**APPENDIX "D" TO CLAIMS PROCESS ORDER
NOTICE OF REVISION OR DISALLOWANCE FOR CLAIMS AGAINST ARRES CAPITAL
INC. (THE "DEBTOR") CONCERNING THE GRAYBRIAR FUNDS**

NOTICE OF REVISION OR DISALLOWANCE

TO: [NAME AND ADDRESS OF CREDITOR]

DATE:

PROOF OF CLAIM NO:

Take notice that Alvarez & Marsal Canada Inc., appointed the receiver and manager (the "**Receiver**") of all of the Debtor's property, assets, and undertakings pursuant to the Order initially granted on February 13, 2015 and subsequently amended on October 23, 2017 (the "**Receivership Order**"), has reviewed the Proof of Claim you submitted against the Debtor, as part of the Debtor's Claims Process pursuant to the order issued by the Court of Queen's Bench of Alberta on June 4, 2018 (the "**Claims Process Order**"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Claims Process Order.

The Receiver has revised your Proof of Claim as follows:

Classification: _____

Quantum: _____

IF YOU WISH TO DISPUTE THE REVISION OR DISALLOWANCE OF YOUR CLAIM AS SET FORTH HEREIN YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Claims Process Order provides that if you disagree with the revision or disallowance of your claim as set out in this Notice of Revision or Disallowance, you must, within fifteen days of receipt of this Notice of Revision or Disallowance from the Receiver, file an application before the Court of Queen's Bench of Alberta for the determination of your Claim. If you fail to file an application before the Court of Queen's Bench of Alberta for the determination of your Claim in the timeframe specified herein you shall be deemed to have accepted the classification and quantum of your Claim as set forth in this Notice of Revision or Disallowance, shall have a Proven Claim in the quantum and with the classification specified in this Notice of Revision or Disallowance and shall be forever barred, enjoined and estopped from challenging the classification and quantum of its Claim as set forth in this Notice of Revision or Disallowance, except as otherwise may be ordered by the Court.

If you have any questions regarding the claims process or the attached materials, please contact Bryan Krol of Alvarez & Marsal Canada Inc. at 403-538-7523.

Dated the ____ day of _____, 2018 in Calgary, Alberta.

**Alvarez & Marsal Canada Inc., in its capacity
as Receiver of Arres Capital Inc.**

Per: _____

I hereby certify this to be a true copy of
the original Order

Dated this 1 day of Feb 2019

COURT FILE NUMBER 1401-12431

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

ACCESS MORTGAGE CORPORATION
(2004) LIMITED

RESPONDENT

ARRES CAPITAL INC.

DOCUMENT

ORDER (Dismissal of Terrapin Claim)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
MAKING THIS OFFER

McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker W. MacLeod / Pantelis Kyriakakis
Telephone: 403-260-3710 / 3536
Facsimile: 403-260-3501
Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca



DATE ON WHICH ORDER WAS PRONOUNCED:

December 20, 2018

NAME OF JUDGE WHO MADE THIS ORDER:

Justice C.M. Jones


LOCATION OF HEARING:

Calgary, Alberta

UPON the application of Terrapin Mortgage Investment Corp. ("**Terrapin**") filed on July 13, 2018 asserting a Claim to the Graybriar Funds (the "**Application**") pursuant to paragraph 12 of Appendix "A" of the Order (Graybriar Funds Claims Process Order) granted by the Honourable Madam Justice B.E.C. Romaine on June 4, 2018 (the "**Claims Process Order**") coming on for a hearing; **AND UPON** reading the Affidavit of Michael John Cassidy Ellis (aka Jake Ellis), sworn on July 12, 2018; **AND UPON** reading the Transcript of Questioning taken on July 25, 2018 of Michael John Cassidy Ellis (aka Jake Ellis) on Affidavit sworn July 12, 2018; **AND UPON** reading the Responses to Undertakings of Michael John Cassidy Ellis; **AND UPON** reading the First Report of the Receiver, dated October 11, 2017, the Second Report of the Receiver, dated May 29, 2018, and the Third Report of the Receiver, dated August 17, 2018; **AND UPON** reading the Affidavit of David Murphy, sworn on August 17, 2018; **AND UPON** reading the written submissions of Terrapin and the Receiver; **AND UPON** hearing oral submissions from Terrapin, the Receiver and other Persons in attendance at the application;

IT IS HEREBY ORDERED THAT:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Claims Process Order.
2. The Application be and is hereby dismissed.
3. Any interested Person who appeared at the Application may speak to costs in respect of the Application.
4. This Order may be executed in counterpart and by facsimile or other electronic means.



J.C.C.Q.B.A.

AGREED AS TO FORM AND CONTENT this
28 day of January, 2019

MCCARTHY TETRAULT LLP

Per: _____

Walker W. MacLeod
 Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

BISHOP & MCKENZIE LLP

Per: _____

Kerry Lynn Okita
 Counsel to Terrapin

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____

Jeffrey Oliver
 Counsel to Access Mortgage
 Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____

Taimur R. Akbar
 Counsel to Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
23rd day of January, 2019

BISHOP & MCKENZIE LLP

Per:  _____
Kerry Lynn Okita
Counsel to Terrapin

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Oliver
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____
Taimur R. Akbar
Counsel to Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

BISHOP & MCKENZIE LLP

Per: _____
Kerry Lynn Okita
Counsel to Terrapin

AGREED AS TO FORM AND CONTENT this
11 day of January, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Olyer
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____
Taimur R. Akbar
Counsel to Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

BISHOP & MCKENZIE LLP

Per: _____
Kerry Lynn Okita
Counsel to Terrapin

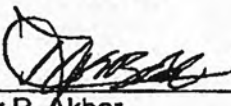
AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Oliver
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
3 day of JAN, 2019

SUGIMOTO & COMPANY

Per:  _____
Taimur R. Akbar
Counsel to Richcrooks Investors

000183 I hereby certify this to be a true copy of
the original Order

Dated this 1 day of Feb 2019

[Signature]
for Clerk of the Court

COURT FILE NUMBER 1401-12431

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

ACCESS MORTGAGE CORPORATION
(2004) LIMITED

RESPONDENT

ARRES CAPITAL INC.

DOCUMENT

ORDER (Dismissal of Related Parties Claim)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
MAKING THIS OFFER

McCARTHY TÉTRAULT LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Walker W. MacLeod / Pantelis Kyriakakis
Telephone: 403-260-3710 / 3536
Facsimile: 403-260-3501
Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca



DATE ON WHICH ORDER WAS PRONOUNCED:

December 20, 2018

NAME OF JUDGE WHO MADE THIS ORDER:

Justice C.M. Jones

LOCATION OF HEARING:

Calgary, Alberta

UPON the application of 875892 Alberta Limited, Staci Serra and Wes Serra (collectively, the "**Related Parties**") filed on July 13, 2018 asserting a Claim to the Graybriar Funds (the "**Application**") pursuant to paragraph 12 of Appendix "A" of the Order (Graybriar Funds Claims Process Order) granted by the Honourable Madam Justice B.E.C. Romaine on June 4, 2018 (the "**Claims Process Order**") coming on for a hearing; **AND UPON** reading the Affidavit of Wes Serra, sworn on July 17, 2018; **AND UPON** reading the Transcript of Questioning taken on July 25, 2018 of Wes Serra on Affidavit sworn July 17, 2018; **AND UPON** reading the Responses to Undertakings of Wes Serra; **AND UPON** reading the First Report of the Receiver, dated October 11, 2017, the Second Report of the Receiver, dated May 29, 2018, and the Third Report of the Receiver, dated August 17, 2018; **AND UPON** reading the Affidavit of David Murphy, sworn on August 17, 2018; **AND UPON** reading the Affidavit of Wes Serra, sworn on September 6, 2018; **AND UPON** reading the written submissions of the Related Parties and the Receiver; **AND UPON** hearing oral submissions from the Related Parties, the Receiver and other Persons in attendance at the application;

IT IS HEREBY ORDERED THAT:

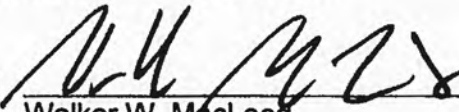
1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Claims Process Order.
2. The Application by the Related Parties be and is hereby dismissed.
3. Any interested Person who appeared at the Application may speak to costs in respect of the Application.
4. This Order may be executed in counterpart and by facsimile or other electronic means.



J.C.C.Q.B.A.

AGREED AS TO FORM AND CONTENT this
28 day of January, 2019

MCCARTHY TETRAULT LLP

Per: 
 Walker W. MacLeod
 Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

**DEMIANTSCHUK BURKE & HOFFINGER
 LLP**

Per: _____
 Judy Burke, Q.C.
 Counsel to the Related Parties

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
 Jeffrey Oliver
 Counsel to Access Mortgage
 Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
 ____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____
 Taimur R. Akbar
 Counsel to the Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
25th day of January, 2019

**DEMIANTSCHUK BURKE & HOFFINGER
LLP**

Per: _____
Judy Burke, Q.C.
Counsel to the Related Parties

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Oliver
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____
Taimur R. Akbar
Counsel to the Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

**DEMIANTSCHUK BURKE & HOFFINGER
LLP**

Per: _____
Judy Burke, Q.C.
Counsel to the Related Parties

AGREED AS TO FORM AND CONTENT this
11 day of January, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Oliver
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

SUGIMOTO & COMPANY

Per: _____
Taimur R. Akbar
Counsel to the Richcrooks Investors

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

MCCARTHY TETRAULT LLP

Per: _____
Walker W. MacLeod
Counsel to the Receiver

AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

**DEMIANTSCHUK BURKE & HOFFINGER
LLP**

Per: _____
Judy Burke, Q.C.
Counsel to the Related Parties

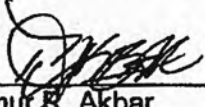
AGREED AS TO FORM AND CONTENT this
____ day of _____, 2019

CASSELS BROCK & BLACKWELL LLP

Per: _____
Jeffrey Oliver
Counsel to Access Mortgage
Corporation (2004) Limited

AGREED AS TO FORM AND CONTENT this
2 day of Jan, 2019

SUGIMOTO & COMPANY

Per:  _____
Taimur R. Akbar
Counsel to the Richcrooks Investors

COURT FILE NUMBER 1401 - 12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

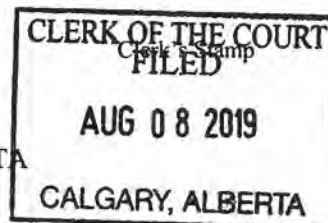
JUDICIAL CENTRE CALGARY

PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LIMITED

DEFENDANT ARRES CAPITAL INC.

DOCUMENT **FOURTH REPORT OF THE RECEIVER**

AUGUST 8, 2018



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

ALVAREZ & MARSAL CANADA INC.
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, Alberta T2P 3H7
Attention: Orest Konowalchuk / Bryan Krol
Telephone: (403) 538-4736 / (403) 538- 7523
Email: okonowalchuk@alvarezandmarsal.com
bkrol@alvarezandmarsal.com

COUNSEL

MCCARTHY TETRAULT LLP
Suite 4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean F. Collins/Walker W. MacLeod/Pantelis
Kyriakakis
Phone: (403) 260-3531 / 3710 / 3613
Fax: (403) 260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca /
pkiriakakis@mccarthy.ca

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APPENDIX A	Jones’ Decision
APPENDIX B	General Claims Ledgers
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INTRODUCTION

1. On July 26, 2017, the Court of Queen's Bench of Alberta (the "**Court**") entered an Order (the "**Receivership Order**") whereby Alvarez & Marsal Canada Inc. ("**A&M**") was appointed receiver (the "**Receiver**") of Arres Capital Inc. ("Arres", the "**Company**" or the "**Debtor**") pursuant to Part 9 of *Civil Enforcement Act* ("**CEA**"), R.S.A. 2000, c. C-15. The effective date of the Receivership Order (date of pronouncement) was February 13, 2015 (the "**Receivership Proceedings**").

