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Clerk's Stamp

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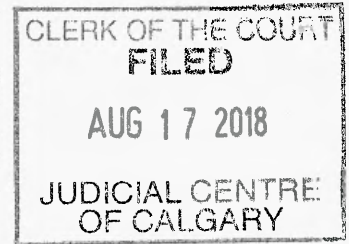
COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE  
APPLICANT

CALGARY  
ACCESS MORTGAGE CORPORATION  
(2004) LIMITED

RESPONDENT

ARRES CAPITAL INC.



DOCUMENT

**AFFIDAVIT OF DAVID MURPHY**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY FILING  
THIS DOCUMENT

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3rd Street SW  
Calgary, Alberta, T2P 5C5

Telephone 403-351-2921  
Facsimile 403-648-1151

**Attention: Jeffrey Oliver**

**AFFIDAVIT OF DAVID MURPHY**

**Sworn August 17, 2018**

I, DAVID MURPHY, of the Town of Heritage Pointe, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a director and officer of the Applicant, Access Mortgage Corporation (2004) Limited ("**Access**") and, as such, have personal knowledge of the matters hereinafter deposed to. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.
2. I make this affidavit in support of the responding application record of Alvarez & Marsal Canada Inc., in its capacity as receiver (the "**Receiver**") of Arres Capital Inc. ("**Arres**").
3. On July 25, 2018, I attend the cross-examination of Wes Serra ("**Serra**"), former president of Arres. During his cross-examination, Serra gave an undertaking to produce any agreements with investors in relation to Graybriar Greens Inc. ("**Graybriar**") that are not substantially the same as the agreement marked as exhibit 1 during Serra's cross-examination (the "**Undertaking**"). Exhibit 1 at Serra's cross-examination was a document titled Trust Agreement Graybriar Greens Inc., between Arres and Mona &/or Mohinder Thakur, dated November 2, 2007 (the "**Thakur Trust Agreement**"). A copy of the Thakur Trust Agreement is attached hereto and marked as **Exhibit "A"**.

4. In response to the Undertaking, Serra produced a copy of a document titled Loan Administration Agreement between Access and Arres, dated July 28, 2010 ("**Loan Administration Agreement**"). A copy of the Loan Administration Agreement is attached hereto and marked as **Exhibit "B"**.
5. The purpose of this affidavit is to explain the difference between the Thakur Trust Agreement and the Loan Administration Agreement.

### **Background**

6. Access is a mortgage investment corporation and is engaged in the business of mortgage lending.
7. Arres was a mortgage brokerage firm and acted as a manager and trustee for investors in various mortgages issued by Arres. Access was an investor in numerous mortgages advanced by Arres to third party borrowers.

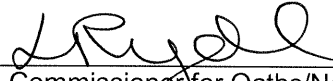
### **Secondary Graybriar Loan**

8. One of the mortgages in which Access participated was a \$9.7 million loan (the "**Secondary Graybriar Loan**") to Graybriar.
9. On or about September 29, 2008, Access and Arres entered into an agreement whereby Access would participate in the Secondary Graybriar Loan to the extent of Access' proportionate share of \$1,785,677.64 (the "**Access Share**"), and Arres would act as trustee of the Access Share for the benefit of Access (the "**Access Trust Agreement**"). A copy of the Access Trust Agreement is attached hereto and marked as **Exhibit "C"**.
10. The Access Trust Agreement is substantially the same as the Trust Agreement. Both agreements relate to the Secondary Graybriar Loan.
11. Graybriar used the Secondary Graybriar Loan to finance the construction of condominium units on a nine acre parcel of land located in Stony Plain, Alberta (the "**Project**").
12. The Secondary Graybriar Loan was renewed in or around November 2008 (the "**Loan Renewal**"). In connection with the Loan Renewal, Arres charged Graybriar a renewal fee that was added to the principal of the Secondary Graybriar Loan ("**Renewal Fee**").
13. I am advised by Doreen Richards, another investor in the Secondary Graybriar Loan, and do verily believe that at the time of the Loan Renewal she was not advised, and is not aware of the other investors in the Secondary Graybriar Loan being advised, that the Renewal Fee was to be added to the principal of the Secondary Graybriar Loan.

**Priority Graybriar Loan**

14. After the Secondary Graybriar Loan was advanced, Graybriar required additional funds to complete the Project.
15. Accordingly, in or around July, 2010, Access, along with other lenders, agreed to advance additional funds to Graybriar so that Graybriar could complete the Project (the "**Priority Graybriar Loan**"). The security for the Priority Graybriar Loan ranked ahead in priority of the security for the Secondary Graybriar Loan.
16. Access participated in the Priority Graybriar Loan in the amount of \$20,103.71.
17. Arres agreed to administer Access' share in the Priority Graybriar Loan pursuant to the Loan Administration Agreement.
18. Accordingly, the Loan Administration Agreement relates solely to the Priority Graybriar Loan. The Access Trust Agreement and the Loan Administration Agreement are separate agreements that relate to two different loans.
19. The Priority Graybriar Loan has subsequently been repaid.
20. Before filing its proof of claim in the within receivership proceedings, Arres had not advanced a claim for any amounts allegedly owed to Arres pursuant to the Loan Administration Agreement.

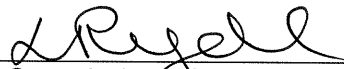
SWORN BEFORE ME at the City of Calgary, in )  
the Province of Alberta, this 17th day of August )  
2018 )

  
\_\_\_\_\_  
Commissioner for Oaths/Notary Public in and for )  
Alberta )

**Lindsay M. Rydl**  
Barrister & Solicitor

  
\_\_\_\_\_  
**DAVID MURPHY**

This is **Exhibit "A"**  
to the affidavit of **David Murphy**, sworn  
before me this 17th day of August, 2018.



A Commissioner for Oaths/Notary Public  
in and for the Province of Alberta

**Lindsay M. Rydl**  
**Barrister & Solicitor**

**TRUST AGREEMENT**  
**GRAYBRIAR GREENS INC. – PHASE 2**

Made this 2<sup>nd</sup> day of November, 2007:

BETWEEN:

**ARRES CAPITAL INC.**  
(hereinafter referred to as the "Trustee")

and

**MONA &/OR MOHINDER THAKUR**  
(hereinafter referred to as the "Investor")

**WHEREAS:**

- A. The meaning of certain capitalized words and phrases used in this Agreement are defined in Article I hereof;
- B. The Trustee is a mortgage broker licensed and registered in accordance with the *Real Estate Act* (Alberta);
- C. The Trustee has entered into a Commitment Letter with the Borrower to lend the Borrower the Loan Amount to be secured primarily against the title to the Borrower's Lands;
- D. 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 **\$100,000.00**;
- E. The Parties have agreed that the Loan Security shall be held in the name of the Trustee and the Proportionate Share of the Loan shall be administered and held by the Trustee acting as bare trustee for the Investor;
- F. The Investor has agreed with the Trustee that the Trustee shall be entitled to deduct placement and administration fees from the proceeds of the Loan and the Investor's net rate of return on his Proportionate Share of the Loan is set out in the Loan Summary;

**NOW THEREFORE:**

**Article 1**  
**DEFINITIONS**

- 1.1 "**Agreement**" means this Agreement and any amendment thereto;
- 1.2 "**Borrower**" means GRAYBRIAR GREENS INC.;
- 1.3 "**Commitment Letter**" means that letter agreement entered into between the Trustee and the Borrower to grant the Loan dated August 10, 2007, a copy of which is attached hereto as Schedule A;

- 1.4 **"Lands"** means those lands and premises described in the Land Schedule annexed hereto;
- 1.5 **"Loan"** means the Loan Amount advanced or to be advanced to the Borrower by the Investor on the terms subject to the conditions set out in the Commitment Letter and includes, without limitation, all principal, interest, fees, expenses, charges and all other amounts owing by the Borrower from time to time to the Investor pursuant to the Commitment Letter and also includes the Loan Security;
- 1.6 **"Loan Amount"** shall mean the sum of NINE MILLION SEVEN HUNDRED THOUSAND (\$9,700,000.00) in Canadian currency;
- 1.7 **"Loan Security"** shall mean any mortgage, charge, pledge, lien, hypothec, encumbrance, conditional sale, title retention agreement, assignment, general security agreement, guarantee or other security interest whatsoever, and shall include that security listed the Commitment Letter;
- 1.8 **"Loan Summary"** means the structure of the loan and return to the Investor on the Investor's Proportionate Share of the Loan as contained in Schedule "B" to this Agreement;
- 1.9 **"Other Investors"** shall mean those parties additional to the Investor who agree to participate in the Loan on the same terms as those herein;
- 1.10 **"Proportionate Share"** shall mean the undivided ownership interest of the in the Loan, expressed as a percentage, equal to the fraction having as its numerator the total principal advanced by the Investor, from time to time, pursuant to this Agreement and having as its denomination the total principal of the Loan advanced, from time to time, to the Borrower;
- 1.11 **"Schedules"** The following schedules shall be deemed for all purposes to comprise and form part of this Agreement:
- |                 |                   |
|-----------------|-------------------|
| Land Schedule - | Lands             |
| Schedule "A" -  | Commitment Letter |
| Schedule "B" -  | Loan Summary      |

## **Article 2 – Loan Acquisition and Participation**

- 2.1 **Acquisition of Loan** The Trustee shall be responsible for the acquisition and processing of the Loan including, without limitation, the following:
- (a) acquiring, assembling, recording and processing all the necessary information, data, applications, forms and reports in connection with the Loan;
  - (b) retaining solicitors to perform and carry out instructions and requirements necessary to complete the Loan including, without limitation, all requisite searches, preparing and attending upon the execution and delivery of the Loan Security and attending to all necessary registrations and filings as may be required to ensure the perfection and the priority of the Loan Security, subject only to such encumbrances and other qualifications specifically permitted by the Commitment Letter or by the Investor in writing;
  - (c) ensuring that the Borrower has made satisfactory arrangements for insurance as is required by the Commitment Letter and the Loan Security; and

- (d) if a requirement for the Loan, obtaining copies of Real Property Reports and specifications in respect of the improvements being constructed on the Lands and verifying that the completion of construction is in accordance with the plans and specifications provided to the Investor by the Borrower and as contemplated by the Commitment Letter.

## 2.2 Interest in the Loan

Upon the Investor delivering to the Trustee advances in accordance with Article 3.1, the Investor shall have a beneficial interest in the Loan to the extent of its Proportionate Share in the Loan. Interest shall be paid to the Investor at the rate of 15% per annum.