2. On July 26, 2017, the Court also granted an Order (the "**Bankruptcy Order**") to adjudge Arres into Bankruptcy and A&M was appointed as trustee (the "**Trustee**") of the estate of the Arres, without security. On August 4, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed. On October 3, 2017, Access (the Plaintiff) filed application materials with respect to seeking an order directing the Respondent, Arres, to pay into court within 30 days of the date of the order the sum of \$14,750 as security for Access' costs of Arres' appeal in the within bankruptcy proceeding. The order was granted by the Court for Arres to pay into court the required funds as security for Access' costs and these funds were to be paid by December 15, 2017. On December 18, 2017, a report of civil appeal was prepared and filed by the Court of Appeal of Alberta advising that the civil notice of appeal to the Bankruptcy Order was dismissed with costs. As a result, the Bankruptcy Order is in full effect.

3. On October 23, 2017, the Receiver sought advice and direction from this Honourable Court to amend the Receivership Order. The Receiver informed the Court that it did not believe it could properly administer the estate of the Debtor on the current terms of the Receivership Order. As a result, an amended and restated order to the Receivership Order (the "**Amended Receivership Order**") was granted by Madame Justice B.E.C Romaine that, amongst other things, amended the existing Receivership Order to that of the Alberta Model Order.

4. On June 4, 2018, an order was granted by this Court (the “**Claims Process Order**”) was issued that provided for the adjudication and resolution of all claims (“**Claims**”) made to the net proceeds from the sale of the remaining seven Graybriar units, consisting of the Graybriar Funds (the “**Claims Process**”). The Represented Investors unsuccessfully opposed the Receiver’s application for the Claims Process Order. The Receiver has administered the Claims Process and admitted claims filed by both the Represented Investors and the Non-Represented Investors (defined below).

5. The purpose of this fourth report of the Receiver (the “**Fourth Report**” or “**this Report**”) is to provide this Honourable Court with information in respect:
 - a) an update on the claims process implemented pursuant to the Graybriar Funds Claims Process Order;

 - b) the Sugimoto & Company (“**Sugimoto**”) proof of claim (the “**S&C Claim**”) filed, on behalf of its 44 investors (the “**Represented Investors**”), in the Claims Process respecting a ‘priority claim’ for legal fees and costs incurred, where the Receiver has reviewed and revised the S&C Claim and the Represented Investors dispute this revision;

 - c) the statement of receipts and disbursements of the Receiver and forecast disbursements with respect to the Graybriar Funds (the “**Graybriar R&D**”);

 - d) the proposed distribution of additional funds recovered by the Receiver to all proven creditor and investor claims in the Claims Process (the “**Graybriar Investor Distribution**”);

 - e) the cash flow for the period from the Receivership Date (July 26, 2017) to August 2, 2019 (the “**Reporting Period**”), that does not include the Graybriar R&D, and the forecast fees and costs of the Receiver and its counsel;

- f) the actions and conduct of the Receiver since the Receiver's Third Report; and
 - g) the Receiver and its counsel's fees and expenditures with respect to the Graybriar matters, Graybriar Claims Process and general Receivership Proceedings.
6. Capitalized words or terms not defined or ascribed a meaning in the Fourth Report are as defined or ascribed a meaning in the Receivership Order, Amended Receivership Order, the Claims Process Order, the Agreed Statement of Facts (as defined herein) and/or the filed reports of the Receiver.
 7. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

8. In preparing this Fourth Report, the Receiver has relied primarily upon stakeholders involved in various Arres' projects, as well as certain financial unaudited financial information contained in Arres' books and records. As discussed in prior reports, the Receiver has encountered various difficulties in its review of financial information due to the incomplete nature of the Arres' books and records. The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of Arres' financial information that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the financial information. Future oriented financial information relied upon in this Report is based on the Receiver's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

BACKGROUND

9. Arres is a corporation registered to carry on business in the Province of Alberta and is owned 100% by Mr. Wesley Serra. Arres is also registered to carry on business in the Province of British Columbia and operates under the name Western Arres Capital Inc. (collectively referred to as “**Arres**”). Western Arres Capital Inc. is an assumed name of Arres Capital Inc. for the purposes of section 26 of the Business Corporations Act (British Columbia) and is not a separate legal entity.
10. Arres was a full-service mortgage brokerage firm specializing in unconventional financing solutions, which would include but not limited to all types of residential and commercial, first and second mortgages, builders’ mortgages, debt consolidations and interim financing. As part of its business, Arres arranges mortgage loans with borrowers, raises the mortgage funds through a group of private investors and then administers the mortgages (trustee) on behalf of the investors.
11. Arres acts as a trustee and is a registered mortgage broker for certain projects in British Columbia and also has interests in various other projects in Alberta, but is currently not registered as a mortgage broker in Alberta.
12. Further background to Arres and its operations is contained in the materials filed in support of and relating to the Receivership Order. These documents and other relevant information has been posted by the Receiver on its website at: www.alvarezandmarsal.com/arrescapital (the “**Receiver’s Website**”).

CLAIMS PROCESS UPDATE

Overview

13. On June 4, 2018, the Claims Process Order was granted by the Court. Pursuant to the Claims Process Order, the Receiver was required to and performed the following:

- a) posted on the Receiver's Website the Claims Package and the Claims Process Order before June 8, 2018;
 - b) sent the Claims Package on June 8, 2018 to each known or possible known Graybriar Investor and Lien Claimants who had or may have had a Claim to the Graybriar Funds as at the Receivership Date; and
 - c) caused a newspaper notice to the Graybriar Investors and the Lien Claimants to be advertised in the Calgary Herald on June 21, 2018.
14. As at the Claims Bar Date (July 16, 2018), 50 claims totaling \$33,795,586 were submitted to the Receiver. Based on the Receiver's review of the claims received, the Receiver accepted 25 claims for a total of \$ \$21,062,771 comprising all of Graybriar Investor trust claims.

Related Party Claim

15. Certain Persons who were non-arm's length from the Debtor (the "**Related Parties**") advanced a Claim to the Graybriar Funds in the Claims Process. The Receiver disallowed this Claim and, in September 2018, a hearing was held before the Honourable Justice Jones in respect to this Claim. On December 21, 2018, Justice Jones issued reasons which, *inter alia*, upheld the disallowance of the Related Party Claims. A copy of the judgment of the Honourable Justice Jones is attached as Appendix A (the "**Jones' Decision**").

Terrapin

16. Terrapin Mortgage Investment Corporation ("**Terrapin**") advanced a Claim to the Graybriar Funds in the Claims Process. The Receiver disallowed this Claim and, in September 2018, a hearing was held before the Honourable Justice Jones in respect to this Claim. The Jones' Decision also upheld the disallowance of this Claim.
17. The Receiver has subsequently reached an agreement with Terrapin pursuant to which (a) the Receiver will not seek costs against Terrapin for the disallowance of

the Claim; and (b) Terrapin will not oppose any further relief sought by the Receiver or Trustee in the receivership / bankruptcy proceedings unless such relief involves the Receiver or Trustee advancing a claim directly against Terrapin.

S&C Claim

18. As discussed further below, the Receiver reviewed and revised the S&C Claim in the Claims Process and S&C, on behalf of the Represented Investors, is disputing the Receiver's revision with respect to the priority portion of the S&C Claim. The Receiver and S&C have agreed to submit to this Court a joint 'Statement of Agreed Facts' (the "**Agreed Statement of Facts**") to assist the Court in its determination as to the priority portion of the S&C Claim.
19. Subject to this Honourable Courts determination as to the S&C Priority Claim (defined below), the Receiver respectfully recommends making a final distribution to the proven investors (the "**Graybriar Dividend Distribution**"), on a pro-rata basis from the remaining estimated Graybriar Funds held by the Receiver.
20. The Receiver has included as Appendix B to this Report, two separate claims ledger outlining:
 - a) the accepted proof of claims by the Receiver in the Claims Process should this Court determine and accept the Receiver's revision to the S&C Priority Claim; and
 - b) the accepted proof of claims by the Receiver that contemplates if the S&C Priority Claim is ultimately deemed accepted as a 'priority claim' by this Honourable Court.

Overview of S&C Claim

21. S&C, on behalf of the Represented Investors, submitted a proof of claim into the Claims Process. In addition, certain of the individual Represented Investors have submitted proofs of claims in the Claims Process that are duplicative of the Sugimoto Claim.

22. The S&C Claim is comprised of two parts:
- a) the Sugimoto Claim in the total amount of \$15,710,604 is in respect of the mortgage investment made by the Represented Investors. This portion of the Claim (the “**S&C General Claim**”) has been reviewed by the Receiver and, based on the books and records of Arres and additional consultation with various of the Investors, revised by the Receiver to the total amount of \$14,860,148; and
 - b) the Sugimoto Claim in the amount of \$246,248 is in respect of legal fees and disbursements charged by S&C to the Represented Investors (the “**S&C Priority Claim**”). As discussed above, this portion of the Sugimoto Claim is the claim in question and has been reviewed and revised by the Receiver to the amount of \$221,623, with the deduction being made on account of a ten (10%) interest claim on the legal fees and disbursements.
23. The S&C Claim has been revised and allowed by the Receiver in the total amount of \$15,081,771. The Claims of the other Represented Investors, which is duplicative of allowed Sugimoto Claim, have been disallowed.
24. While the Receiver is sympathetic to the Represented Investors assertions and rationale to the S&C Priority Claim, the Receiver does not believe the S&C Priority Claim (which has been allowed by the Receiver in the amount of \$221,623 on a *pro rata* basis and included within the total Represented Investors Claims), can rank *pro rata* with the allowed Claims of the remaining investors claims (the “Non Represented Investors”) under law.

STATEMENT OF RECEIPTS AND DISBURSEMENTS – GRAYBRIAR FUNDS

25. The table below provides a summary of actual cash flows with respect to the Graybriar Funds and a summary of the remaining estimated forecast disbursements to be paid by the Receiver with respect to the Graybriar Funds, before the proposed distribution to the Graybriar Investors.

Arres Capital Inc. (Graybriar) - In Receivership		
Actual + Forecast Receipts & Disbursements		
CAD\$, unaudited		July 31/19 to Discharge
July 31, 2019 cash balance		\$ 1,090,769
Estimated Receipts		
GST Refunds		\$ 19,288
Estimated Disbursements		
Receiver (A&M)	40,000	
Receiver's Counsel (McCarthy)	40,000	
Professional Fees		\$ 80,000
Contingency		\$ 5,000
Funds available for distribution		\$ 1,025,057
Distribution to creditors		\$ (1,025,057)
Remaining funds		\$ -

26. The above chart includes the cash receipts collected from Court representing the Graybriar Funds and costs incurred in relation to the Graybriar matters and as permitted by Court Order. The estimated funds available for distribution of \$1,025,057 represents Graybriar Funds that is estimated to be available for the Graybriar Investor Distribution, subject to Court approval, on a pro-rata basis, as discussed further below. The proposed distribution is contingent upon if there is a variance in the forecast disbursements and may result in the amount distributed for the Graybriar Investor Distribution being adjusted.
27. The estimated disbursements relating to professional fees includes:
- Receiver's actual fees and disbursements of \$135,914 for work specific to the Graybriar Funds in the fourteen month period May 1, 2018 to June 30, 2019. The Receiver estimates fees to complete the administration of the Graybriar Funds in the amount of \$40,000.

- b) Receiver's counsel actual fees and disbursements of \$159,696 for work specific to the Graybriar Funds in the fourteen month period May 1, 2018 to June 30, 2019. The Receiver's counsel estimates fees to complete the administration of the Graybriar Funds in the amount of \$40,000.
- 28. The Receiver anticipates that, provided there are no further applications or appeal in respect of the Graybriar Funds, the forecast disbursements will not be materially different than as disclosed above.

PROPOSED GRAYBRIAR INVESTOR DISTRIBUTION

- 29. Pursuant to paragraph 12 of the Receivership Order and the Amended and Restated Receivership Order, the monies collected during the Receivership Proceedings shall be held by the Receiver to be paid or distributed in accordance with the terms of the Receivership Order or any other order of the Court.
- 30. Pursuant to the Claims Process Order, the Receiver accepted 25 proof of claims in the amount of \$ \$21,062,771. The Receiver anticipates the Graybriar Investor Distribution to be in the range of \$803,433 to \$1,025,057 subject to the following:
 - a) the forecast disbursements payments, as discussed above;
 - b) should this Honourable Court accept the S&C Priority Claim as a valid claim and not accept the Receiver's revision to this claim in the Claims Process; and
 - c) Court approval of the Graybriar Investor Distribution.
- 31. The Receiver respectfully requests that this Honorable Court approve the proposed Graybriar Investor Distribution after the forecast disbursements have materialized and after this Court determines the validity of the S&C Priority Claim dispute. Once the Receiver is in a position to make the Graybriar Investor Distribution, the Receiver will provide each proven investor a final calculation of the amounts available to distribute for their proven claim.