Total Interest to be paid by the borrower is to be 15% per annum, (being 15% per annum to the Investor and 0.00% per annum to the Trustee for administration and loan servicing.

## 2.3 Acknowledgment of Other Investors and Endorsement of Loan Security

All loan documents shall be taken, held and registered only in the name of the Trustee and the Trustee shall hold the same at all times as bare trustee for the Investor and other Investors as to their respective Proportionate Shares. The Investor recognizes and agrees that the Trustee may be participating in the Loan as an Investor.

## 2.4 Non-Interference

The Investor covenants and agrees with the Trustee that it will not act, or deal with its Proportionate Share in the Loan and the Loan Security in such a manner as to prejudice or reduce the rights of the Trustee of any Other Investor or the Loan Security, and further covenants and agrees to maintain this Agreement in full force and effect as it relates to the Loan as long as the Loan is owned in part by the Investor.

## 2.5 Further Documents

The Trustee shall, at the request of the Investor, execute and deliver such further assignment, transfer, conveyance, assurance, document or instrument which may be reasonably required by the Investor to evidence the Proportionate Share of the Investor in the Loan, provided only that such further assignment, transfer, conveyance, assurance, document or instrument shall not impair the Trustee.

## 2.6 Acknowledgements

The Lender will, at the request and expense of the Investor, execute and deliver from time to time such additional acknowledgements as the Investor may reasonably require to confirm the Investor's beneficial ownership of its Proportionate Share including all profits and losses.

## **Article 3 - Advances**

### 3.1 Advanced Generally

Upon request from the Trustee, the Investor shall remit by bank draft to the Trustee, or as the Trustee may otherwise direct in writing, an amount equal to its Proportionate Share of any portion of the Loan to be advanced to the Borrower pursuant to the Commitment Letter.

### 3.2 Interest on Advances

Funds will be requested by the trustee from the investor. When the investors certified cheque or bank draft payable to the law firm is brought to the trustee, or in cases of RSP money, when the trustee advances the funds, prior to noon in both cases, interest will start accruing. If funds are received after noon, interest will start the following banking day. In the event of a BC mortgage, interest will start one banking day after receipt of the bank draft payable to the law firm being received in the Trustee's office.

### 3.3 No Obligation to Advance

Other than in its capacity as a participating investor, the Trustee shall not be required to advance its own funds for any purpose.

### 3.4 Advanced To Preserve or Enforce Loan Security

The Investor acknowledges and agrees that excess advances may be required from it from time to time in the event of the Borrower's default to preserve or recover the Loan in the same ratio as its Proportionate Share.

### 3.5 Failure to Advance

The Investor acknowledges and agrees that its failure to advance funds pursuant to Article 3.1 may result in the Trustee being unable to fund the loan as required by the Commitment Letter and thereby may be subject to damages. In addition to any other provisions to this Agreement, the Investor hereby indemnifies the Trustee and the Other Investors for any losses, expenses, costs, suits or liabilities that may be incurred as a result of the Investor's failure to advance its Proportionate Share of the Loan under this Agreement. In addition to any other rights or remedies that the Other Investors may have, any amounts owing under this Agreement to the defaulting Investor shall be set off against the amount owing under such indemnity.

## **Article 4 Administration of the Loan**

### 4.1 Servicing of the Loan

The Trustee shall administer and service the Loan on the terms and subject to the conditions to this Agreement.

### 4.2 Acting in Good Faith

The Trustee shall administer the Loan and the Loan Security on behalf of the Investor and the Other Investors, and shall exercise its powers and discharge its duties hereunder honestly, in good faith and in the best collective interest of the Investor and the Other Investors and, in connection therewith, shall exercise that degree of care, diligence and skill that a reasonably prudent lender would exercise in comparable circumstances.

### 4.3 Maintain Accounts

The Trustee agrees with the Investor to maintain proper records and accounts showing all receipts, payments and disbursements in respect of the Loan, all according to generally accepted accounting principals, and the Trustee agrees with the Investor that such books as they relate to the Investor shall be open to the Investor on reasonable request.

### 4.4 Periodic Accounting



The Trustee shall provide an accounting of the Loan and the interest earned thereon to the Investor, and shall do so by the provision to the Investor of a report showing the payments received by the Trustee from the Borrower pursuant to the Loan.

#### 4.5 Periodic Payment

The Trustee shall on a monthly basis, remit to the Investor all amounts received by the Trustee on account of the Investor's Proportionate Share including interest payable thereon at the rate set out in the Loan Summary, less any expenses or disbursements properly payable to the Trustee by the Investor with regard to the Loan.

#### 4.6 Specific Authorization to Discharge

The Investor hereby specifically authorizes the Trustee to grant partial discharges of the Loan Security when required under the terms of the Commitment Letter.

#### 4.7 Collection of Debts Due

The Trustee shall make reasonable efforts to collect all payments on account of the Loan and to cause the Borrower and guarantors, if any, to perform their obligations under the Loan Security.

#### 4.8 Retain Experts

The Trustee shall retain, when necessary, solicitors or other professional advisors to protect and enforce the Investor's rights and interests against the Borrower. Prior to such expenditures, the Trustee will endeavor, but is not obligated, to notify and obtain the agreement of the Investor of its intention to make the expenditure. Regardless of such prior approval by the Investor, the Trustee will endeavor to collect such costs incurred or advances made ("**Costs**") from The Borrower but, in all events, the Investor shall pay to the Trustee, and shall indemnify the Trustee for, the Investor's Proportionate Share of the Costs, such payment to be made within five (5) business days of demand by the Trustee. Interest at the Loan rate shall be payable by the Investor on all such sums commencing Five (5) business days from demand by the Trustee.

#### 4.9 Reimbursement of Expenses

The Investor covenants and agrees that it is responsible for expenses and liabilities incurred by the Trustee in the administration of the Loan on a *pro rata* basis according to the Investor's Proportionate Share of the Loan.

#### 4.10 Security for Trustee's Costs

As security for the due and punctual payment and performance of all obligations of the Investor to the Trustee including, without limitation, the payment of all monetary obligations of the Investor, the Investor hereby grants the Trustee a security interest, charge and lien over and in respect of the Investor's Proportionate Share in the Loan and Loan Security. The Investor further grants the Trustee the right to set off, deduct and withhold from any monies payable to the Investor the full amount of all monies, costs, expenses, or indemnified amounts and all interest thereon which is owed or is accruing due by the Investor to the Trustee or which the Trustee considers should be reserved as security for costs or amounts which the Trustee anticipates will be incurred or become due acting reasonably.

### **Article 5 Warranties or Representations**

5.1 No Warranties or Representations Notwithstanding that the Loan may have been presented by the Trustee to the Investor for the Investor's consideration, the Trustee makes no warranty or representation with respect to the Investment and shall not be responsible for the

observance or performance of any of the terms, covenants, conditions or obligations of the Borrower pursuant to the Commitment Letter or the Loan Security and the Investor acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon the Trustee. The Trustee further makes no warranty or representation as to the financial viability of the Borrower or any guarantor nor to the due execution, legality, validity, enforceability, genuineness or sufficiency of the Loan Security.

5.2 Reliance on Information and Advice Subject to the Trustee upholding the standard of care provided for in article 4.2 hereof, the Trustee shall incur no liability under or with respect to this Agreement, the Commitment Letter, the Investment or the Loan Security by acting in good faith or by refraining, in good faith, from acting upon: (a) any notice, consent, certificate or other instrument or writing (sent by letter, telephone, telegram, cable, telex, facsimile or otherwise) believed by the Trustee to be genuine and signed or sent by the proper party or parties; (b) any representation or warranty made by the Borrower, the Guarantors, or any of them under the Commitment Letter or the Loan Security or in connection therewith; and (c) any advice solicited by or given to the Trustee by experts retained by the Trustee.

#### **Article 6 Investing through RRSP**

6.1 The Investor acknowledges and agrees that if it is investing through an RRSP it is required to have its RRSP administer the loan on its behalf. As such the names of the RRSP administrator will show on the Loan Security and payments will be made by the Trustee to such RRSP administrators. To the extent that such loans are already administered by the RRSP administrator, then the Trustee is not acting on behalf of the Investor. Such Investors are, however, subject to the remaining terms of this Agreement.

#### **Article 7 Compensation for the Trustee**

7.1 The Investor acknowledges and agrees that the Trustee may be compensated for its brokerage of the Loan by payment to it by the Borrower of a brokerage fee. The Trustee shall be compensated for its administration of the Loan.

#### **Article 8 Disposition of Interest**

##### **8.1 Disposal of Percentage in Loan**

If, at the time of renewal, the Investor desires to sell or dispose of its Proportionate Share in a Loan, the Investor shall forthwith deliver to the Trustee notice in writing of its intention to sell or dispose. Upon receipt of the said notice, the Trustee shall have a period of Fifteen (15) days within which to acquire, on his own behalf or as agent for an new Other Investor, the Investor's Proportionate Share in the Loan, after which time the Investor shall be at liberty to sell its Proportionate Share in the Loan to a third party purchaser or an existing Other Investor, in which event the Investor shall, before transferring his interest the Loan, obtain and deliver to the Trustee confirmation by the purchaser, in form acceptable to the Trustee, that the purchaser is bound to the terms of this Agreement. In the event that the Trustee incurs any extra-ordinary expense in assisting the Investor in any of the activities outlined herein, such extra-ordinary expense shall be borne by the Investor. In the event that the Investor's interest cannot be sold or disposed of, the Investor must retain his Proportionate Share in the Loan until maturity of the term of the Loan.

##### **8.2 Purchase Right**

Both the Trustee and the Investor agree to act in good faith and to act reasonably in attempting to resolve any disagreement regarding the Loan. In the event of disagreement between the Trustee and the Investor with respect to the administration of the Loan which they are unable to resolve, the Trustee shall have the right, but not the obligation, to purchase all but not less than all of the Investor's Proportionate Share in the Loan upon written notice to the Investor and payment to the

Investor of his Proportionate Share of the outstanding principal amount of the Loan and all accrued but unpaid interest on such principal calculated at the rate in the Loan Summary to the date of payment to the Investor. The Investor hereby irrevocably appoints the Trustee as his irrevocable attorney for the purpose of executing and delivering all deeds, instruments, transfers, and agreements necessary or desirable to complete and perfect any sale as aforesaid.