INTERIM RECEIPTS AND DISBURSEMENTS – JULY 26, 2017 TO AUGUST 2, 2019

Overview

32. The following is a statement of the Receiver's receipts and disbursements during the Receivership Reporting Period (excludes the statement of receipts and disbursements relating to the Graybriar Funds above):

Arres Capital Inc. (General) - In Receivership Interim Statement of Receipts & Disbursements CAD\$, unaudited		July 26/17 to Aug. 2/19
Opening cash balance		\$ -
Receipts		
		\$ 505,352
Disbursements		
Professional Fees		(238,459)
General & Administrative		(5,353)
OSB Fee		(150)
GST Paid		(9,381)
Total		\$ (253,343)
<i>Net receipts and disbursements</i>		<i>\$ 252,009</i>

33. There was no opening cash available as at July 26, 2017.
34. The Receiver collected \$505,352 in receipts, primarily relating to:
- \$371,956 owing to Arres with respect to a settlement agreement between Arres and another party prior to the Receivership Proceedings totaling \$65,000, certain funds held in court in British Columbia totaling \$65,156 that were released to the Receiver with respect to the Rise Project, and a total of \$241,800 which relates to 'Court Funds'

released to the Receiver pursuant to an order of the Court dated June 4, 2018;

- b) \$132,444 of advances made by Access pursuant to the Amended Receivership Order to pay certain costs incurred by the Receiver pursuant to the Receiver's Charge (including partial payment of the Receiver's and its legal counsels fees and costs); and
- c) \$953 relating to interest and miscellaneous receipts.

35. The Receiver disbursed approximately \$253,343, primarily relating to:

- a) \$5,353 in general and administrative costs, which is made up of storage costs to store Arres' books and records, contractor fees to assist the receiver in moving the books and records, and delinquent property taxes in relation to the Timber Creek Project.
- b) \$238,459 relating to professional fees and costs of the Receiver and its legal counsels' fees from the Receivership Date (July 26, 2017) to August 2, 2019, as detailed further below;
- c) \$150 paid to the Office of the Superintendent of Bankruptcy; and
- d) The remaining balance of \$9,381 relating to GST paid on certain disbursements as listed above.

36. General cash on hand held by the Receiver as at August 2, 2019 is \$252,009 (excluding the Graybriar Funds).

APPROVAL OF THE RECEIVER'S AND ITS COUNSEL'S FEES AND COSTS

Approval of Graybriar Professional Fees and Costs

37. The total fees and disbursements of A&M, in its capacity as the Court-appointed Receiver of the Company, with respect to the Graybriar Funds in the period May 1, 2018 to June 30, 2019 are approximately \$135,914 (excluding GST).

38. The total fees and disbursements of McCarthy Tetrault LLP (“McCarthy”), the Receiver’s legal counsel, with respect to the Graybriar Funds in the period May 1, 2018 to June 30, 2019 are approximately \$159,696 (excluding GST).
39. A summary of the total fees and disbursements of the Receiver and McCarthy pertaining to the fees and costs relating to the Graybriar Funds (the “**Graybriar Professional Fees and Costs**”) is attached as Appendix C to this Report.

Approval of General Receivership Fees and Costs

40. The total general receivership fees and disbursements of A&M, in its capacity as the Court-appointed Receiver of the Company, in the period May 1, 2018 to June 30, 2019 are approximately \$18,445 (excluding GST). [**“Interim Taxation Period”**]
41. The total general fees and disbursements of McCarthy, in the interim taxation period are approximately \$24,231 (excluding GST).
42. A summary of the Receiver’s and McCarthy’s general receivership fees and costs (the “**General Receivership Fees and Costs**”) is attached as Appendix C to this Report.

Relief sought

43. The Receiver seeks approval of its and its legal counsels Graybriar Professional Fees and Costs and its General Professional Fees and Costs during the Interim Taxation Period along with its Forecast Graybriar Fees and Costs, pursuant to paragraph 17 and 18 of the Amended Receivership Order.
44. The fee accounts of the Receiver and McCarthy outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. All billings were calculated in accordance with A&M and MT’s standard rates. Copies of the invoices will be made available to the Court at its direction, if necessary.

45. The Receiver is respectfully of the view that its and its counsel's Graybriar Professional Fees and Costs and the General Receivership Professional Fees and Costs during the Interim Taxation Period are fair and reasonable for the following reasons:

- a) there have been a significant number of disputes involving stakeholders and the Receiver in this matter. The Receiver has previously brought three different applications in this matter and each of those applications was opposed and involved written briefs, cross-examination on affidavit evidence (when submitted) and half day or full day oral argument;
- b) the Receiver was successful in the entirety on the previously contested applications;
- c) absent these applications and the corresponding successful outcome, there would be no assets available for any creditors (be it the Graybriar Investors or other creditors); and
- d) the previous controlling mind of the Debtor opposed certain of the relief by the Receiver and has been non co-operative with the Receiver throughout the majority of Receivership proceedings.

46. The Receiver respectfully request the Court's approval of these accounts.

COST ALLOCATION

47. After concluding an investigation into the assets of the Debtor, the Receiver formed the view that the Graybriar Funds are held in trust by the Debtor for the benefit of the Graybriar Investors. As a consequence, and other than to satisfy claims on the Receiver's Charge and the Receiver's Borrowing Charge pursuant to the Order of Madam Justice B.E.C. Romaine made on June 4, 2018, the Graybriar Funds are not available for distribution to general creditors of the Debtor. The Graybriar Funds

are being administered and distributed through the Claims Process (including on the within application).

48. In addition to the Graybriar Funds, there are additional assets in the estate (comprised of the Court Funds and miscellaneous cash on hand at the time of appointment). The Receiver is of the view that these assets are not trust property for the benefit of any Persons and therefore are available for distribution to general creditors of the Debtor. The Receiver understands that certain creditors of the Debtor may dispute this view. Regardless of this dispute, these assets are also subject to the claims on the Receiver's Charge and the Receiver's Borrowing Charge pursuant to the Amended and Restated Receivership Order and the Order of Madam Justice B.E.C. Romaine made on June 4, 2018. These assets are being administered through the general receivership estate and the Receiver anticipates that any surplus amounts will be distributed by way of dividend in the Debtor's bankruptcy. These amounts are currently included as part of the general receivership statement of receipts and disbursements above. Persons who wish to assert a trust or other type of priority claim to these assets are able to do so in the receivership proceedings and prior to the dividend payment.
49. Because the Receiver is administering separate classes of assets that will be distributed for the benefit of separate classes of creditors, the Receiver has been careful to segregate professional fee charges and disbursements between the separate asset classes. Since May 2018, the Receiver and its legal counsel have separately recorded and charged their fees and disbursements to "Graybriar" (when performing work related to the Graybriar Funds) and to "General" (when performing work related to the general assets) so as to ensure that allocation of cost is fair and accurate.
50. The Debtor company also administered other syndicated mortgage investments. The Receiver understands these are also trust relationships pursuant to which the mortgage security (and any proceeds derived therefrom) is held by Arres in trust for the benefit of specific individual investors in that mortgage. In

the event that there are recoveries on these assets they will be trust assets for the benefit of those specific individual investors and not available to either: (a) the Graybriar Investors; or (b) general creditors. Because of this, the Receiver has been careful not to expend either: (a) the Graybriar Funds; or (b) general estate funds pursuing recovery on these assets. The Receiver has had discussions with certain of the individual investors in these syndicates and is prepared to pursue recovery on these additional assets if either: (a) the subject assets are determined to have value; or (b) appropriate funding arrangements are made that ensure that the cost of recovery is not borne by Persons who will not benefit from such recoveries. These discussions are continuing but, to date, the Receiver has not identified assets with realizable value or received a funding commitment hat would allow it to pursue recovery of such assets.

RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

51. The Receiver recommends that this Honorable Court:

- a) approve the actions and activities of the Receiver and its legal counsel as reported in the Third and Fourth Report of the Receiver;
- b) approve the Proposed Graybriar Investors Distribution;
- c) approve the Receiver's and its counsels Graybriar Professional Fees and Costs and Forecast Graybriar Professional Fees and Costs; and
- d) approve the Receiver's and its counsels General Professional Fees and Costs for the Interim Taxation Period;

All of which is respectfully submitted this 8th day of August 2019.

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver of Arres Capital Inc. and not in
its personal or corporate capacity**

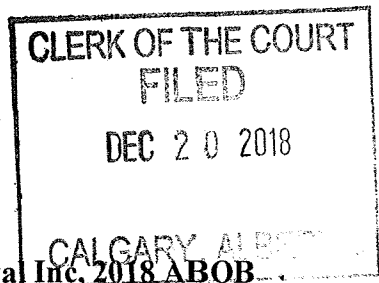
A handwritten signature in blue ink, appearing to be 'Orest Konowalchuk', with a stylized, flowing script.

Orest Konowalchuk, CPA, CA, CIRP, LIT
Senior Vice-President

A handwritten signature in blue ink, appearing to be 'Bryan Krol', with a stylized, flowing script.

Bryan Krol
Manager

Appendix A



Court of Queen's Bench of Alberta

Citation: Access Mortgage Corporation (2004) Limited v Arres Capital Inc. 2018 ABQB 1034

Date: 20181220
Docket: 1401 12431
Registry: Calgary

Between:

Access Mortgage Corporation (2004) Limited

Plaintiff

- and -

Arres Capital Inc

Defendant

**Reasons for Judgment
of the
Honourable Mr. Justice C.M. Jones**

I. Introduction

[1] This matter involves competing claims to funds under the administration of a court-appointed receiver.

[2] By order of this Court dated February 13, 2015, Alvarez & Marsal Canada Inc. was appointed receiver ("Receiver") of Arres Capital Inc. ("Arres"). Arres was assigned into bankruptcy on July 26, 2017 and the Receiver now acts as trustee of Arres' estate.

[3] The matter before me relates not to the whole of Arres' estate, but only to certain funds, referred to as the "Graybriar Funds". There are two separate and quite different claims to the Graybriar Funds. One of the Applicants, Terrapin Mortgage Investment Corp. ("Terrapin"), alleges an equitable mortgage over the Graybriar Funds. The other Applicants, Staci Serra, Wesley Serra and 875892 Alberta Limited ("875") are persons related to Arres. I will refer to them collectively as the "Serra Parties". Mr. Serra 100% of the shares in Arres Holdings Inc. which in turn owns 100% of the shares of Arres. Ms. Serra is Mr. Serra's spouse; she owns and controls 875. The Serra Parties claim entitlement to the Graybriar Funds as a result of assignments to one or more of them of amounts due to Arres (the "Alleged Assignments").

[4] I note that both Terrapin and the Serra Parties claim a priority interest in the Graybriar Funds. Thus, what is at issue before me is not so much their alleged entitlement to the Graybriar Funds as their alleged priority over other creditors.

II. Background

[5] As noted above, the claims of Terrapin and of the Serra Parties are quite different. While it will be necessary to analyze those claims separately and the specific facts relevant to the claims are different, both arise out of the same initial situation.

[6] Graybriar Land Company Limited and Graybriar Greens Inc. (collectively, "Graybriar") sought to finance a condominium development near Stony Plain, Alberta.

[7] As part of its business, Arres arranged mortgage loans with borrowers. It raised mortgage monies through a group of private investors. It would advance those funds on the security of mortgages and it then administered those mortgages as a trustee on behalf of the investors.

[8] In this case, Arres acted as trustee for 76 investors (the "Graybriar Investors") who collectively invested approximately \$9,000,000. Those monies, together with others for a total of \$9,700,00, were advanced to Graybriar and secured by a mortgage in favor of Arres (the "Graybriar Mortgage") registered against title to the Graybriar condominiums. Arres held the Graybriar Mortgage in trust for the Graybriar Investors pursuant to written agreements (the "Trust Agreements") that were the same for each investor, apart from the name of the investor and the dollar amount invested.