## **Article 9 Indemnification of the Trustee and the Other Investors**

### **9.1 Indemnity**

To the extent of its Proportionate Share, the Investor hereby agrees to indemnify, save and hold harmless the Trustee and Other Investors from and against any and all legal actions or law suits of any nature and kind with respect to or arising out of the processing, administration and servicing of the Loan or in otherwise fulfilling its obligations, duties and responsibilities set out in this Agreement and any costs, expenses or disbursements incurred in connection therewith, save and except where any such legal action or law suit results from the failure of the Trustee to fulfil and satisfy the terms and conditions of this Agreement including, without limitation, failure of the Trustee to uphold the standard of care or from the fraud, gross negligence or wilful misconduct of the Lender or its agents or employees. The obligation of the Investor to so indemnify and save harmless shall only survive the termination of this Agreement if the cause of action upon which such legal action or law suit is based, arose prior to the termination of the Investor's interest in the Loan under this Agreement.

## **Article 10 Acknowledgement of Participation of the Trustee**

10.1 The Investor hereby acknowledges that the Trustee, or its principals may purchase with its own funds and own as an Other Investor, a Proportionate Share in the Loan. The Trustee shall not, however, be obligated to purchase or maintain a Proportionate Share in the Loan.

## **Article 11 Termination**

### **11.1 Termination of the Role of the Trustee**

The role of the Trustee in servicing and administering the Loan on behalf of the Investor may be terminated upon the Investor giving notice to that effect in writing to the Trustee only upon the happening of any of the following events:

- (a) If any proceedings in insolvency, bankruptcy, receivership or liquidation is taken against the Trustee;
- (b) The Trustee makes any assignment for the benefit of its creditors or commits any act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act (Canada)*;
- (c) If the Trustee assigns or purports to assign this Agreement or any of its rights hereunder without the prior written consent of the Investor;
- (d) If the Trust commits a breach or default under this Agreement, which is not remedied within Fifteen (15) days after written notice of such breach has been received by the Trustee from the Investor

Upon such termination, the Investor shall be entitled to request and receive from the Trustee a transfer of title to the Investor of the Investor's Proportionate Interest in the Loan and, for such purposes, the Trustee provides the Investor with its irrevocable Power of Attorney for such purposes.

### **11.2 Termination of the Investor**

The interest of the Investor in the Investment may be terminated by the Trustee upon notice in writing to the Investor only upon the happening of any of the following events:

- (a) if any proceedings in insolvency, bankruptcy, receivership or liquidation be taken against the Investor;
- (b) if the Investor makes any assignment for the benefit of its creditors or commits any act of bankruptcy within the meaning of the Bankruptcy Act;
- (c) except as expressly permitted hereby, if the Investor assigns or purports to assign its Proportionate Share or any of its rights under this Agreement;
- (e) if the Investor commits a breach or default under this Agreement, which is not remedied within fifteen (15) days after written notice has been received by the Investor.

### 11.3 Postponement After Termination

In addition to any other rights that the Trustee may have, In the event that the interest of the Investor in the Investment is terminated, all amounts that have been advanced by the Investor on account of the Loan prior to the date of termination shall be postponed in favour of, and shall rank subordinate to, all amounts advanced by the Other Investors subsequent to such termination on account of the Loan.

### 11.4 Termination Generally

This Agreement shall remain in full force and effect until the Loan and any other amounts expressed to be owing to the Trustee under the Loan Security have been paid in full and the Loan Security has been reassigned or discharged or shall have been realized upon and the proceeds or realization shall have been distributed among the Investor and Other Investors in accordance with this Agreement.

## **Article 12**     **Notices**

### 12.1 Addresses for Notices

All notices to be given under this Agreement shall be deemed to have been duly given if mailed by registered mail to the addresses, or sent by facsimile transmission to the fax numbers, as follows:

To the Trustee:

Arres Capital Incorporated  
#1002, 1520 – 4<sup>th</sup> Street S.W.  
Calgary, Alberta T2P 3C8  
Fax (403) 264-9954

To the Investor:

Investor: **Mona &/or Mohinder Thakur**  
Address: **24 Royal Oak Cape NW**  
**Calgary, Alberta T3G 0A5**

### **Article 13 Additional Provisions**

#### **13.1 Liability of the Trustee**

Notwithstanding anything contained in this Agreement or any Loan documentation, the Trustee shall not be liable to the Investor for any losses or damages incurred by the Investor in respect of any Loan save and except for any loss or damage caused directly by the gross negligence or willful misconduct of the Trustee or its officers, agents or employees

#### **13.2 Time**

Time shall be of the essence in this Agreement.

#### **13.3 Governing Law and Jurisdiction**

This Agreement shall be governed by the law of the Province of Alberta and the parties hereto hereby irrevocably attorn to that jurisdiction.

#### **13.4 Further Acts**

The parties hereto agree that they shall do all further things and take all further steps, including the execution of further documents that may be required to carry out and give effect to this Agreement.

#### **13.5 Entire Agreement**

This Agreement is the entire agreement between the parties and supersedes and replaces any prior written or oral agreement that may have been made between the parties.

#### **13.6 Severability**

In the event that any part of this Agreement shall be determined to be null, void or of no effect, that part of this Agreement shall be severed herefrom and the balance of this Agreement shall continue in full force and effect.

#### **13.7 Amendments**

This agreement may only be amended by an agreement in writing duly executed by each of the parties hereto.

#### **13.8 Assignment**

Except as may be otherwise permitted herein, neither party to this Agreement may assign its interest to another party without the prior written consent of the other party, such consent not to be unreasonably withheld.

#### **13.9 Real Estate Act**

Without in any way limiting or derogating from its obligations or responsibilities under this Agreement, the Trustee in fulfilling its obligations and responsibilities with respect to the administration of the Loan and the Loan Security will at all times comply with the provisions of the *Real Estate Act (Alberta)*, as amended, replaced or substituted from time to time.

13.10 Relationship

Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other Investors.

13.11 Counterparts

This document may be executed in counterparts, each of which executed counterpart shall be deemed to be an original and such counterparts together shall constitute one and the same document, and notwithstanding different dates of execution, shall be deemed to have been executed on the same date, being the later of the dates of execution of such counterparts.

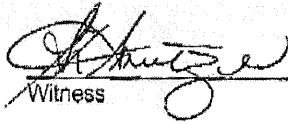
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ARRES CAPITAL INC.

Per:  (c/s)

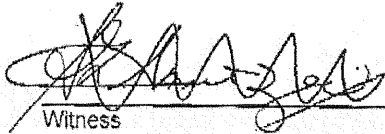
MONA THAKUR

Per: \_\_\_\_\_ (c/s)

  
Witness

MOHINDER THAKUR

Per: \_\_\_\_\_ (c/s)

  
Witness

This is **Exhibit "B"**  
to the affidavit of **David Murphy**, sworn  
before me this 17th day of August, 2018.



A Commissioner for Oaths/~~Notary Public~~  
in and for the Province of Alberta

**Lindsay M. Rydl**  
**Barrister & Solicitor**

**LOAN ADMINISTRATION AGREEMENT**  
**GRAYBRIAR GREENS PHASE 2 - \$1,235,162.38 PRIORITY MORTGAGE**

This Agreement made the 28 day of July, 2010

BETWEEN:

**ARRES CAPITAL INCORPORATED**, a body corporate incorporated under the laws of the Province of Alberta, having an office at 205, 707 – 10<sup>th</sup> Avenue S.W., Calgary, AB, T2R 0B3

1454787 Alberta Ltd., a body corporate incorporated under the laws of the Province of Alberta, having an office at 205, 707 – 10<sup>th</sup> Avenue S.W., Calgary, AB, T2R 0B3

Or any nominee or agent of Arres Capital Inc

(hereinafter called "Arres Capital")

OF THE FIRST PART

AND:           **ACCESS MORTGAGE CORPOTATION 2004 LTD**

Residing at: 205, 707 10 AVENUE SW  
CALGARY, AB  
T2R 0B3

(hereinafter called the "Co-lender")

WHEREAS:

OF THE SECOND PART

- 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; and
- D. The parties wish to clarify, in the event of a co-lending arrangement, the manner in which the Loans will be administered.
- 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 \$20,103.71 bring the total amount invested to **\$1,010,162.38** of the total priority mortgage amount of \$1,235,162.38



F. A copy of the commitment letter signed by the borrower is attached here to as "Schedule A"

NOW THEREFORE this Agreement witnesseth 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 *Securities Act* (Alberta);

"Agreement" refers to the whole of this Agreement and not to any particular article, clause or other portions thereof, and includes any and every instrument supplemental hereto;

"Arres Capital" means the party of the first part and any nominees, assigns or agents appointed by Arres Capital Inc. to administer, manage, service, or enforce any or all the terms of this agreement;

"Associate" has the meaning ascribed thereto in the *Business Corporations Act* (Alberta);

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

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

"Co-lender Commitment" is attached here to as "Schedule B" 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 party of the second part and any other person or entity, including Arres Capital 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" means all the Co-lenders that participate in a particular Loan;

"Co-lender Loan" means a Loan in which the Co-lender holds a Participating Interest;

"Loan" or "Loans" means indebtedness or obligations secured or collateralized by a Security Interest;

"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, bonds, assignments of purchase and sale agreements or other evidences of indebtedness, whether negotiable or non-negotiable;

"Other Co-Lender Loan Documents" means any agreement or document entered into by, or delivered to and accepted by, the Co-lender in connection with a specific Co-lender Loan, which agreement or document may supersede this Agreement respecting the subject matter of such agreement or document if so specified by the terms thereof;

"Participating Interest" means with respect to any Loan or any costs or other amounts relating to or regarding a Loan, the undivided ownership interest of a Co-lender in such Loan, expressed as a percentage based on the

principal advanced by the Co-lender as a fraction of the total principal advanced by all Co-lenders comprising the Loan;

**"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 Interest"** 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 Arres Capital 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 Arres Capital 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.

## **ARTICLE 2 - LOAN ADMINISTRATION & TRUST DECLARATION**

### **2.1 Appointment of Arres Capital as Trustee**

The Co-lender hereby irrevocably nominates, constitutes and appoints Arres Capital as its custodian and bare trustee to hold its Participating Interest in a Co-lender Loan, and grants Arres Capital full power to administer and manage such Participating Interest and authorizes Arres Capital to deal with its Participating Interest pursuant to the terms of this Agreement.

Arres Capital will act as signing authority for the Co-lender and shall enter into all commitments, contracts and obligations in that capacity, for and on behalf of the Co-lender.

All rights, monies, payments, profits and advantages relating to the Co-lender's percentage 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.

In the sole discretion of Arres Capital, a Participating Interest will be registered and/or held in its name or in the name of an Affiliate or Associate, or an entity appointed by Arres Capital as nominee and bare trustee for and on behalf of the Co-lender with full power and authority to hold, administer and manage the Co-lender Loan.

The Co-lender's Participating Interest in any Loan and related Security Interests shall remain in Arres Capital's name subject only to the following events:

- (a) Arres Capital becoming insolvent or making a general assignment for the benefit of its creditors or a bankruptcy petition or receiving order being granted against Arres Capital; or
- (b) Arres Capital ceasing to carry on business.

Upon the occurrence of either of the foregoing events, the Co-lender shall be entitled to request and receive from Arres Capital such executed documents as are required to transfer the Co-lender's Participating Interest in the Loan and the related Security Interests, if any, into the Co-lender's name.

"Until such time as Arres Capital has executed and provided to the Co-lender such transfer, the Co-lender shall not be entitled to register a caveat or any other document in the applicable land titles registry to evidence its rights hereunder. Without limitation, in the event that the Co-lender registers such interest, it shall forthwith, upon request of Arres Capital, 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 Arres Capital on account of such registration."

## 2.2 Termination of Trust

Notwithstanding any other provision of this Agreement, the Co-lender's right, title and interest in or to a Loan shall automatically terminate without any action by the Co-lender 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) receipt by the Co-lender of its Participating Interest in any amount received as a final compromise or settlement with a borrower in default in respect of a Loan;
- (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 Arres Capital distributes to the Co-lender its Participating Interest in any net proceeds of realization received by Arres Capital; or
- (d) Arres Capital 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 Interests upon Arres Capital becoming insolvent or making a general assignment for the benefit of its creditors or a bankruptcy petition or receiving order being granted against Arres Capital or Arres Capital ceasing to carry on business as set out above.

## 2.3 Arres Capital's Irrevocable Option to Repurchase

Notwithstanding any other provision of this Agreement, the Co-lender hereby grants to Arres Capital the irrevocable right at any time to purchase its 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)."

## 2.4 Administration of Loans

Arres Capital agrees to take such actions as may be necessary or desirable in its sole discretion to administer and service each Co-lender Loan, including retaining and instructing solicitors, receivers or other professional advisers and agents to protect and enforce the Co-lender'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 Co-lender Loan, 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 Co-lender Loan in accordance with Arres Capital's normal lending practice;
- (c) making reasonable efforts to collect all payments on account of principal or interest payable on the Co-lender Loan where applicable and to cause the borrower to perform its obligations under the Co-lender Loan or other security documents relating thereto, including instituting foreclosure or other enforcement remedies, if necessary;
- (d) administering the Co-lender Loan in good faith and in Arres Capital'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 Co-lender Loan;
- (e) on a monthly basis forwarding to the Co-lender a monthly statement of account in respect of all Co-lender Loans; and
- (f) maintaining records and accounts in respect of each Co-lender Loan as set out in this Agreement.

Arres Capital agrees to service the Co-lender 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 Co-lender Loans. Arres Capital 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 Default and Enforcement and Expenses

The Co-lender acknowledges that the time within which Arres Capital 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 on behalf of the Co-lender may vary considerably depending on the particular investment, the Real Property, the borrower, the Co-lender's circumstances as perceived by Arres Capital and the presence of an acceptable party to assume the Co-lender Loan. Arres Capital may, but shall not be obligated to, retain legal counsel, 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 Co-lender Loan, security for the Co-lender Loan, investment or any Real Property Associated with the Co-lender Loan.

The Co-Lender agrees that all costs incurred by Arres Capital including its internal costs in the administration servicing and enforcement of the Co-Lender Loan both before and after default and enforcements shall: (a) be paid to Arres Capital by the Co-Lender in accordance with Section 2.7 hereof and (b) as additional security for payment shall constitute a first charge against payments of interest, principal or other costs collected on the Co-Lender Loan.

## 2.6 Interest Participation and Fees

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

## **2.7 Costs**

Arres Capital shall endeavor to collect the amount of all costs incurred in respect of a Co-lender Loan ("Costs") from the borrower but, in all events, the Co-lender shall indemnify Arres Capital for and shall pay to Arres Capital the Co-lenders Participating Interest of the Costs within five (5) days of demand by Arres Capital plus interest at the Contracted Borrower Rate if the Costs are not paid within the aforesaid five (5) days, and grant to Arres Capital a lien over its Participating Interest in the Co-lender Loan for any unpaid Costs. "For clarification, such Costs shall not include such fees and expenses that Arres Capital received at the time of funding in accordance with the terms of such facility letter or loan agreement relating to the Co-lender Loan."

## **2.8 Interest**

Total interest paid by the borrower (contracted borrower rate) is to be 15% per annum.

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

## **2.9 Books and Records**

At all times, Arres Capital shall keep timely, complete and accurate books of account and records relating to a Co-lender Loan and the services performed hereunder by Arres Capital, 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 Arres Capital. All records, papers, policies, documents, files and other information and materials regarding Arres Capital or a Co-lender Loan are and shall be and remain forever the property of Arres Capital. The Co-lender covenants not to retain or make any copies, extracts or reproductions of the information without the prior written consent of Arres Capital which consent may be subject to conditions established by Arres Capital.

# **ARTICLE 3 – CO-LENDER CONSENTS AND ACKNOWLEDGEMENTS**

## **3.1 Specific Consents and Acknowledgements**

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

- (a) Arres Capital and its principals, Affiliates, Associates and employees, may purchase with their own funds and own as a Co-lender, a Participating Interest in any Co-lender Loan and Arres Capital may also sell Participating Interests in such Co-lender Loan to other Co-lenders.
- (b) the directors, officers, employees, Affiliates and Associates of Arres Capital are engaged in a wide range of investing and other business activities which may include Real Property financing in direct competition with the Co-lender Loan and Arres Capital intends to and has established other investment vehicles which may involve transactions which conflict with the interests of the Co-lender;
- (c) the services of Arres Capital and its directors, officers and employees are not exclusive to the Co-lender or any Co-lender Loan, and Arres Capital, 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 with any Co-lender Loan;
- (d) 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;

- (e) Arres Capital is under no obligation to make payments to the Co-lender hereunder in respect of its Participating Interest in a Co-lender Loan unless and until payments are received by Arres Capital from the borrower or other applicable Person in respect of the Co-lender Loan in any particular month;
- (f) the Co-lender's interest in the Loan is that of a co-tenant as to an undivided interest in common with all other Co-lenders;
- (g) Arres Capital may, in its absolute discretion, but shall not be required to, put any issue dealing with the enforcement or administration of any Co-lender Loan to a vote by the Co-lenders participating in such Co-lender 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 Arres Capital, 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. Arres Capital 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 issue shall be decided on by simple majority of the co lenders (by weighted vote) who casts their votes in person or in writing. Nothing herein shall prevent Arres Capital from applying to a Court of competent jurisdiction for advice and direction, should it deem it necessary;
- (h) the total principal advanced on a Co-lender Loan may increase after the date that the Co-lender's funds are advanced, in which case the Co-lender's Participating Interest in the Co-lender Loan will decrease as such additional advances are made; and
- (i) there are risks inherent in participating in a Co-lender Loan and that, in making such investment decision, it 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, and undertakes to review each Co-lender Loan with such independent professional advisers as the Co-lender considers appropriate.

### **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, Arres Capital 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 Arres Capital, 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 Co-lender Loan calculated at the Contracted Co-lender Rate for such Co-lender Loan but subject to the terms of this Agreement and any Other Co-lender 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 Co-Lender Loan Documents; (a) on a monthly basis Arres Capital will distribute to the Co-lender its proportionate share of the net interest received by Arres Capital from a borrower in respect of the Co-lender Loan after deduction of any interest allocations, fees, reserves, expenses or disbursements properly payable to Arres Capital by the Co-lender or deductible by Arres Capital with regard to the Co-lender Loan in accordance with this Agreement and any Other Co-Lender Loan Documents; and (b) any partial payments of principal or interest received by Arres Capital in respect of a Co-lender Loan will be paid to those participating Co-lenders pro rata in accordance with their Participating Interests in such Co-lender Loan.

Arres Capital 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 Arres Capital from the borrower in respect of a Co-lender 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 to Arres Capital. 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 to Arres Capital.

In the event that Arres Capital shall hold any amount owing to a Co-lender which is unclaimed or which cannot be paid for any reason, Arres Capital 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. Arres Capital 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 Arres Capital has its principal office, whose receipt shall be a good discharge and release of Arres Capital.

If Arres Capital anticipates holding a Co-lender's funds in cash for a period in excess of seven (7) days, Arres Capital 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 discretion of Arres Capital. Notwithstanding the foregoing, the Co-lender authorizes Arres Capital to hold a cheque for its funds un-cashed until such time as the Co-lender Loan for which the funds were paid to Arres Capital 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

Arres Capital assumes no responsibility under this Agreement or any Other Co-Lender Loan Documents or trust documentation other than to render the services called for in accordance with the Servicing Standard. Arres Capital 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. Arres Capital 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 thereunder, and, subject to the foregoing, none of Arres Capital, 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 Arres Capital 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 Arres Capital

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

Arres Capital, 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 Co-lender Loans and the Co-lender acknowledges and agrees that the foregoing aspects of each and every Co-lender 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 may be terminated by Arres Capital or by the Co-lender at any time when the Co-lender does not own a Participating Interest in any Loan being administered by Arres Capital or, in relation to a particular Loan, solely by Arres Capital when Arres Capital 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 Arres Capital pursuant to this Agreement.

## ARTICLE 7 – MISCELLANEOUS

1 **Security.** Arres Capital shall have a lien on the assets and property of the Co-lender to enforce payment of all amounts owing from time to time to Arres Capital by the Co-lender under this Agreement or otherwise.

7.2 **Privacy.** The Co-lender hereby acknowledges that it has read and understood Arres Capital'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 Arres Capital's collection, use and disclosure of the Co-lender's personal information as described in Arres Capital'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.** Arres Capital 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 the Co-Lender Commitment detailing the Loan and seeking the Co-lender's agreement to participate in such Loan. The Co-Lender Commitment forms part of this agreement and both of which are attached to this document.

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 Arres Capital:** At: Suite 205, 707 – 10<sup>th</sup> Avenue SW, Calgary, AB, T2R 1H5  
Attention: President.