[9] Eventually, Graybriar defaulted on the Graybriar Mortgage and Arres took foreclosure action on behalf of the Graybriar Investors in respect of seven condominium units (the "Graybriar Units").

[10] As part of foreclosure proceedings, Arres attempted to acquire the Graybriar Units, intending to keep three of them and to effect a transfer of the other four (the "179 Units") to 1798582 Alberta Ltd. ("179"). Prior to its being struck in 2017, Ms. Serra was a director of 179 and her corporation, 875, held 100% of its voting shares. Apparently without notice to the Graybriar Investors, Arres sought an order approving its offer to purchase the Graybriar Units (the "Sale Order"). The Sale Order relieved Arres of the need to pay the purchase price for the Graybriar Units into Court. Instead, it was allowed to set off the purchase price against the amount outstanding under the Graybriar Mortgage.

[11] Terrapin agreed to finance the acquisition of the 179 Units and advanced funds in the amount of \$426,000 (the "179 Loan") to counsel for 179 on February 13 or 14, 2014. On or about February 14, 2014, counsel for 179 submitted documents, including the Sale Order, to the Land Titles Office, seeking to discharge the Graybriar Mortgage, transfer title to the 179 Units to 179, register a mortgage in favour of Terrapin (the "Terrapin Mortgage") for the 179 Loan and transfer to Arres clear title to the three remaining Graybriar Units.

[12] The Registrar of Land Titles rejected the documents submitted by counsel for 179. Apparently, the Registrar required the correspondence directing registrations to be authored by Arres' counsel and on Arres' counsel's letterhead.

[13] Meanwhile, Terrapin advanced the 179 Loan to counsel for 179 on trust conditions. Those monies were dispersed to various parties, but were not used to pay out the Graybriar Mortgage.

[14] On February 14, 2014, before the documents submitted to the Land Titles Office could be rectified permitting the Sale Order to be acted upon, some of the Graybriar Investors (the "Richcrooks Investors") obtained an *ex parte* order from this Court suspending foreclosure proceedings in respect of the Graybriar Units (the "Stay Order").

[15] The Richcrooks Investors took the position that Arres had lost the right to represent them in the Graybriar foreclosure action and should not have obtained the Sale Order without first advising them. The Richcrooks Investors asserted in their factum that:

As a result of the bankruptcy proceedings commenced against Arres, legal counsel for the [Richcrooks Investors] wrote to Arres and its lawyers on October 31, 2013. This letter purported to terminate Arres as trustee in respect of the Mortgage and demanded the Graybriar Investors represented "receive from the Trustee a transfer of title to the Investor of the Investor's Proportionate Interest in the Mortgage...

[16] As a result of the Stay Order, the 179 Units were not transferred to 179 and, notwithstanding the advance of the 179 Loan, the Terrapin Mortgage was not registered against title to the 179 Units. Title to the 179 Units remained in the name of Graybriar Land Company Ltd. with the Graybriar Mortgage registered against title until a judicial sale was effected as noted *infra*.

[17] The Stay Order came back before this Court on September 15, 2014. Strekaf J, as she then was, declined the Richcrooks Investors' application for an indefinite stay of the Sale Order. She directed them to appeal the Sale Order and to provide an undertaking as to damages satisfactory to the Court.

[18] The Richcrooks Investors failed to provide the directed undertaking and on December 17, 2014, Strekaf J vacated the Stay Order.

[19] On December 9, 2015, the Court of Appeal allowed the Richcrooks Investors' appeal and directed, *inter alia*, that the sale proceeds of the Graybriar Units be paid into Court and that this Court determine who had the right to those sale proceeds. The Court of Appeal encouraged the parties "to proceed to resolve their outstanding litigation with dispatch".

[20] The Richcrooks Investors have taken no further steps in respect of the Sale Order or the Stay Order.

[21] Pursuant to an order of Romaine J dated June 4, 2018, the Graybriar Units have been sold, resulting in the Graybriar Funds, which are being held by the Receiver.

[22] Terrapin argues that the Richcrooks Investors have taken no steps to assert a claim to the Graybriar Funds. Terrapin would have this Court declare that the Richcrooks Investors' appeal has been effectively abandoned and that the Sale Order should be considered substantively valid.

III. Issues

[23] As noted above, both Terrapin and the Serra Parties claim priority entitlement to the Graybriar Funds. The issue before me is whether either of them has priority over Arres' other creditors.

IV. Analysis

A. Terrapin

[24] Terrapin argues that "if everything had gone properly" it would have a legal mortgage over the Graybriar Funds. Terrapin argues that the Sale Order would have been registered had the Richcrooks Investors not intervened and that their intervention did not alter the substantive elements of the Sale Order. Terrapin would have this Court give effect to the Sale Order, despite it never having been registered at the Land Titles Office, because the Richcrooks Investors have abandoned whatever basis they may have had for intervening and obtaining a stay.

[25] Counsel for the Richcrooks Investors advised that, at the time his clients obtained the Stay Order, there was an extant claim against Arres alleging breach of trust under the Trust Agreements and asserting a debt owing to the Richcrooks Investors. They took the position that the proceeds of sale of the Graybriar Units were trust moneys under the Trust Agreements. Counsel advised that the Richcrooks Investors did not consider it necessary to take further steps to recover these moneys because they intended to pursue them as part of the receivership of Arres that could be foreseen at the time.

[26] The Receiver's counsel pointed out that I am not required to resolve priorities as between Terrapin and the Richcrooks Investors. He noted that Arres' bankruptcy effective July 26, 2017 gave rise to a stay under s. 69 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. The effect of that stay was to freeze any actions by the Richcrooks Investors in respect of amounts allegedly belonging to them under the Trust Agreements.

[27] He clarified that priority as between Terrapin and the Richcrooks Investors was a matter for the Arres claims process. By contrast, the equitable mortgage sought by Terrapin before me is a priority contest between Terrapin and Arres. That contest, the Receiver pointed out, was between Arres' claims under a registered first mortgage and Terrapin's claim to an equitable mortgage. Moneys established to form part of Arres' estate may then be subject to claims of others, like the Richcrooks Investors and Terrapin.

[28] As between Arres and Terrapin, the Receiver takes the position that Arres has the first claim to the funds. I note that the Graybriar Mortgage no longer exists. All that remains are sale proceeds from the Graybriar Units against which the Graybriar Mortgage was registered.

[29] The Receiver argues that Terrapin has to establish some basis for priority to the Graybriar Funds over the Graybriar Mortgage. In the words of counsel for the Receiver, the Arres' first mortgage trumps any other claims to the Graybriar Funds unless Terrapin can establish a priority.

[30] As noted above, the Terrapin Mortgage was never registered. Recognizing that it does not have a legal mortgage, Terrapin asserts an equitable mortgage over the Graybriar Funds. Terrapin argues that, but for the action of the Richcrooks Investors, the sale to 179 would have

been completed pursuant to the Sale Order, funds would have been received by 179 and the Terrapin Mortgage would have been registered against the 179 Units.

[31] Terrapin claims a priority interest in Arres' estate by virtue of its alleged equitable mortgage. I note, however, that Terrapin did not lend funds to Arres. It loaned funds to 179, which had intended to purchase the 179 Units. Terrapin is therefore a creditor of a creditor (179) of Arres.

[32] The Receiver points out that, unlike a legal mortgage, an equitable mortgage does not transfer the legal estate in the property securing the mortgage. Rather, it creates, in equity, a charge upon the property. The Receiver's position is that no equitable mortgage arises on these facts and, even if one did, the Graybriar Mortgage would take priority.

[33] The Receiver cites *Falconbridge on Mortgages*, 5th ed (Toronto: Thomson Reuters Canada, 2017), note 16 at 5-2, in support of its position that an equitable mortgage may arise in one of three circumstances:

- (a) The interest mortgaged is equitable or future, because in such a case, even if the mortgage complies with all formalities, it cannot be a legal mortgage;
- (b) The mortgagor has not executed an instrument sufficient to transfer the legal estate. In this case, it is the informality of the mortgage that prevents it from being a legal mortgage. This category also includes a written agreement to execute a legal mortgage, that is, a promise to grant a legal mortgage which is itself not a grant of a legal mortgage; or
- (c) There has been a deposit of title deeds.

[34] The second and third grounds have no application here. There was no defect in the mortgage documentation that prevented 179 from granting a legal mortgage to Terrapin. Indeed, the executed agreement between 179 and Terrapin was a legal mortgage document, not merely an agreement to execute a mortgage. Further, no title deeds were deposited with Terrapin.

[35] With respect to the first ground, 179 never acquired title to the 179 Units and thus did not have the right to grant Terrapin a mortgage over them. It therefore failed to comply with two covenants under its agreement with Terrapin. The Receiver argues this situation is analogous to that in *Re Elias Markets Ltd* (2006), 274 DLR (4th) 166 at paras 75-77 where the Ontario Court of Appeal determined that failure to satisfy conditions precedent set out in a mortgage document precluded a finding that an equitable mortgage had been granted.

[36] The Receiver also argues that Terrapin cannot assert a mortgage of an equitable or future interest. While the Receiver acknowledges that a valid contract for the sale of land may give the purchaser and equitable interest, it states that 179 never paid the purchase price for the 179 Units and therefore never became the equitable owner of them. Consequently, 179 had no interest in the 179 Units, whether legal or equitable, that could support a mortgage to Terrapin.

[37] Moreover, the Receiver argues that even if Terrapin could establish an equitable mortgage, it would rank lower in priority than the Graybriar Mortgage.

[38] The Graybriar Mortgage is dated 2006 and 2007, before Terrapin entered into the 179 Loan. It was registered against title to the Graybriar Units under the *Land Titles Act*, RSA 2000, c L-4 ("*LTA*"). Section 14 of the *LTA* provides that the serial number attached to each instrument

or caveat in the Registrar's daily record determines the priority of the instrument or caveat filed or registered.

[39] The Receiver argues that even an earlier equitable mortgage is subordinated to a later legal mortgage. It points to s. 203(2) of the *LTA*, which provides that a person who takes a mortgage from an owner is not, except in the case of fraud by that person:

- (a) bound or concerned, for the purposes of obtaining priority over a trust or other interest that is not registered by instrument or caveat, to inquire into or ascertain the circumstances in or the consideration for which the owner or any previous owner of the interest acquired the interest or to see to the application of the purchase money or any part of the money; or
- (b) affected by any notice, direct, implied or constructive, of any trust or other interest in the land that is not registered by instrument or caveat, any rule of law or equity to the contrary notwithstanding.

[40] The Receiver argues that its position is affirmed by both *Falconbridge* and *Re Elias Markets*. *Falconbridge* states in note 16 at 7-4:

... between a first equitable mortgage and a second legal mortgage, the second mortgage has priority if the mortgagee has acquired the legal estate in good faith for value and without notice.

[41] The Ontario Court of Appeal stated in *Re Elias Markets* at para 69:

As between a first legal mortgage and a second equitable mortgage, the first mortgage has priority, unless the second mortgagee, being a mortgagee in good faith for value and without notice, has been misled by the fraud or negligence of the first mortgagee in connection with the taking of the first mortgage or the subsequent fraud (as distinguished from mere negligence) of the first mortgagee, or unless the first mortgagee is estopped from claiming priority.

[42] Terrapin responds by reiterating its earlier observation that the Sale Order was never appealed and that the Richcrooks Investors never took the additional steps directed by the Court. Through a somewhat unusual series of events, Terrapin advanced moneys that were never used to acquire an interest in real property, with the result that the presumptive mortgagor did not have the requisite interest to grant the mortgage. What ultimately happened to those funds is unclear, but they do not appear to be capable of being traced or followed into the Graybriar Funds. Terrapin argues that its legitimate interests should not be frustrated on these facts.

[43] I agree with the Receiver. While I am not without sympathy for Terrapin, it cannot satisfy the requirements for an equitable mortgage, given 179's lack of interest in the Graybriar Units. Further, even if an equitable mortgage could be established, it is clear that it would rank behind the Graybriar Mortgage. Accordingly, Terrapin's request for a declaration that the Graybriar Funds are held for it pursuant to an equitable mortgage is dismissed.