7.5 **Relationship.** Arres Capital is, and shall perform its duties hereunder as, an independent contractor on

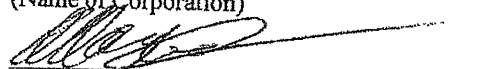


**7.17 Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

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

ACCESS MORTGAGE CORP 2004 LTD

(Name of Corporation)



(Authorized Signatory)

c/s

\_\_\_\_\_  
(Authorized Signatory)

**Witness to Execution**

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

OR

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Co-lender)

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Signature of Co-lender)

\_\_\_\_\_  
(Address of witness)

**ARRES CAPITAL INC.**

Per: \_\_\_\_\_  
(Authorized Signatory)

c/s

**1454787 ALBERTA LTD.**

Per: \_\_\_\_\_  
(Authorized Signatory)

c/s

**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.

**INVESTOR/LENDER CONFLICT OF INTEREST DISCLOSURE STATEMENT****Form 11 – Section 17.4**

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.**

Graybriar Greens Inc

Name of Borrower:

Arres Capital Inc

Name of Mortgage Broker:

403 261 9955

Telephone:

N/A

Name of Submortgage Broker:

Civic address of property to be mortgaged:

Condominium Plan 0827766 Unit C And 1660 undivided

Condominium Plan 0827766 Unit D And 2324 undivided

Legal description of property to be mortgaged:

ACCESS MORTGAGE CORP 2004 LTD

Name of Investor/Lender:

Date of transaction:

### 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

**Referrals to the Mortgage Broker – N/A**

## 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.

Agres Capital Inc

205, 707 10 Avenue SW Calgary AB T2R 0B3

Full name of Mortgage Broker

Address (including Postal Code)

Signature of Mortgage Broker or Authorized Representative      Date Signed (YYYY, MM, DD)

### ACKNOWLEDGE OF RECEIPT

Signature \_\_\_\_\_ Name (Please Print) \_\_\_\_\_ Date Signed (YYYY, MM, DD) \_\_\_\_\_

Signature \_\_\_\_\_ Name (Please Print) \_\_\_\_\_ Date Signed (YYYY, MM, DD) \_\_\_\_\_



**Privacy Policy**  
**Client Information – To keep**

**Introduction**

The *Personal Information Protection Act* (PIPA) governs how all private sector organizations in Alberta 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 situations 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 Inc.  
#1002, 1520 – 4<sup>th</sup> Street S.W.  
Calgary, Alberta T2R 1H5

Attention: Privacy Officer



August 10, 2007  
 Graybriar Greens Inc.  
 c/o Graybriar Land Development Company Ltd.

Dear Sir/Madam:

Re: Loan for \$9,700,000.00

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 Arres Capital Inc. and/or its assigns

1. **Borrowers:** Graybriar Land Company Ltd. and Graybriar Greens Inc.

2. **Amount of loan:** \$9,700,000.00

3. **Term:** One year, renewable at the discretion of the Lender.

4. **Rate of Interest:**

Interest will be charged at 15% 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 September 1, 2008 (the "Maturity Date").

5. **Fees:**

Lender Fees for this transaction shall be 2% of any amount Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited lends in this matter which at this time is One Million Dollars thus a fee of \$20,000.00 shall be deemed due and owing. The Lender Fees shall be earned and be payable to Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited and/or its assigns upon acceptance of this letter by the Borrowers, and the Borrowers agree that a caveatable charge against the interest and estate of the Borrowers in the Property is thereby created which shall remain in force until the Fee is paid in full. In the event that any further funds are required by the borrower from Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited or any re-advancement from Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited under this loan shall also be subject to the same terms as set out herein and fees of 2% shall be charged on re-advancement. Any other investors in this mortgage will not receive a lenders fee for this transaction.

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 on the principal amount advanced shall be due and payable. An interest reserve account shall be set up and all interest reserve funds will be held in trust by Hildebrand Wilde. With each advance under this loan, further interest reserve will be required for monthly interest only payments.

-In the event that the interest reserve does not cover a payment and a direct payment is required from the borrower the 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.

A standby fee of ½ % per month will be charged on progress draws that are scheduled and not drawn within 7 calendar days of scheduled draw date.

**7. Prepayment:**

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

**8. Security and other documents:**

The Borrowers agree to provide to Arres Capital Inc. and/or its assigns in form and substance satisfactory to it, all security requested by Arres Capital Inc. and/or its assigns including, without limitation, the following documentation (the "Security") which will be held by 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 Arres Capital Inc. and/or its assigns from time to time:

A corporate Guarantee of: Graybriar Land Company Ltd. and Graybriar Greens Inc.

A mortgage over the properties described as: Will initially be a second charge on the whole property but will be a first charge on the titles to the 13 buildings once land is subdivided.

PLAN 052-0941, BLOCK 1, LOT C

A general security agreement compromising 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 Encumbrance 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 Arres Capital Inc. and/or its assigns satisfactory to Arres Capital Inc. and/or its assigns

**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 the mortgage of Arres Capital Inc. and/or its assigns over the Properties.

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 Arres Capital Inc.

Assignment of Rents

Assignment of all plans and permits

Assignment of all drawings as completed by the architect

That an interest reserve account be set up for monthly interest only payments. The initial interest reserve will be for 6 months and any further advances under this mortgage will require further interest reserves to be put in place.

Partial Discharges will be granted for 95% of net sales proceeds. All sales must be within 3% of list price unless agreed to in writing by Arres Capital Inc and/or its assigns.

In the event of default all sales proceeds are due to the lender.

#### USE OF FUNDS:

\$ 863,200.00	to be paid for services completed
\$ 20,000.00	Lender fees to Access
\$ 883,200.00	TOTAL FIRST ADVANCE
Other disbursements to be made in due course	
Legal Fees	TBD
Interest Reserve	TBD
Land Purchase	TBD
\$5,720,000.00	approximate balance available for future improvements and services to the site as work is completed and invoices are submitted and approved by Arres Capital Inc. and or its assigns.
<u>\$9,700,000.00</u>	<u>TOTAL MORTGAGE AMOUNT APPROVED AT THIS TIME.</u>

Any advances made shall be for strictly for the benefit of the project

#### 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 favor 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 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.

That the borrower agrees that in the event that any insurance claim is made during the term of this mortgage or any renewal terms, 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 Arres Capital 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 Arres Capital Inc. and/or its assigns (acting reasonable) and its solicitors in their absolute discretion. Arres Capital Inc. and/or its assigns solicitors in this transaction are:

**13. Title:**

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

The security required by 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 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 Arres Capital'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 Arres Capital Inc. and/or its assigns in the Province of Alberta. Such fees, disbursements, and GST shall be deducted from the Mortgage Proceeds.

#### Other

If Arres Capital Inc or any affiliate of 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:

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 Arres Capital Inc. and/or its assigns, a material adverse change in the condition of the property or Collateral Property or the Borrowers; or

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 Arres Capital's Inc. and/or its assigns and its council's satisfaction.

If 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 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 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 September 1, 2008 and a renewal fee not to exceed 2% of the principal balance owing on the mortgage at the time of renewal will be payable to 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 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 funds are not fully disbursed by the close of business on September 1, 2007 Arres Capital Inc. and/or its assigns agree to provide the loan or advance any funds, at the sole discretion of 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 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, Arres Capital Inc. and/or its assigns may elect which provision shall prevail.

**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 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 Arres Capital Inc. and/or its assigns on or before 2:00 p.m. on October 15, 2007, after which date and time, this offer shall lapse, if it is not accepted.

Sincerely,  
Arres Capital Inc.

Wes Serra  
President

**ACCEPTANCE**

Acceptance of this letter provides full and sufficient acknowledgement that Arres Capital Inc. and/or its assigns has no obligation to advance any funds under this agreement and if, in the opinion of 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 Arres Capital Inc 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 \_\_\_\_\_, 2007 on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

We hereby acknowledge and agree that all information and/or documentation provided to me/us by 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 Arres Capital Inc. and or its assigns.

Graybriar Land Company Ltd.

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Graybriar Greens Inc.

Per: \_\_\_\_\_

Per: \_\_\_\_\_



ARRES

Capital Inc.

24

#1002, 1540 - 4th Street SW  
Calgary, AB T2P 3C8  
Fax: (403) 264-9954 Tel: (403) 261-9955

Date: August 10, 2007

To: Graybriar Land Company Ltd. and Graybriar Greens Inc.

Dear Sir/Madam,

Re: Financing Through Arres Capital Inc.

As required by the Real Estate Council of Alberta's Code of Conduct, a mortgage brokerage (including its broker, associate brokers, and agents) must only act for one party in a transaction, unless there is full disclosure to all parties, and the dual agency is agreed to in writing. The client must fully understand the implications of dual agency and give an informed consent in writing before entering into a real estate transaction.

In general, our firm will act both for the mortgagor (borrower) and mortgagee (lender) and in some cases the loan may be advanced by members of the firm and/or their relatives.

When acting for both the mortgagor and mortgagee in a mortgage transaction, we retain on file, a letter of conflict informing you that we are acting on behalf of both parties in regards to this transaction. We also may or may not receive referral fees in connection with your file.

Arres Capital Inc. deals with mortgages based on equity in Real Property, we deal with unconventional lenders, interest rates and fees will normally exceed conventional financing.

The undersigned agree to have Arres Capital Inc. act as its mortgage broker / broker agent, giving full disclosure to both parties, with respect to the above transaction, and authorizes the Brokerage Firm, Arres Capital Inc., to act as a dual agent in accordance with the above disclosure.

This loan is a commercial mortgage

Dated this      day of      2007

Name :  
Address:

## INFORMATION / CREDIT AUTHORIZATION

In connection with my (our) application for credit and keeping with the Privacy Act, I hereby authorize Arres Capital Incorporated or their solicitors to obtain the following personal information and/or credit information:

-any and all information requested regarding my (our) mortgage, account, loan, credit card account, or any other relative information required by them, and

-Any and all information regarding a consumer credit report respecting me (us).

I (we) hereby consent to the disclosure of such information to Arres Capital Incorporated or their solicitors now or at any time in the future that they may request same:

Dated : \_\_\_\_\_, 2007

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Print Name:



# ARRES

Capital Inc.

#205, 707 - 10 Ave SW

Calgary, AB T2R 0B3

Tel: (403) 261-9955

Fax: (403) 264-9954

September 29, 2009

**Re: Investors in Graybriar Greens Phase 2 Mortgage**

Dear Investors,

We are writing to provide you with an update and to seek your approval.

**Update:**

Based on your approval of the \$300,000 priority funding we have completed the majority of the site preservation and improvements as stipulated in the investor letter on July 23, 2009. In particular:

- the entire site has been cleaned up
- the exteriors of buildings 800, 900 and 1000 have been completed
- building 2200 is nearing completion and the show suite should be complete by the first week in October.
- the basement slab has been poured in building 700 (originally reported as building 500)
- all sea cans have been removed from the site and all material has been stored in building 700
- the landscaping improvements to Phase 1 have been completed
- Timberock has begun developing signage and preparing advertising
- contingency funds have been used to complete the retaining walls and sidewalks to satisfy the towns requirements for subdivision and occupancy

Despite our construction progress, the foreclosure continues to be an ongoing judicial process taking its due course. We continue to pursue this, however we do not want to stall the project from progressing and miss this prime building time and return of sales to the market place.

**Approval Required:**

Therefore we are seeking your approval for an additional \$181,560.00 priority mortgage, which will be dispensed immediately. Thus, the total priority will be \$481,560 (\$181,560 + \$300,000). We will again use the same process (outlined below) that was used to raise the original \$300,000 priority.

**The plan for the \$181,560.00 is as follows:**

- Register units with Progressive Home Warranty, the registration fee is \$45,360.00. It is imperative that each home is properly registered under new home warranty; without new home warranty purchasers do not qualify for CMHC financing. An additional \$48,000.00 security deposit must be provided. The security deposit may be refunded if no costs are incurred by Progressive one year following the initial possession date on a per unit basis. The total initial cost which must be paid to secure new home warranty is \$93,360.00.
- Complete the framing and exterior envelope of building final building in Phase 2. Currently, the footings



are in place however, no framing has commenced. The majority of framing material is on site and remains salvageable. If it is not assembled and covered in the near future, all material will have to be discarded. In addition, as per the town's requirements, if this unit is not framed and completed from an exterior perspective, occupancy cannot be granted on any of the existing buildings. Furthermore, completing this process becomes much more costly during the winter months. The funds required to complete the framing and remaining exterior work of the last building are \$88,200.

Our goal is to continue making progress on the file while we await foreclosure, and ensure we take advantage of prime building conditions. We also want to capture the ever increasing real estate market; compared to August of last year, sales have been higher this year and although the average price is lower, there is less inventory and increased buyer interest (Edmonton Real Estate Board, September 2009). We plan to take pre sales within the coming months and move forward with the remainder of construction.

**Due to the liens in place what we are proposing to the investors is as follows:**

- The investors in the current \$9,000,000 mortgage must agree to raise an additional \$181,560 in priority to them (\$300,000 has already been approved and currently is in priority); as a result the new priority amount would be \$481,560.00.
- As there are lien holders, this cannot be a normal priority mortgage.
- The investors in the \$9,000,000.00 mortgage must agree to sell the \$181,560 to the investors in the priority position in addition to the \$300,000.
- The new investors will have their \$181,560 secured in priority (in addition to the \$300,000), within the existing \$9,000,000 mortgage already advanced to date.
- Thus your current pro-rated portion of the \$181,560 plus the previously raised \$300,000 will be behind the lien holders. The end effect (based on \$181,560 plus \$300,000) to you is that 5.4% of your current investment would move to last position. For example, if you lent \$100,000.00 in the original deal, \$5,351 would be the amount moving out of the existing first mortgage to the last position in exchange for the new \$481,560 in funds.

In the future when sales happen, we pay the priority mortgage down first. The priority mortgage earns interest at 15%, this interest is accrued and is paid when the principal is repaid. We want to keep the amount of the priority to a minimum, but at the same, move forward in the most cost effective manner possible.

Please indicate your decision by signing your initials beside the applicable choice:

- \_\_\_\_\_ I approve the addition of \$181,560 to the existing priority position of \$300,000 for a total priority position of \$481,560 as outlined above, however I do not wish to contribute to the priority position
- \_\_\_\_\_ I approve the addition of \$181,560 to the existing priority position of \$300,000 for a total priority position of \$481,560 as outlined above, and I do wish to contribute to the priority position
- \_\_\_\_\_ I do not approve the addition of \$181,560 to the existing priority position of \$300,000 for a total priority position of \$481,560 as outlined above


**Authorization:**\_\_\_\_\_  
Please print full name\_\_\_\_\_  
Signature\_\_\_\_\_  
Please print full name\_\_\_\_\_  
Signature

Once you have initialed your applicable choice and signed the authorization, please e-mail **all three pages** back to [billie@arrescapital.com](mailto:billie@arrescapital.com) or fax to (403)264-9954 **BY FRIDAY, OCTOBER 2, 2009 @ 12 NOON.**

\* 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.

This is **Exhibit "C"**  
to the affidavit of **David Murphy**, sworn  
before me this 17th day of August, 2018.

  
A Commissioner for Oaths/~~Notary Public~~  
in and for the Province of Alberta

**Lindsay M. Rydl**  
Barrister & Solicitor

TRUST AGREEMENT  
GRAYBRIAR GREENS INC. - PHASE 2

Made this 29 day of September, 2008:

BETWEEN:

ARRES CAPITAL INC.  
(hereinafter referred to as the "Trustee")

and

ACCESS MORTGAGE CORPORATION (2004) LTD.  
(hereinafter referred to as the "Investor")

WHEREAS:

- A. The meaning of certain capitalized words and phrases used in this Agreement are defined in Article I hereof;
- B. The Trustee is a mortgage broker licensed and registered in accordance with the *Real Estate Act* (Alberta);
- C. The Trustee has entered into a Commitment Letter with the Borrower to lend the Borrower the Loan Amount to be secured primarily against the title to the Borrower's Lands;
- D. 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 **\$1,785,677.64**
- E. The Parties have agreed that the Loan Security shall be held in the name of the Trustee and the Proportionate Share of the Loan shall be administered and held by the Trustee acting as bare trustee for the Investor;
- F. The Investor has agreed with the Trustee that the Trustee shall be entitled to deduct placement and administration fees from the proceeds of the Loan and the Investor's net rate of return on his Proportionate Share of the Loan is set out in the Loan Summary;

NOW THEREFORE:

**Article 1**  
**DEFINITIONS**

- 1.1 "Agreement" means this Agreement and any amendment thereto;
- 1.2 "Borrower" means GRAYBRIAR GREENS INC.;
- 1.3 "Commitment Letter" means that letter agreement entered into between the Trustee and the Borrower to grant the Loan dated August 10, 2007, a copy of which is attached hereto as Schedule A;

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- 1.4 **"Lands"** means those lands and premises described in the Land Schedule annexed hereto;
- 1.5 **"Loan"** means the Loan Amount advanced or to be advanced to the Borrower by the Investor on the terms subject to the conditions set out in the Commitment Letter and includes, without limitation, all principal, interest, fees, expenses, charges and all other amounts owing by the Borrower from time to time to the Investor pursuant to the Commitment Letter and also includes the Loan Security;
- 1.6 **"Loan Amount"** shall mean the sum of NINE MILLION SEVEN HUNDRED THOUSAND (\$9,700,000.00) in Canadian currency;
- 1.7 **"Loan Security"** shall mean any mortgage, charge, pledge, lien, hypothec, encumbrance, conditional sale, title retention agreement, assignment, general security agreement, guarantee or other security interest whatsoever, and shall include that security listed the Commitment Letter;
- 1.8 **"Loan Summary"** means the structure of the loan and return to the Investor on the Investor's Proportionate Share of the Loan as contained in Schedule "B" to this Agreement;
- 1.9 **"Other Investors"** shall mean those parties additional to the Investor who agree to participate in the Loan on the same terms as those herein;
- 1.10 **"Proportionate Share"** shall mean the undivided ownership interest of the in the Loan, expressed as a percentage, equal to the fraction having as its numerator the total principal advanced by the Investor, from time to time, pursuant to this Agreement and having as its denominator the total principal of the Loan advanced, from time to time, to the Borrower;
- 1.11 **"Schedules"** The following schedules shall be deemed for all purposes to comprise and form part of this Agreement:
- |                 |                   |
|-----------------|-------------------|
| Land Schedule - | Lands             |
| Schedule "A" -  | Commitment Letter |
| Schedule "B" -  | Loan Summary      |

## **Article 2 – Loan Acquisition and Participation**

- 2.1 **Acquisition of Loan** The Trustee shall be responsible for the acquisition and processing of the Loan including, without limitation, the following:
- (a) acquiring, assembling, recording and processing all the necessary information, data, applications, forms and reports in connection with the Loan;
  - (b) retaining solicitors to perform and carry out instructions and requirements necessary to complete the Loan including, without limitation, all requisite searches, preparing and attending upon the execution and delivery of the Loan Security and attending to all necessary registrations and filings as may be required to ensure the perfection and the priority of the Loan Security, subject only to such encumbrances and other qualifications specifically permitted by the Commitment Letter or by the Investor in writing;
  - (c) ensuring that the Borrower has made satisfactory arrangements for insurance as is required by the Commitment Letter and the Loan Security, and

- (d) if a requirement for the Loan, obtaining copies of Real Property Reports and specifications in respect of the improvements being constructed on the Lands and verifying that the completion of construction is in accordance with the plans and specifications provided to the Investor by the Borrower and as contemplated by the Commitment Letter.

## 2.2 Interest in the Loan

Upon the Investor delivering to the Trustee advances in accordance with Article 3.1, the Investor shall have a beneficial interest in the Loan to the extent of its Proportionate Share in the Loan. Interest shall be paid to the Investor at the rate of 15% per annum.

Total Interest to be paid by the borrower is to be 15% per annum, (being 15% per annum to the Investor and 0.00% per annum to the Trustee for administration and loan servicing.

## 2.3 Acknowledgment of Other Investors and Endorsement of Loan Security

All loan documents shall be taken, held and registered only in the name of the Trustee and the Trustee shall hold the same at all times as bare trustee for the Investor and other Investors as to their respective Proportionate Shares. The Investor recognizes and agrees that the Trustee may be participating in the Loan as an Investor.

## 2.4 Non-Interference

The Investor covenants and agrees with the Trustee that it will not act, or deal with its Proportionate Share in the Loan and the Loan Security in such a manner as to prejudice or reduce the rights of the Trustee of any Other Investor or the Loan Security, and further covenants and agrees to maintain this Agreement in full force and effect as it relates to the Loan as long as the Loan is owned in part by the Investor.

## 2.5 Further Documents

The Trustee shall, at the request of the Investor, execute and deliver such further assignment, transfer, conveyance, assurance, document or instrument which may be reasonably required by the Investor to evidence the Proportionate Share of the Investor in the Loan, provided only that such further assignment, transfer, conveyance, assurance, document or instrument shall not impair the Trustee.

## 2.6 Acknowledgements

The Lender will, at the request and expense of the Investor, execute and deliver from time to time such additional acknowledgements as the Investor may reasonably require to confirm the Investor's beneficial ownership of its Proportionate Share including all profits and losses.