B. The Serra Parties

[44] Arres seeks an Order declaring the Alleged Assignments from Arres to the Serra Parties valid and enforceable. The Receiver opposes that application. The Alleged Assignments pertain

to a number of expenses, charges and debts arising under different agreements and circumstances.

[45] Under the terms of the Trust Agreements, Arres was permitted to “set off, deduct and withhold” certain administrative costs, fees and expenses associated with its management of the Graybriar Mortgage prior to distributing remaining funds to the Graybriar Investors.

[46] On November 11, 2008, the Graybriar Mortgage was renewed for one year. Arres claims that the Graybriar Investors signed renewal letters evidencing their approval of this renewal. A renewal agreement (the “Renewal Agreement”) set out the terms and conditions of this renewal. Pursuant to the terms of the Renewal Agreement and a commitment letter that was attached to and formed part of each of the Trust Agreements (the “Commitment Letter”) Arres purported to charge a renewal fee not to exceed 2% of the principal balance owing on the Graybriar Mortgage at the time of renewal. Arres also purported to charge an interest rate spread as further compensation for administering and servicing the Graybriar Mortgage.

[47] When Graybriar encountered financial difficulty, two “priority mortgages” were approved by the Graybriar Investors. These priority mortgages, which ranked ahead of the Graybriar Mortgage, totalled approximately \$1,235,162.38 by July 2010. The priority mortgages were contributed to by “co-lenders” who entered into loan administration agreements with Arres (the “Co-Lender Administration Agreements”). Arres claims that the Co-Lender Administration Agreements, like the Trust Agreements, allowed it to set off and deduct certain administrative costs, fees and expenses associated with its management of the priority mortgages prior to distributing any and all proceeds thereof to the co-lenders.

[48] Arres argues that both the Trust Agreements and the Co-Lender Administration Agreements allowed Arres to assign rights accruing to it under those agreements. Arres and the Serra Parties assert that fees payable to Arres under the Trust Agreements and Co-Lender Agreements were assigned to Ms. Serra and to 875.

[49] Further, Arres points to a document dated December 5, 2009 under which it argues it was to advance \$287,360 towards new home warranties (the “New Home Warranty Agreement”). Arres claims that, in order to fulfill this obligation, it borrowed these monies from Mr. Serra and from 1499760 Alberta Ltd. (“149”), a company controlled by Mr. Serra. Arres claims that pursuant to the New Home Warranty Agreement, 149 and Mr. Serra were to earn fees from ongoing monitoring costs.

[50] The Serra Parties claim priority over the Graybriar Funds stemming from these assignments.

[51] The Receiver challenges the Serra Parties’ claim on three grounds. First, it asserts that if the Alleged Assignments actually took place and did so for consideration, they were subject to the *Personal Property Security Act*, RSA 2000, c P-7 (“PPSA”). As the Alleged Assignments were not registered in the Personal Property Registry (“PPR”), the Receiver argues that they are unperfected security interests that do not take priority over other creditors. Second, the Receiver asserts that there is insufficient evidence that the Serra Parties gave sufficient (or any) consideration for the Alleged Assignments. Third, the Receiver argues that because Arres was prohibited from assigning any interest in the Trust Agreements, the Alleged Assignments were invalid.

1. Application of the PPSA

[52] As between a debtor and a creditor, registration of a debt under the *PPSA* is not necessary. The parties' rights and obligations are governed by their agreement. A creditor registers its interest at the PPR to protect the priority of its claims against third parties. Registration serves as notice to third parties of the creditor's security interest and helps to elevate a creditor's claim above that of unsecured creditors.

[53] This priority survives a debtor's bankruptcy. Section 136 of *BIA* provides that secured creditors have first priority to a distribution by the trustee.

[54] Generally, priority among secured creditors is determined by the order in which they have "perfected" their interests. An interest is perfected when a security agreement has been executed, the debtor has possession of the subject property and the security interest has been registered. Accordingly, the first creditor to have registered at the PPR generally will be entitled to claim priority.

[55] It is undisputed that the Alleged Assignments were not registered at the PPR.

[56] The Receiver argues that the Alleged Assignments are subject to section 3 of the *PPSA*, which provides that:

3(1) Subject to section 4, this Act applies to

- (a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and
- (b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation.

(2) Subject to sections 4 and 55, this Act applies to

- (c) a transfer of an account or chattel paper...

that does not secure payment of an account or performance of an obligation.

[57] The Receiver asserts that an assignment of receivables to secure payment or performance of an obligation is a "security interest". It points to s. 1(1)(tt) of the *PPSA*, which provides that:

(tt) "security interest" means

- (i) an interest in goods, chattel paper, investment property, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, other than the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of the agent of the seller unless the parties have otherwise evidenced an intention to create or provide for investment property interest in the goods...

[58] The Receiver argues that ss. 3(1) and 3(2) of the *PPSA* contemplate a very broad range of financing transactions and non-financing transactions, respectively. The Serra Parties do not argue that the Alleged Assignments do not fall within those sections. Rather, they rely on an exception to the need for registration, as discussed *infra*.

[59] I find that the Alleged Assignments, assuming they were valid, would constitute a security interest as they originate in documents that purport to secure payment or performance of an obligation. At the very least, I accept that, if the Alleged Assignments are valid, they fall within section 3(2). Whatever else they may be, they appear to reflect the transfer of an account.

[60] Therefore, the Serra Parties will be unsecured creditors unless some exception applies to obviate the necessity of registering the Alleged Assignments at the PPR.

[61] The Serra Parties rely upon the exception in s. 4(d) of the *PPSA*, which provides, *inter alia*, that:

4 Except as otherwise provided under this Act, this Act does not apply to the following:

...

(d) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services.

[62] The Serra Parties argue that the Alleged Assignments fall within this exception because they amount to the creation or transfer of an interest in present or future compensation for services other than fees for professional services. They argue that Arres, as a mortgage broker, was compensated by setting off and deducting certain administrative costs, fees and expenses associated with its management of the Graybriar Mortgage, prior to distributing any remaining proceeds to Graybriar Investors. They assert that compensation thus earned by Arres should not be viewed as fees paid for professional services.

[63] The Serra Parties point to the decision of this Court in *Re Lloyd*, [1995] 164 AR 59. There, the Master held that the *PPSA* does not apply to fees earned by a real estate agent. He found that professional services did not include those of a real estate salesperson and, thus, fees paid to that person were not fees paid for professional services.

[64] The Serra Parties argue that the same analysis should apply to mortgage brokers such as Arres. They point out that both real estate agents and mortgage brokers are governed by the *Real Estate Act*, RSA 2000, c R-5 ("*REA*"). Section 1(1)(r) of the *REA* provides, in part, that:

"mortgage broker" means a person who on behalf of another person for consideration **or other compensation**

- (A) solicits a person to borrow or lend money to be secured by a mortgage,
- (B) negotiates a mortgage transaction,
- (C) collects mortgage payments and otherwise administers mortgages, or
- (D) buys, sells or exchanges mortgages or offers to do so... [Emphasis added.]

[65] Thus, they argue, like a real estate agent who is not considered a professional and whose compensation is not subject to *PPSA* registration for purposes of establishing priorities among claimants in the event of an assignment, Arres should be able to avail itself of the exception in section 4(d) of the *PPSA*.

[66] In response, the Receiver notes that s. 4 of the *PPSA* provides narrow exceptions to transactions that otherwise would fall within its ambit and require registration to perfect a priority. The Receiver argues that the term “compensation” must be construed with reference to the words “wages, salary, pay, [and] commission”. Section 4(d), the Receiver argues, addresses a narrow category of assignments of wages or analogous modes of payment for labour or personal services that are not otherwise prohibited under s. 53 of the *Consumer Protection Act*, RSA 2000, c C-26.3. That Act prohibits most assignments of wages or similar receivables for labour or personal services. For those few assignments of wages that are permitted, s. 4(d) of the *PPSA* reflects the impracticality of requiring such assignments to be registered.

[67] The Receiver argues that Arres acted as an intermediary in mortgage transactions and did not provide labour or personal services. Its view is that amounts owing to Arres do not fall within the exception in s. 4(d) because they cannot be said to be “wages, salary, pay, commission or any other compensation for labour or personal services”. Rather, they relate to reimbursement of expenses incurred by Arres in the course of administering the Trust Agreements. The Receiver states that s. 4(d) was not intended to exclude the *PPSA*’s application to the assignment of such receivables. Any reference to these amounts not being for “professional services” is therefore irrelevant.

[68] The Receiver takes the position that the policy objectives of the *PPSA* would be undermined if assignments of fees computed with reference to the value of a transaction or of reimbursement for expenses were excluded by virtue of s. 4(d).

[69] I agree with the Receiver. While the amounts Arres was permitted to set off under the relevant agreements may have constituted its compensation, they were not akin to the payment of wages. The facts in *Re Lloyd* are not analogous to those before me and the reasoning in that case does not apply. Therefore, s. 4(d) of the *PPSA* does not exempt the Alleged Assignments from registration and the lack of registration means that the Alleged Assignments do not have priority over the claims of Arres’ other creditors.

2. Valuable Consideration for the Alleged Assignments

[70] While non-compliance with the registration requirements of the *PPSA* negates any priority for the Alleged Assignments, I will also consider the Receiver’s second basis for challenging Arres’ claims.

[71] The Serra Parties argue that the Alleged Assignments comprise a number of assignments for which they have given valuable consideration. In Arres’ Brief, the Serra Parties set out several assignments they claim Arres made and the consideration given for them. Though the facts alleged are somewhat confusing, I will attempt to set out the Alleged Assignments in chronological order.

[72] Arres alleges that on November 20, 2007, it agreed to purchase \$200,000 of shares in a company called Grand Lion Entertainment Group (the “Grand Lion Shares”). It asserts that it paid \$50,000 towards those shares and that 875 assumed the remainder of that obligation by

“providing an additional \$150,000”. Arres claims that 875 received the Grand Lion Shares and agreed to transfer them to Arres, provided Arres transferred a mortgage receivable or new investment of not less than \$250,000 to 875 (the “Grand Lion Assignment”). The Serra Parties assert that the additional amount (\$250,000 - \$200,000 = \$50,000) was to compensate 875 for its foregone mortgage interest and the risk of holding the Grand Lion Shares in lieu of mortgages.

[73] Arres asserts that on or about June 25, 2008, 875 borrowed \$1,524,750 from Access Mortgage. Arres claims that the net proceeds from this loan in the amount of \$1,017,487.29 were “given to Arres” and that this money was used to satisfy some of its obligations to Graybriar Investors under the Trust Agreements. In exchange, Arres executed an assignment in favour of 875 (the “June Assignment”) of various accounts receivable from a number of projects, including the Trust Agreement fees.

[74] The Serra Parties assert that on September 1, 2008, Arres agreed to transfer a portion of the loan renewal fee owed to it pursuant to the Renewal Agreement, in the amount of \$230,000, in partial satisfaction of its obligations under the Grand Lion Assignment.

[75] The Serra Parties claim that on January 31, 2009, Arres assigned any and all accounts receivable under the Trust Agreements to Ms. Serra (the “January Assignment”). They state that the consideration Arres received for the January Assignment was bonuses deemed to have been advanced to Mr. Serra and Ms. Serra on January 31, 2009 in the amount of \$2,200,000 and a further \$8,000 cash payment made by Mr. Serra. Arres points to a QuickBooks entry as evidence of these deemed bonuses and the \$8,000 payment from Mr. Serra.

[76] The Serra Parties assert that on or about July 10, 2010, Mr. Serra and Ms. Serra “allotted” to Arres \$105,000 from the proceeds of a separate project, Houseco. They claim this amount was paid to Arres by cheque “in further consideration towards the June Assignment and the January Assignment”.

[77] Arres claims that it made an assignment to Ms. Serra on September 30, 2010 (the “September Assignment”) in exchange for a cheque received from her for \$97,500. The Serra Parties claim that the September Assignment included an assignment by Arres to Ms. Serra of any and all accounts receivable from the Trust Agreement Fees.

[78] As additional consideration for the June and January Assignments, the Serra Parties claim that Ms. Serra paid an additional \$167,234.47 to Arres through a series of cheques. In its brief, Arres refers to this payment as an assignment dated March 23, 2012 (the “March Assignment”).