## Article 3 - Advances

### 3.1 Advanced Generally

Upon request from the Trustee, the Investor shall remit by bank draft to the Trustee, or as the Trustee may otherwise direct in writing, an amount equal to its Proportionate Share of any portion of the Loan to be advanced to the Borrower pursuant to the Commitment Letter.

### 3.2 Interest on Advances

Funds will be requested by the trustee from the investor. When the investors certified cheque or bank draft payable to the law firm is brought to the trustee, or in cases of RSP money, when the trustee advances the funds, prior to noon in both cases, interest will start accruing. If funds are received after noon, interest will start the following banking day. In the event of a BC mortgage, interest will start one banking day after receipt of the bank draft payable to the law firm being received in the Trustee's office.

### 3.3 No Obligation to Advance

Other than in its capacity as a participating investor, the Trustee shall not be required to advance its own funds for any purpose.

### 3.4 Advanced To Preserve or Enforce Loan Security

The Investor acknowledges and agrees that excess advances may be required from it from time to time in the event of the Borrower's default to preserve or recover the Loan in the same ratio as its Proportionate Share.

### 3.5 Failure to Advance

The Investor acknowledges and agrees that its failure to advance funds pursuant to Article 3.1 may result in the Trustee being unable to fund the loan as required by the Commitment Letter and thereby may be subject to damages. In addition to any other provisions to this Agreement, the Investor hereby indemnifies the Trustee and the Other Investors for any losses, expenses, costs, suits or liabilities that may be incurred as a result of the Investor's failure to advance its Proportionate Share of the Loan under this Agreement. In addition to any other rights or remedies that the Other Investors may have, any amounts owing under this Agreement to the defaulting investor shall be set off against the amount owing under such indemnity.

## Article 4 Administration of the Loan

### 4.1 Servicing of the Loan

The Trustee shall administer and service the Loan on the terms and subject to the conditions to this Agreement.

### 4.2 Administer the Loan

The Trustee shall administer the Loan and the Loan Security on behalf of the Investor and the Other Investors, and shall exercise its powers and discharge its duties hereunder honestly, in good faith and in the best collective interest of the Investor and the Other Investors and, in connection therewith, shall exercise that degree of care, diligence and skill that a reasonably prudent lender would exercise in comparable circumstances.

### 4.3 Maintain Accounts

The Trustee agrees with the Investor to maintain proper records and accounts showing all receipts, payments and disbursements in respect of the Loan, all according to generally accepted accounting principals, and the Trustee agrees with the Investor that such books as they relate to the Investor shall be open to the Investor on reasonable request.

### 4.4 Periodic Accounting

The Trustee shall provide an accounting of the Loan and the interest earned thereon to the Investor, and shall do so by the provision to the Investor of a report showing the payments received by the Trustee from the Borrower pursuant to the Loan.

#### 4.5 Periodic Payment

The Trustee shall on a monthly basis, remit to the Investor all amounts received by the Trustee on account of the Investor's Proportionate Share including interest payable thereon at the rate set out in the Loan Summary, less any expenses or disbursements properly payable to the Trustee by the Investor with regard to the Loan.

#### 4.6 Specific Authorization to Discharge

The Investor hereby specifically authorizes the Trustee to grant partial discharges of the Loan Security when required under the terms of the Commitment Letter.

#### 4.7 Collection of Debts Due

The Trustee shall make reasonable efforts to collect all payments on account of the Loan and to cause the Borrower and guarantors, if any, to perform their obligations under the Loan Security.

#### 4.8 Retain Experts

The Trustee shall retain, when necessary, solicitors or other professional advisors to protect and enforce the investor's rights and interests against the Borrower. Prior to such expenditures, the Trustee will endeavor, but is not obligated, to notify and obtain the agreement of the Investor of its intention to make the expenditure. Regardless of such prior approval by the Investor, the Trustee will endeavor to collect such costs incurred or advances made ("Costs") from The Borrower but, in all events, the Investor shall pay to the Trustee, and shall indemnify the Trustee for, the Investor's Proportionate Share of the Costs, such payment to be made within five (5) business days of demand by the Trustee. Interest at the Prime Rate shall be payable by the Investor on all such sums commencing five (5) business days after demand by the Trustee.

#### 4.9 Reimbursement of Expenses

The Investor covenants and agrees that it is responsible for expenses and liabilities incurred by the Trustee in the administration of the Loan on a pro rata basis according to the Investor's Proportionate Share of the Loan.

#### 4.10 Security for Trustee's Costs

As security for the due and punctual payment and performance of all obligations of the Investor to the Trustee including, without limitation, the payment of all monetary obligations of the Investor, the Investor hereby grants the Trustee a security interest, charge and lien over and in respect of the Investor's Proportionate Share in the Loan and Loan Security. The Investor further grants the Trustee the right to set off, deduct and withhold from any monies payable to the Investor the full amount of all monies, costs, expenses or indemnified amounts and all interest thereon which is owed or is accruing due by the Investor to the Trustee, or which the Trustee considers should be reserved as security for costs or amounts which the Trustee anticipates will be incurred or become due and owing reasonably.

### Article 5 Warranties or Representations

5.1 No Warranties or Representations Notwithstanding that the Loan may have been presented by the Trustee to the Investor for the Investor's consideration, the Trustee makes no warranty or representation with respect to the Investment and shall not be responsible for the



observance or performance of any of the terms, covenants, conditions or obligations of the Borrower pursuant to the Commitment Letter or the Loan Security and the Investor acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon the Trustee. The Trustee further makes no warranty or representation as to the financial viability of the Borrower or any guarantor nor to the due execution, legality, validity, enforceability, genuineness or sufficiency of the Loan Security.

**5.2 Reliance on Information and Advice** Subject to the Trustee upholding the standard of care provided for in article 4.2 hereof, the Trustee shall incur no liability under or with respect to this Agreement, the Commitment Letter, the Investment or the Loan Security by acting in good faith or by refraining, in good faith, from acting upon: (a) any notice, consent, certificate or other instrument or writing (sent by letter, telephone, telegram, cable, telex, facsimile or otherwise) believed by the Trustee to be genuine and signed or sent by the proper party or parties; (b) any representation or warranty made by the Borrower, the Guarantors, or any of them under the Commitment Letter or the Loan Security or in connection therewith; and (c) any advice solicited by or given to the Trustee by experts retained by the Trustee.

#### **Article 6 Investing through RRSP**

**6.1** The Investor acknowledges and agrees that if it is investing through an RRSP it is required to have its RRSP administer the loan on its behalf. As such the names of the RRSP administrator will show on the Loan Security and payments will be made by the Trustee to such RRSP administrators. To the extent that such loans are already administered by the RRSP administrator, then the Trustee is not acting on behalf of the Investor. Such Investors are, however, subject to the remaining terms of this Agreement.

#### **Article 7 Compensation for the Trustee**

**7.1** The Investor acknowledges and agrees that the Trustee may be compensated for its brokerage of the Loan by payment to it by the Borrower of a brokerage fee. ~~The Trustee shall be compensated for its administration of the Loan.~~

#### **Article 8 Disposition of Interest**

##### **8.1 Disposal of Percentage in Loan**

If, at the time of renewal, the Investor desires to sell or dispose of its Proportionate Share in a Loan, the Investor shall forthwith deliver to the Trustee notice in writing of its intention to sell or dispose. Upon receipt of the said notice, the Trustee shall have a period of Fifteen (15) days within which to acquire, on his own behalf or as agent for a new Other Investor, the Investor's Proportionate Share in the Loan, after which time the Investor shall be at liberty to sell its Proportionate Share in the Loan to a third party purchaser or an existing Other Investor, in which event the Investor shall, before transferring his interest the Loan, obtain and deliver to the Trustee confirmation by the purchaser, in form acceptable to the Trustee, that the purchaser is bound to the terms of this Agreement. In the event that the Trustee incurs any extra-ordinary expense in assisting the Investor in any of the activities outlined herein, such extra-ordinary expense shall be borne by the Investor. In the event that the Investor's interest cannot be sold or disposed of, the Investor must retain his Proportionate Share in the Loan until maturity of the term of the Loan.

##### **8.2 Purchase Right**

Both the Trustee and the Investor agree to act in good faith and to act reasonably in attempting to resolve any disagreement regarding the Loan. In the event of disagreement between the Trustee and the Investor with respect to the administration of the Loan which they are unable to resolve, the Trustee shall have the right, but not the obligation, to purchase all but not less than all of the Investor's Proportionate Share in the Loan upon written notice to the Investor and payment to the

Investor of his Proportionate Share of the outstanding principal amount of the Loan and all accrued but unpaid interest on such principal calculated at the rate in the Loan Summary to the date of payment to the Investor. The Investor hereby irrevocably appoints the Trustee as his irrevocable attorney for the purpose of executing and delivering all deeds, instruments, transfers, and agreements necessary or desirable to complete and perfect any sale as aforesaid.

#### **Article 9 Indemnification of the Trustee and the Other Investors**

##### **9.1 Indemnity**

To the extent of its Proportionate Share, the Investor hereby agrees to indemnify, save and hold harmless the Trustee and Other Investors from and against any and all legal actions or law suits of any nature and kind with respect to or arising out of the processing, administration and servicing of the Loan or in otherwise fulfilling its obligations, duties and responsibilities set out in this Agreement and any costs, expenses or disbursements incurred in connection therewith, save and except where any such legal action or law suit results from the failure of the Trustee to fulfill and satisfy the terms and conditions of this Agreement including, without limitation, failure of the Trustee to uphold the standard of care or from the fraud, gross negligence or wilful misconduct of the Lender or its agents or employees. The obligation of the Investor to so indemnify and save harmless shall only survive the termination of this Agreement if the cause of action upon which such legal action or law suit is based, arose prior to the termination of the Investor's interest in the Loan under this Agreement.

#### **Article 10 Acknowledgement of Participation of the Trustee**

10.1 The Investor hereby acknowledges that the Trustee, or its principals may purchase with its own funds and own as an Other Investor, a Proportionate Share in the Loan. The Trustee shall not, however, be obligated to purchase or maintain a Proportionate Share in the Loan.

#### **Article 11 Termination**

##### **11.1 Termination of the Role of the Trustee**

The role of the Trustee in servicing and administering the Loan on behalf of the Investor may be terminated upon the Investor giving notice to that effect in writing to the Trustee only upon the happening of any of the following events:

- (a) If any proceedings in insolvency, bankruptcy, receivership or liquidation is taken against the Trustee;
- (b) The Trustee makes any assignment for the benefit of its creditors or commits any act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act (Canada)*;
- (c) If the Trustee assigns or purports to assign this Agreement or any of its rights hereunder without the prior written consent of the Investor;
- (d) If the Trust commits a breach or default under this Agreement, which is not remedied within Fifteen (15) days after written notice of such breach has been received by the Trustee from the Investor

Upon such termination, the Investor shall be entitled to request and receive from the Trustee a transfer of title to the Investor of the Investor's Proportionate Interest in the Loan and, for such purposes, the Trustee provides the Investor with its irrevocable Power of Attorney for such purposes.