[79] The Serra Parties also claim that Ms. Serra paid an additional \$177,053 to Arres by cheque on October 11, 2012. In its brief, Arres refers to this as the “October Assignment” and claims this amount was paid as additional consideration for the June and January Assignments.

[80] The Serra Parties also point to a QuickBooks entry from Arres dated September 30, 2013 that purports to show a further \$243,568.20 paid by Ms. Serra towards the June and January Assignments.

[81] In his Affidavit sworn July 17, 2018, Mr. Serra claims that a total of \$2,079,747.03 represents accounts receivable assigned from Arres allegedly “from the Graybriar Mortgage.” In addition, Mr. Serra deposes that Ms. Serra advanced \$2,537,000 to Arres.

[82] The Receiver argues that the evidence of the Serra Parties does not establish that they gave sufficient, or any, consideration for which the Alleged Assignments validly could have been made.

[83] At paragraph 15 of its Third Report dated August 17, 2018, the Receiver notes as follows:

The Receiver has reviewed the amount of \$2,537,000 identified as being advanced by or otherwise owing by the [Serra] Parties to the Debtor at paragraph 37 of the Affidavit of Mr. Serra. The Receiver has confirmed that the sum of \$97,500 was advanced by Ms. Serra to the Debtor on or about September 30, 2010 as discussed in the Second Report. Other than this amount, the Receiver has been unable to substantiate any of the other amounts reportedly advanced by the [Serra Parties] to the Debtor based on its review of Arres' financial records (ie. Balance Sheet and financial statements). In addition, the Receiver has been unable to identify the recording of the respective \$2.35 M liability of the Debtor to any of the [Serra] Parties in Arres' accounting records.

[84] At para 16 of its Third Report, the Receiver makes the following observation in respect of each of the four accounts receivable alleged to comprise the \$2,079,747 claimed by Mr. Serra:

The Receiver has not been able to identify the recording of this amount as an account receivable in Arres' financial records.

[85] In addition to this overview, the Receiver also addresses the Alleged Assignments more specifically. With respect to the Grand Lion Assignment, the Receiver states in its brief that "no document has been entered into evidence" establishing that Arres actually received the Grand Lion shares.

[86] With respect to the alleged advance of \$1,017,487 by 875 to Arres from funds borrowed by 875 from Access Mortgage, the Receiver again states that "no document has been entered into evidence" establishing that 875 borrowed these funds from Access Mortgage or that Arres received any of them.

[87] 875 alleges that it contributed a further \$300,000 "towards the June Assignment" by agreeing to sell its interest in a "Bankview Mortgage" and transferring the funds to Arres. The Receiver states that the only documentation related to this alleged contribution is a deposit slip showing an amount received from Access Mortgage that has no evident connection to 875.

[88] With respect to the management bonuses of \$2.2 million allegedly deemed to have been advanced to Mr. Serra and Ms. Serra and to have been satisfied, in part, by the Alleged Assignments, the Receiver argues that management bonuses of this magnitude are not sufficiently supported by Arres' accounting records. It argues that there is no journal entry that reflects elimination of Mr. Serra's and Ms. Serra's rights to be paid \$2.2 million by way of receipt of the Alleged Assignments. The Receiver further argues that no evidence has been adduced to show that these alleged management bonuses were ever reported in Mr. Serra's or Ms. Serra's tax returns. The Receiver suggests that they may have been simply reversed in whole or in part by a subsequent journal entry.

[89] With respect to Mr. Serra's' alleged payment of \$8,000 to Arres, the Receiver argues that accounting records suggest that this amount was actually a repayment by Mr. Serra of a shareholder's loan made to him by Arres. That accounting record is a debit entry to a bank

account which is identified as “SH Loan/Management Wages”. This record, the Receiver argues, shows no connection to Mr. Serra or the Alleged Assignments and is not evidence that Mr. Serra paid consideration for the Alleged Assignments.

[90] With respect to Mr. Serra’s and Ms. Serra’s alleged allotment to Arres of \$105,000 from the proceeds of the Houseco project, the Receiver notes that this transaction is supported only by a notice of assignment signed by Mr. Serra and Ms. Serra. The Receiver contends in its brief that it cannot be determined if this notice was signed on behalf of Mr. Serra and Ms. Serra, 875 or Arres. It elaborated somewhat in oral argument, saying that there was no evidence of the \$105,000 having been received by Arres.

[91] As noted above, Ms. Serra is alleged to have paid \$167,234.47 and \$177,053 to Arres as consideration for the March and October Assignments. The Receiver notes that copies of cheques attached to Mr. Serra’s Affidavit sworn on July 17, 2018 offered as evidence of consideration for the Alleged Assignments were drawn on Arres’ bank account, not Ms. Serra’s bank account.

[92] With respect to the sum of \$243,568.20 allegedly paid by Ms. Serra to Arres in or around September 2013, the Receiver notes that this transaction is supported only by a line item in a listing of Arres’ bank transactions that does not show any connection between Ms. Serra and the deposit in question.

[93] The Receiver does acknowledge that payment of \$97,500 is reflected in a cheque to Arres by Mr. Serra and Ms. Serra in or around September 2010. Still, it argues, it is impossible to verify whether this payment represents consideration for the Alleged Assignments. Further, there is no record on the Arres balance sheet dated July 31, 2014 showing amounts owing to the Serra Parties. Accordingly, the Receiver asserts that the Serra Parties have not proven that this amount is currently owing. Moreover, the Receiver’s position is that, even if this amount is proved owing, it does not take priority over Arres’ other debts because of the lack of *PPSA* registration.

[94] I accept the Receiver’s position. The evidence does not satisfy me that the Serra Parties provided consideration for the Alleged Assignments. Therefore, the Serra Parties have not proven that they are creditors of Arres in respect of the Alleged Assignments.

3. Validity of Alleged Assignments

[95] The Receiver argues that Arres could not validly have assigned its receivables because doing so would have been a breach of trust under the Trust Agreements. The Receiver notes that section 13.8 of each of the Trust Agreements requires a Graybriar Investor’s consent before an assignment can be made. It argues that there is no evidence of any prior or subsequent written consent to the Alleged Assignments.

[96] The Receiver further argues that it would be improper to allow Mr. Serra, as one of the Serra Parties, to benefit, directly or by virtue of his “connection” with Ms. Serra and 875, from a breach of trust when he was a principal, and essentially the mind and management of, Arres.

[97] The Serra Parties assert that the Graybriar Investors were given written notice of the Alleged Assignments in 2009 and acquiesced to them. It points out that clause 11.1(c) of the Trust Agreements provides that Arres’ trusteeship may be terminated by the Graybriar Investors if Arres purports to assign its rights without their prior written consent. The Receiver disputes the assertion that the Graybriar Investors acquiesced in any breach of trust by Arres. While it

acknowledges that the Trust Agreements allow the Graybriar Investors to terminate the trustee if they so choose, the Receiver argues that failing to exercise that right does not rise to the level of acquiescence to a breach of trust.

[98] Arres also argues that amounts it was allowed to set off and deduct from funds otherwise distributable to a Graybriar Investor never formed part of the property administered under the Trust Agreement. The Receiver disagrees and argues that the Alleged Assignments did not operate to remove these monies from what would otherwise have been trust property.

[99] I have reviewed an example of the Co-Lender Administration Agreements and I am unable to find any express power for either party to its assign rights thereunder. Further, I agree with the Receiver that clause 13.8 of the Trust Agreements permitted assignment of a party's rights only with the prior written consent of the other party. I am not satisfied that the prior consent of the Graybriar Investors was obtained.

[100] In addition, I reject Arres' argument that the amounts subject to the Alleged Assignments were not trust property. If an amount may be set off against otherwise distributable trust property, it follows that until that set off occurs the amount should be characterized as trust property. I note that the Trust Agreements do not provide that amounts to be set off or deducted by Arres are not part of the trust property.

[101] Accordingly, I agree that the Alleged Assignments, if they in fact arose, gave rise to a breach of the Trust Agreements.

[102] This raises the question of the effect of that breach of trust. The Receiver asserts that the Alleged Assignments were void *ab initio* because they were contrary to the terms of the Trust Agreements, but cites no authority for that proposition. In argument, I posed the question whether an assignment made in breach of trust might nevertheless be valid and enforceable by the assignee, but give the beneficiary an *in personam* action against the trustee for breach of trust or, in some circumstances, an *in rem* right to trace and recover the trust property. I note that *Waters' Law of Trusts in Canada*, 3d ed (Thomson Carswell: Toronto, 2005) states this at p13:

Moreover, though the trust beneficiary who has only an equitable interest is unable to bring an action in conversion against the trustee or third party unless the beneficiary has a right to immediate possession of the trust property, the beneficiary does have a right to follow the property into the hands of third parties. First, he will sue the trustee personally for breach of trust, and if the trustee is unable to meet his claim he can proceed to trace the property, supposing it continues to be identifiable, and recover it from third parties. It is this right to trace which leads to the oft-made statement that the trust beneficiary's interest cannot be merely *in personam*, it must at least be partly *in rem*. What these obscure and confusing latinisms mean is that, since the beneficiary in protecting or asserting his equitable interest is not restricted to a personal action against the trustee, but may bypass the breaching trustee and sue the third party, he is asserting an interest of some kind in the trust property itself.

[103] Though this argument was not well developed by any of the parties, this seems to me to indicate that a transaction undertaken in breach of trust is not void *ab initio*. Rather, the aggrieved beneficiary is entitled to a remedy, which may be *in personam* or *in rem*, depending

upon the circumstances. However, given the lack of argument and my other conclusions, I need not decide this.


[104] I am satisfied that, to the extent the Alleged Assignments may have been made, registration under the *PPSA* would have been required to grant them priority over Arres' other creditors. Further, the evidence does not satisfy me that consideration was given for the Alleged Assignments and they should not, therefore, be recognized as valid.

V. Conclusion

[105] In the result, the applications of both Terrapin and the Serra Parties are dismissed. The parties may speak to costs.

Heard on the 21st day of September, 2018.

Dated at the City of Calgary, Alberta this 20th day of December, 2018.



C.M. Jones
J.C.Q.B.A.

Appearances:

Kerry Lynn Okita
For Terripan Mortgage Investment Corp

Walker W. MacLeod and Theodore Stathakos
for the Reciever

Judy Burke, Q.C. and Irfan Tharani
for Arres Capital Inc

Taimur R. Akbar
for Graybrair Land Company Limited

Appendix B

Arres Capital Inc. - In Receivership Graybriar Claims Process Distribution Analysis - No Sugimoto Priority	
TOTAL CLAIMS	\$ 21,062,771.55
Investors	TOTAL ACCEPTED CLAIM
1025571 Alberta Ltd.	\$ 58,750.00
515476 Alberta Ltd.	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Carpenter, Pao-Lien	\$ 235,000.00
CME Holdings Ltd.	\$ -
CUMIS Inc. (c/o Stan Smith)	\$ -
Carpenter, Fred	\$ -
Carson, Delores	\$ -
Carson, Bruce	\$ -
Curlew Finance	\$ -
Demel Financial Corp.	\$ -
Drefs, Gary	\$ -
Foy, Barb	\$ 117,500.00
Felzel Management, Inc.	\$ 893,000.00
Garden Valley Construction Ltd.	\$ -
Graham Pye Management Ltd.	\$ 117,500.00
Gaur, Satish	\$ 741,000.00
Greenmar Holdings Inc.	\$ -
Hornby, Robin	\$ 23,500.00
Hudson Principle Investment Ltd.	\$ -
Jalali, Ali	\$ 470,000.00
Krishnamoorthy, Leela	\$ -
Kurtz, Michael	\$ -
Liwanag, Mike	\$ 35,250.00
Leroy, Connie	\$ -
McKenna Investments	\$ -
McRitchie, Marguerite	\$ -
Middleton Energy Management Ltd.	\$ 552,250.00
Ogg, Steven	\$ -
Pedersen, Kevin R.	\$ -
Pimlico Capital Corporation Inc.	\$ 470,000.00
Rajakaruna, Gaston	\$ -
Rajpal (Gaur), Priti	\$ -
Sicherman, Harold	\$ -
Schulman, Mayer	\$ 129,250.00
Siemens, Leslie	\$ 58,750.00
Siemens, Annette & Shane	\$ 152,750.00
Scott, Carey	\$ 329,000.00
Sewers, Greg & Cindy	\$ 70,500.00
Sugimoto & Company	\$ 15,081,771.55
Schulman Family Trust	\$ 70,500.00
Sharma, Mona Preeti	\$ 282,000.00
Thompson, Nick	\$ 235,000.00
Thompson, Gwen & Dave	\$ 235,000.00
Thakur, Mona	\$ 235,000.00
Universal Rebar Detailing Ltd.	\$ 187,500.00
Veiner, Doran	\$ 235,000.00
Yee, Jeffrey	\$ 47,000.00
Zivea Ltd.	\$ -
TOTAL	\$ 21,062,771.55

Appendix C

Arres Capital Inc. - In Receivership**APPENDIX C**

Summary of Receiver's Fees and Disbursements

October 23, 2017 to June 30, 2019

Invoices subject to interim taxation by this Court

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
<u>Graybriar Specific Invoices</u>						
812583C- Invoice #2	May 1, 2018 to July 31, 2018	\$ 44,010.00	\$ 822.28	\$ 44,832.28	\$ 2,241.61	\$ 47,073.89
812583C- Invoice #3	August 1, 2018 to September 30, 2018	21,470.00	-	21,470.00	1,073.50	22,543.50
812583C- Invoice #4	October 1, 2018 to December 31, 2018	8,767.50	-	8,767.50	438.38	9,205.88
812583C- Invoice #5	January 1, 2019 to June 30, 2019	60,845.00	-	60,845.00	3,042.25	63,887.25
		\$ 135,092.50	\$ 822.28	\$ 135,914.78	\$ 6,795.74	\$ 142,710.52
<u>General Receivership Invoices</u>						
812583B- Invoice #5	May 1, 2018 to December 31, 2018	\$ 6,685.00	\$ 156.00	\$ 6,841.00	\$ 342.05	\$ 7,183.05
812583B- Invoice #6	January 1, 2019 to June 30, 2019	10,720.00	884.74	11,604.74	580.24	12,184.98
		\$ 17,405.00	\$ 1,040.74	\$ 18,445.74	\$ 922.29	\$ 19,368.03
TOTAL		\$ 152,497.50	\$ 1,863.02	\$ 154,360.52	\$ 7,718.03	\$ 162,078.55

Invoices Previously Approved by this Court pursuant to an Order dated June 5, 2018

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
<u>General Receivership Invoices</u>						
812583- Invoice #1	July 24, 2017 to August 31, 2017	\$ 51,868.50	\$ 411.23	\$ 52,279.73	\$ 2,613.99	\$ 54,893.72
812583- Invoice #2	September 1, 2017 to September 30, 2017	52,121.50	415.44	52,536.94	2,626.85	55,163.79
812583- Invoice #3	October 1, 2017 to December 15, 2017	43,417.50	294.22	43,711.72	2,185.57	45,897.29
812583- Invoice #4	December 16, 2017 to March 31, 2018	22,575.00	1,260.91	23,835.91	1,191.80	25,027.71
812583C- Invoice #1	April 1, 2018 to April 30, 2018	4,325.00	-	4,325.00	216.25	4,541.25
TOTAL		\$ 174,307.50	\$ 2,381.80	\$ 176,689.30	\$ 8,834.45	\$ 185,523.75
TOTAL INVOICES		\$ 326,805.00	\$ 4,244.82	\$ 331,049.82	\$ 16,552.48	\$ 347,602.30

Arres Capital Inc. - In Receivership**APPENDIX C**

Summary of Receiver's Counsel (McCarthy) Fees and Disbursements
October 23, 2017 to June 30, 2019

Invoices subject to interim taxation by this Court

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
<u>Graybriar Specific Invoices</u>						
Graybriar 1	May 31, 2018	\$ 16,712.66	\$ 34.20	\$ 16,746.86	\$ 837.34	\$ 17,584.20
Graybriar 1a	May 31, 2018	52,015.50	109.80	52,125.30	2,606.27	54,731.57
Graybriar 2	June 30, 2018	1,807.50	-	1,807.50	90.38	1,897.88
Graybriar 2a	June 30, 2018	2,125.50	-	2,125.50	106.28	2,231.78
Graybriar 3	July 31, 2018	5,460.00	126.25	5,586.25	278.96	5,865.21
Graybriar 4	August 31, 2018	9,134.50	703.20	9,837.70	489.39	10,327.09
Graybriar 5	September 30, 2018	42,376.50	2,960.40	45,336.90	2,266.85	47,603.75
Graybriar 6	October 31, 2018	5,172.50	309.29	5,481.79	274.10	5,755.89
Graybriar 7	November 30 - December 31, 2018	793.00	177.20	970.20	48.01	1,018.21
Graybriar 8	January 31, 2019	4,948.50	-	4,948.50	247.43	5,195.93
Graybriar 9	February 28, 2019	2,128.50	20.00	2,148.50	107.43	2,255.93
Graybriar 10	March 31, 2019	1,354.50	-	1,354.50	67.73	1,422.23
Graybriar 11	April 1 - May 31, 2019	3,160.50	20.00	3,180.50	159.03	3,339.53
Graybriar 11	June 30, 2019	7,634.50	412.48	8,046.98	382.07	8,429.05
		\$ 154,824.16	\$ 4,872.82	\$ 159,696.98	\$ 7,961.26	\$ 167,658.24
<u>General Receivership Invoices</u>						
11	May 31, 2018	\$ 3,693.50	\$ 339.75	\$ 4,033.25	\$ 200.87	\$ 4,234.12
12	June 30, 2018	603.00	417.60	1,020.60	33.68	1,054.28
13	July 1, 31 - December 31, 2018	1,281.00	-	1,281.00	64.05	1,345.05
14	January 1 - February 28, 2019	2,260.50		2,260.50	\$ 113.02	2,373.52
15	March 31, 2019	3,418.50		3,418.50	\$ 170.93	3,589.43
16	April 1 - May 31, 2019	11,257.50	\$ 40.50	11,298.00	\$ 562.87	11,860.87
17	June 30, 2019	\$ 919.00		919.00	\$ 45.95	964.95
		\$ 23,433.00	\$ 797.85	\$ 24,230.85	\$ 1,191.37	\$ 25,422.22
TOTAL		\$ 178,257.16	\$ 5,670.67	\$ 183,927.83	\$ 9,152.62	\$ 193,080.45
Invoices Previously Approved by this Court pursuant to an Order dated June 5, 2018						
Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
<u>General Receivership Invoices</u>						
1	August 31, 2017	\$ 8,483.00	\$ 31.20	\$ 8,514.20	\$ 425.71	\$ 8,939.91
2	September 30, 2017	18,947.00	8.50	18,955.50	947.43	19,902.93
3	October 31, 2017	19,924.50	1,129.00	21,053.50	1,052.33	22,105.83
4	November 30, 2017	5,103.50	361.97	5,465.47	257.93	5,723.40
5	December 15, 2018	6,440.00	-	6,440.00	322.00	6,762.00
6	December 31, 2017	3,457.50	-	3,457.50	172.88	3,630.38
7	January 31, 2018	16,715.00	211.75	16,926.75	836.19	17,762.94
8	February 28, 2018	3,339.50	-	3,339.50	166.98	3,506.48
9	March 31, 2018	3,445.00	93.00	3,538.00	172.50	3,710.50
10	April 30, 2018	3,613.50	38.00	3,651.50	181.88	3,833.38
TOTAL		\$ 89,468.50	\$ 1,873.42	\$ 91,341.92	\$ 4,535.82	\$ 95,877.74
TOTAL INVOICES		\$ 267,725.66	\$ 7,544.09	\$ 275,269.75	\$ 13,688.44	\$ 288,958.19

COURT FILE NUMBER 1401-12431
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT ACCESS MORTGAGE CORPORATION (2004) LIMITED
 RESPONDENT ARRES CAPITAL INC.
 DOCUMENT **ORDER (Distribution of Graybriar Funds)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCARTHY TÉTRAULT LLP
 4000, 421 – 7th Avenue SW
 Calgary, AB T2P 4K9
 Attention: Walker W. MacLeod / Pantelis Kyriakakis
 Telephone: 403-260-3710 / 3536
 Facsimile: 403-260-3501
 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca



DATE ON WHICH ORDER WAS PRONOUNCED: August 13, 2019
 LOCATION OF HEARING: Calgary, Alberta
 NAME OF JUDGE WHO MADE THIS ORDER: Justice Eidsvik

I hereby certify this to be a true copy of the original Order
 Dated this 14 day of August 2019
S. MacLeod
 for Clerk of the Court

UPON the application of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Fourth Report of the Receiver, dated August 8, 2019 (the "**Fourth Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on August 12, 2019, all filed (the "**Service Affidavit**"); **AND UPON** having read the Order (Graybriar Funds Claims Process Order) (the "**Graybriar Funds Claims Process Order**"), granted on June 4, 2018 by the Honourable Justice B.E.C. Romaine; **AND UPON** hearing counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:**SERVICE**

1. Service of the Application and the Fourth Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Fourth Receiver's Report.
2. Any and all capitalized terms used herein and not otherwise defined are hereby given the meaning that such terms have under and pursuant to the Fourth Receiver's Report or the Graybriar Funds Claims Process Order, as applicable.

DISTRIBUTION

3. Each of the Persons listed in Schedule "A" hereto (collectively, the "**Trust Creditors**") be are hereby declared to have a Proven Claim to the Graybriar Funds in the amount identified in Schedule "A" hereto. The Receiver be and is hereby expressly authorized and empowered, immediately and from time to time hereafter as the Receiver determines appropriate, to make *pro rata* distributions from the Graybriar Funds to the Trust Creditors up to the amount of each Trust Creditors Proven Claim. In making such distributions, the Receiver is further authorized and empowered to holdback amounts on account of amounts due, accruing due or estimated to accrue due the Receiver's Charge or the Receiver's Borrowing Charge.

MISCELLANEOUS MATTERS

4. The Receiver and any other interested Person shall be at liberty to apply for further advice, assistance, and directions, as may be necessary, in order to give full force and effect to the terms of this Order.
5. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.



J.C.C.Q.B.A.

**SCHEDULE "A" TO THE FORM OF ORDER (DISTRIBUTION OF GRAYRBRIAR FUNDS)
LIST OF PROVEN CLAIMS**

Arres Capital Inc. - In Receivership	
Graybriar Claims Process	
Distribution Analysis - Sugimoto Priority	
Investors with Filed POCs	
TOTAL CLAIMS	\$ 20,841,148.35
Estimated Total Available for Distribution	\$ 1,025,057.00
Sugimoto Legal Fees	\$ 221,623.20
Estimated Total Available for Distribution after Priority Payment	\$ 803,433.80
	Total Revised Claim
1025571 Alberta Ltd.	\$ 58,750.00
515476 Alberta Ltd.	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Access Mortgage Corporation (2004) Limited	\$ -
Carpenter, Pao-Lien	\$ 235,000.00
CME Holdings Ltd.	\$ -
CUMIS Inc. (c/o Stan Smith)	\$ -
Carpenter, Fred	\$ -
Carson, Delores	\$ -
Carson, Bruce	\$ -
Curlew Finance	\$ -
Demel Financial Corp.	\$ -
Drefs, Gary	\$ -
Foy, Barb	\$ 117,500.00
Felzel Management, Inc.	\$ 893,000.00
Garden Valley Construction Ltd.	\$ -
Graham Pye Management Ltd.	\$ 117,500.00
Gaur, Satish	\$ 741,000.00
Greenmar Holdings Inc.	\$ -
Hornby, Robin	\$ 23,500.00
Hudson Principle Investment Ltd.	\$ -
Jalali, Ali	\$ 470,000.00
Krishnamoorthy, Leela	\$ -
Kurtz, Michael	\$ -
Liwanag, Mike	\$ 35,250.00
Leroy, Connie	\$ -
McKenna Investments	\$ -
McRitchie, Marguerite	\$ -
Middleton Energy Management Ltd.	\$ 552,250.00
Ogg, Steven	\$ -
Pedersen, Kevin R.	\$ -
Pimlico Capital Corporation Inc.	\$ 470,000.00
Rajakaruna, Gaston	\$ -
Rajpal (Gaur), Priti	\$ -
Sicherman, Harold	\$ -
Schulman, Mayer	\$ 129,250.00
Siemens, Leslie	\$ 58,750.00
Siemens, Annette & Shane	\$ 152,750.00
Scott, Carey	\$ 329,000.00
Sewers, Greg & Cindy	\$ 70,500.00
Sugimoto & Company	\$ 14,860,148.35
Schulman Family Trust	\$ 70,500.00
Sharma, Mona Preeti	\$ 282,000.00
Thompson, Nick	\$ 235,000.00
Thompson, Gwen & Dave	\$ 235,000.00
Thakur, Mona	\$ 235,000.00
Universal Rebar Detailing Ltd.	\$ 187,500.00
Veiner, Doran	\$ 235,000.00
Yee, Jeffrey	\$ 47,000.00
Zivea Ltd.	\$ -
TOTAL	\$ 20,841,148.35



COURT FILE NUMBER 1401-12431
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT ACCESS MORTGAGE CORPORATION (2004) LIMITED
 RESPONDENT ARRES CAPITAL INC.
 DOCUMENT **ORDER (Fee and Conduct Approval)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCARTHY TÉTRAULT LLP
 4000, 421 – 7th Avenue SW
 Calgary, AB T2P 4K9
 Attention: Walker W. MacLeod / Pantelis Kyriakakis
 Telephone: 403-260-3710 / 3536
 Facsimile: 403-260-3501
 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: **August 13, 2019**
 LOCATION OF HEARING: **Calgary, Alberta**
 NAME OF JUDGE WHO MADE THIS ORDER: **Justice Eidsvik**

I hereby certify this to be a true copy of the original Order

Dated this 14 day of Aug 2019
S. Smith
 for Clerk of the Court

UPON the application of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Fourth Report of the Receiver, dated August 8, 2018 (the "**Fourth Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on August 12, 2019, all filed (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:**SERVICE**

1. Service of the Application and the Fourth Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Fourth Receiver's Report.

APPROVAL OF RECEIVER'S ACTIONS

2. The actions and conduct of the Receiver, as reported in the Fourth Receiver's Report are hereby approved and ratified as of and up to the date of the Fourth Receiver's Report.

FEE APPROVAL (GENERAL)

1. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$18,445) are hereby approved without the necessity of a formal passing of accounts.

2. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$24,231) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - INCURRED)

3. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$135,915) are hereby approved without the necessity of a formal passing of accounts.

4. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$159,697) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - COMPLETION)

5. The Receiver's estimated accounts for fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal passing of accounts.

6. The estimated accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal assessment of its accounts.

7. The Receiver be and is hereby granted leave to apply to amend or vary paragraphs 7 and 8 of this Order in the event that the estimated fees for completion exceed the amounts provided for herein.

COST ALLOCATION APPROVAL

8. The allocation of accounts issued by the Receiver and its legal counsel, McCarthy Tétrault LLP, for their fees and disbursements in respect of the Debtor in the period July 26, 2017, to June 30, 2019 (in the total amount of \$606,320) are hereby approved as follows:

- (a) General matters: \$310,708;
- (b) Graybriar Funds matters: \$295,612.

MISCELLANEOUS MATTERS

9. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.

J.C.C.Q.B.A.



Loran Halyn

From: David N. Murphy <dmurphy@foxbridgegroup.com>
Sent: Wednesday, October 23, 2019 12:13 PM
To: Allan Beck
Cc: Loran Halyn
Subject: Re: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Thanks Allan,

- I already indicated my position on the \$235K, in a September 25th email to the receiver (with a cc to Loran).
 - It clearly detailed my position that the \$235 should not be construed as part of the Arres estate.
 - They responded to me, indicating that they disagreed.
- On Oct 2nd I did receive a further email from the receiver wanting to know if I had "any comments on the below re: our position, your position and/or a possible settlement."
 - I did not have any further commentary to offer.
- I see that the below noted cc of the Receiver's October 2 email to Loran indicates that they were "awaiting instructions from the inspector of the estate".
 - Sadly, I was not made aware of that fact as I thought they were just looking to see if I had anything further to offer.

DNM

From: Allan Beck <allanbeck@telus.net>
Date: Wednesday, October 23, 2019 at 11:37 AM
To: "David N. Murphy" <dmurphy@foxbridgegroup.com>
Subject: FW: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Dave please see the email from the trustee advising us that they are awaiting instructions from the inspector. I am assuming that is you. Let me know.

Thanks

Allan

Assured Mortgage Investments Corp.
 Allan Beck, Director

#1-2707-58 Avenue S.E.
 Calgary Alberta
 T2C 0B4
 Tel. 403-276-1800
 Fax 403-276-1888
 Cell 403-861-9256

-----Original Message-----

From: Loran Halyn <lhalyn@sugimotolaw.com>

To: 'Harvey Beck (harveybeck@telus.net)' <⁰⁰⁰²³⁶harveybeck@telus.net>; 'Allan Beck (allanbeck@telus.net)' <allanbeck@telus.net>

Subject: FW: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Gentlemen,

Below is the up-to-date email exchange with counsel for the Arres' Trustee / Receiver. I am hopeful (but not terribly optimistic) that they will change their position and concede the \$235K held to the Y-K investors without a fight. I will advise when I hear back from Mr. MacLeod – hopefully soon.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhalyn@sugimotolaw.com <<mailto:lhalyn@sugimotolaw.com>>

From: Loran Halyn

Sent: Thursday, October 3, 2019 10:32 AM

To: 'MacLeod, Walker W.'; Orest Konowalchuk (okonowalchuk@alvarezandmarsal.com)
(okonowalchuk@alvarezandmarsal.com); bkrol@alvarezandmarsal.com

Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Walker,

I am attaching the transcript of our appearance before Madam Justice Romaine, in case you don't have a copy. I believe the inspector of the estate should be apprised of what transpired during that June 4th appearance before formulating instructions.

To recap, during the proceedings relating to the \$235,000 paid into court in the Kenzie Financial et al. matter, counsel presented to the Court their respective positions, where I pressed the application of the Stone Sapphire decision (attached) that indicated "A judgment creditor may trump a trustee's priority to funds paid into court if

000237
decision (attached) that indicated "A judgment creditor may trump a trustee's priority to funds paid into court if the funds are sufficiently 'earmarked' and the creditor has 'done all that it could' to access the funds". Meanwhile, Kerry Lynn Okita indicated Terrapin was claiming entitlement to those funds as well – and so there evidently was a contest as to entitlement to the funds. Accordingly, Justice Romaine directed that the \$235K was to be segregated from the other funds of Arres Capital collected by the Trustee/Receiver and only those costs and expenses of the Trustee/Receiver related to dealing with the issue of entitlement to those funds were to constitute a first charge against those funds so segregated.

Therefore, it is clear (in my opinion) that Justice Romaine did not consider the \$235K as comprising the unsecured and general funds of Arres Capital available to creditors other than either my Kenzie Financial et al. clients or Terrapin or otherwise available to cover the general administration costs and expenses of the Trustee/Receiver, because that position is inconsistent with the direction to segregate the funds in the first place. Now that Terrapin has disavowed any claim over those funds, it is my position that the only parties still standing that have a claim to those funds are my clients who have their unsatisfied partial summary judgment that those funds were paid into court to satisfy.

I remain hopeful that the position that will be taken on this issue is that a judicial determination as to entitlement will not be required.

Thanks and regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhalyn@sugimotolaw.com<<mailto:lhalyn@sugimotolaw.com>>

From: MacLeod, Walker W. [<mailto:wmacleod@mccarthy.ca>]
Sent: Wednesday, October 2, 2019 4:20 PM
To: Loran Halyn; Orest Konowalchuk
(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>);
(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>);
bkrol@alvarezandmarsal.com<<mailto:bkrol@alvarezandmarsal.com>>
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Loran, thanks, we are awaiting instructions from the inspector of the estate and will revert with our position after that.

[McT Logo]

Walker MacLeod

Partner | Associé

Bankruptcy and Restructuring | Faillite et restructuration

T: 403-260-3710

C: 403-463-1207

F: 403-260-3501

E: wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>

McCarthy Tétrault LLP

Suite 4000

421 - 7th Avenue SW

Calgary AB T2P 4K9

Please, think of the environment before printing this message.

[https://www.mccarthy.ca/sites/default/files/2018-10/TOP100_Employer_2019_english_70X70.png] [https://www.mccarthy.ca/sites/default/files/2019-02/diversity-2019-english_signature.jpg]

From: Loran Halyn <lhaly@lhalyn@sugimotolaw.com<<mailto:lhaly@lhalyn@sugimotolaw.com>>>

Sent: Wednesday, October 02, 2019 1:49 PM

To: MacLeod, Walker W. <wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>>; Orest Konowalchuk (okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>)
(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>)
<okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>>;
bkrol@alvarezandmarsal.com<<mailto:bkrol@alvarezandmarsal.com>>

Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Walker,

With Terrapin definitively not making a play for the \$235K, would you agree the best approach is that we proceed with a Commercial List application (much like we did for the Graybriar matter) to determine entitlement to those funds as between the Kenzie Financial et al. plaintiffs, who secured the partial summary judgment that resulted in those funds being paid into court to satisfy that judgment, and Arres' Trustee/Receiver?

If not, what approach would you propose to resolve that issue?

I look forward to your reply and thank you in advance for your attention to my inquiries.

Regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhalyn@sugimotolaw.com<<mailto:lhalyn@sugimotolaw.com>>

From: Kerry Lynn Okita [<mailto:KOkita@bmlp.ca>]
Sent: Tuesday, September 24, 2019 10:25 AM
To: Loran Halyn
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>)
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Morning Loran,
Apologies for the delay. I confirm that Terrapin will not be taking a position on your application.
Best,

Kerry Lynn Okita
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From: Loran Halyn <lhalyn@sugimotolaw.com<<mailto:lhalyn@sugimotolaw.com>>>
Sent: Wednesday, September 18, 2019 2:59 PM
To: Kerry Lynn Okita <KOkita@bmlp.ca<<mailto:KOkita@bmlp.ca>>>
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>)
<wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>>

Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Good afternoon Kerry Lynn,

As you know, I represent the investors involved in an Arres Capital Ltd. syndicated loan to Y-K Projects Ltd. from several years ago. The Y-K investors successfully sued and secured a summary judgment award against Arres for about \$235,000, which amount was paid into court by Arres from funds derived from the failed attempt to transfer 4 Graybriar condominium units to 1798583 Alberta Ltd. to be mortgaged to Terrapin Mortgage Investment Corp.

You may recall that previously before Madam Justice Strekaf you had advanced an argument that Terrapin had an interest in and a claim over those funds, which had prevented the release of the funds to my clients following the dismissal of Arres appeal against the summary judgment award. The funds were ordered to remain in court pending the determination of issues regarding the entitlement to the 4 Graybriar condominium units and the registration of Terrapin's mortgage against those units.

With the decision of Justice Jones in the Arres bankruptcy and receivership proceedings dismissing 1798583's assignment claim and Terrapin's claim of an equitable mortgage regarding the 4 Graybriar condo units, the issue of entitlement to those 4 units has been resolved. Thereafter, I understand a settlement agreement was recently reached between you and Walker Macleod as counsel for Arres' Trustee/Receiver regarding Terrapin's liability for costs in that application. I further understand from Walker that he takes the position such settlement resolved all claims Terrapin might conceivably advance in the bankruptcy and receivership proceedings, including any claim Terrapin had previously advanced vis-à-vis the \$235,000 paid into court for my client's summary judgment award.

My clients wish to advance an application in the Arres' bankruptcy and receivership proceedings to determine entitlement to the \$235,000 paid into court to the credit of my clients in satisfaction of their summary judgment against Arres. I request confirmation of your position regarding whether Terrapin intends to maintain any claim against those funds, in which case Terrapin would need to be included in my clients' application as a respondent.

May I kindly request your timely reply to my inquiry so I can prepare appropriate application materials.

Thank you in advance for your attention to my request.

Regards,

Loran V. Halyn
Sugimoto and Company
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