##### **11.2 Termination of the Investor**

The interest of the Investor in the Investment may be terminated by the Trustee upon notice in writing to the Investor only upon the happening of any of the following events:

- (a) if any proceedings in insolvency, bankruptcy, receivership or liquidation be taken against the Investor;
- (b) if the Investor makes any assignment for the benefit of its creditors or commits any act of bankruptcy within the meaning of the Bankruptcy Act;
- (c) except as expressly permitted hereby, if the Investor assigns or purports to assign its Proportionate Share or any of its rights under this Agreement;
- (e) if the Investor commits a breach or default under this Agreement, which is not remedied within fifteen (15) days after written notice has been received by the Investor.

#### 11.3 Postponement After Termination

In addition to any other rights that the Trustee may have, in the event that the interest of the Investor in the Investment is terminated, all amounts that have been advanced by the Investor on account of the Loan prior to the date of termination shall be postponed in favour of, and shall rank subordinate to, all amounts advanced by the Other Investors subsequent to such termination on account of the Loan.

#### 11.4 Termination Generally

This Agreement shall remain in full force and effect until the Loan and any other amounts expressed to be owing to the Trustee under the Loan Security have been paid in full and the Loan Security has been reassigned or discharged or shall have been realized upon and the proceeds or realization shall have been distributed among the Investor and Other Investors in accordance with this Agreement.

### Article 12 Notices

#### 12.1 Addresses for Notices

All notices to be given under this Agreement shall be deemed to have been duly given if mailed by registered mail to the addresses, or sent by facsimile transmission to the fax numbers, as follows:

##### To the Trustee:

Arres Capital Incorporated  
#1002, 1520 - 4<sup>th</sup> Street S.W.  
Calgary, Alberta T2P 3C8  
Fax (403) 264-9954

##### To the Investor:

Investor: Access Mortgage Corporation (2004) Ltd.  
Address: 1610, 700 - 4 Ave SW  
Calgary, Alberta T2P 3J4

### Article 13 Additional Provisions

#### 13.1 Liability of the Trustee

Notwithstanding anything contained in this Agreement or any Loan documentation, the Trustee shall not be liable to the Investor for any losses or damages incurred by the Investor in respect of any Loan save and except for any loss or damage caused directly by the gross negligence or willful misconduct of the Trustee or its officers, agents or employees

#### 13.2 Time

Time shall be of the essence in this Agreement.

#### 13.3 Governing Law and Jurisdiction

This Agreement shall be governed by the law of the Province of Alberta and the parties hereto hereby irrevocably attorn to that jurisdiction.

#### 13.4 Further Acts

The parties hereto agree that they shall do all further things and take all further steps, including the execution of further documents that may be required to carry out and give effect to this Agreement.

#### 13.5 Entire Agreement

This Agreement is the entire agreement between the parties and supersedes and replaces any prior written or oral agreement that may have been made between the parties.

#### 13.6 Severability

In the event that any part of this Agreement shall be determined to be null, void or of no effect, that part of this Agreement shall be severed herefrom and the balance of this Agreement shall continue in full force and effect.

#### 13.7 Amendments

This agreement may only be amended by an agreement in writing duly executed by each of the parties hereto.

#### 13.8 Assignment

Except as may be otherwise permitted herein, neither party to this Agreement may assign its interest to another party without the prior written consent of the other party, such consent not to be unreasonably withheld.

#### 13.9 Real Estate Act

Without in any way limiting or derogating from its obligations or responsibilities under this Agreement, the Trustee in fulfilling its obligations and responsibilities with respect to the administration of the Loan and the Loan Security will at all times comply with the provisions of the *Real Estate Act (Alberta)*, as amended, replaced or substituted from time to time.

### 13.10 Relationship

Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other Investors.

### 13.11 Counterparts


This document may be executed in counterparts, each of which executed counterpart shall be deemed to be an original and such counterparts together shall constitute one and the same document, and notwithstanding different dates of execution, shall be deemed to have been executed on the same date, being the later of the dates of execution of such counterparts.

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

ARRES CAPITAL INC.

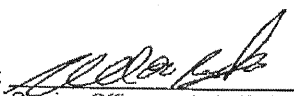
Per:  (c/s)

INVESTOR

Per:  (c/s)  
Signing Officer on behalf of  
Access Mortgage Corporation (2004) Ltd.

Witness

Witness

Per:  (c/s)  
Signing Officer on behalf of  
Access Mortgage Corporation (2004) Ltd.

LAND SCHEDULE

PLAN 052-0941, BLOCK 1, LOT C

SCHEDULE "A"

## COMMITMENT LETTER

August 10, 2007  
 Graybriar Greens Inc.  
 c/o Graybriar Land Development Company Ltd.

Dear Sir/Madam:

Re: Loan for \$9,700,000.00

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 Arres Capital Inc. and/or its assigns

1. **Borrowers:** Graybriar Land Company Ltd. and Graybriar Greens Inc.
2. **Amount of loan:** \$9,700,000.00
3. **Term:** One year, renewable at the discretion of the Lender.

4. **Rate of Interest:**

Interest will be charged at 15% 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 September 1, 2007 (the "Maturity Date").

5. **Fees:**

Lender Fees for this transaction shall be 2% of any amount Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited lends in this matter which at this time is One Million Dollars thus a fee of \$20,000.00 shall be deemed due and owing. The Lender Fees shall be earned and be payable to Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited and/or its assigns upon acceptance of this letter by the Borrowers, and the Borrowers agree that a caveatable charge against the interest and estate of the Borrowers in the Property is thereby created which shall remain in force until the Fee is paid in full. In the event that any further funds are required by the borrower from Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited or any re-advancement from Access Mortgage Corporation Limited or Access Mortgage Corporation (2004) Limited under this loan shall also be subject to the same terms as set out herein and fees of 2% shall be charged on re-advancement. Any other investors in this mortgage will not receive a lenders fee for this transaction.

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 on the principal amount advanced shall be due and payable. An interest reserve account shall be set up and all interest reserve funds will be held in trust by Hildebrand Wilde. With each advance under this loan, further interest reserve will be required for monthly interest only payments.

-In the event that the interest reserve does not cover a payment and a direct payment is required from the borrower the 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.

A standby fee of ½ % per month will be charged on progress draws that are scheduled and not drawn within 7 calendar days of scheduled draw date.

#### 7. Prepayment:

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

#### 8. Security and other documents:

The Borrowers agree to provide to Arres Capital Inc. and/or its assigns in form and substance satisfactory to it, all security requested by Arres Capital Inc. and/or its assigns including, without limitation, the following documentation (the "Security") which will be held by 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 Arres Capital Inc. and/or its assigns from time to time:

A corporate Guarantee of: Graybriar Land Company Ltd. and Graybriar Greens Inc.

A mortgage over the properties described as: Will initially be a second charge on the whole property but will be a first charge on the titles to the 13 buildings once land is subdivided.

PLAN 052-0941, BLOCK 1, LOT C

A general security agreement compromising 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 Arres Capital Inc. and/or its assigns satisfactory to Arres Capital Inc. and/or its assigns



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 the mortgage of Arres Capital Inc. and/or its assigns over the Properties.

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 Arres Capital Inc.

Assignment of Rents

Assignment of all plans and permits

Assignment of all drawings as completed by the architect

That an interest reserve account be set up for monthly interest only payments. The initial interest reserve will be for 6 months and any further advances under this mortgage will require further interest reserves to be put in place.

Partial Discharges will be granted for 95% of net sales proceeds. All sales must be within 3% of list price unless agreed to in writing by Arres Capital Inc and/or its assigns.

In the event of default all sales proceeds are due to the lender.

USE OF FUNDS:

\$ 863,200.00	to be paid for services completed
\$ 20,000.00	Lender fees to Access
\$ 883,200.00	TOTAL FIRST ADVANCE
Other disbursements to be made in due course	
Legal Fees	TBD
Interest Reserve	TBD
Land Purchase	TBD
\$5,720,000.00	approximate balance available for future improvements and services to the site as work is completed and invoices are submitted and approved by Arres Capital Inc. and or its assigns.
<u>\$9,700,000.00</u>	<u>TOTAL MORTGAGE AMOUNT APPROVED AT THIS TIME.</u>

Any advances made shall be for strictly for the benefit of the project

**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 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.

That the borrower agrees that in the event that any insurance claim is made during the term of this mortgage or any renewal terms, 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 Arres Capital 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 Arres Capital Inc. and/or its assigns (acting reasonable) and its solicitors in their absolute discretion. Arres Capital Inc. and/or its assigns solicitors in this transaction are:

**13. Title:**

The Borrower will have, as the registered owner of the property, good title in fee simple to the property, and Arres Capital's Inc. and/or its assigns Charge on the property will be **FIRST** in priority over this portion of the land once subdivided, all other financial encumbrances, leases, agreements for leases, restrictions, agreements, liens, assignments and charges whatsoever to the

full extent of the loan except as Arres Capital Inc. and/or its assigns may in writing consent to or the law may require.

The security required by 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 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 Arres Capital'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 Arres Capital Inc. and/or its assigns in the Province of Alberta. Such fees, disbursements, and GST shall be deducted from the Mortgage Proceeds.

#### **Other**

If Arres Capital Inc or any affiliate of 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:**

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 refusal 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 Arres Capital Inc. and/or its assigns, a material adverse change in the condition of the property or Collateral Property of the Borrowers; or

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 Arres Capital's Inc. and/or its assigns and its council's satisfaction.

If 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 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 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 September 1, 2008 and a renewal fee not to exceed 2% of the principal balance owing on the mortgage at the time of renewal will be payable to 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 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 funds are not fully disbursed by the close of business on September 1, 2007 Arres Capital Inc. and/or its assigns agreement to provide the loan or advance any funds, at

the sole discretion of 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 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, Arres Capital Inc. and/or its assigns may elect which provision shall prevail.

**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

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 Arres Capital Inc. and/or its assigns on or before 2:00 p.m. on October 15, 2007, after which date and time, this offer shall lapse, if it is not accepted.

Sincerely,  
Arres Capital Inc.

Wes Serra  
President

SCHEDULE "B"**ARRES**

Capital Inc.

#1002, 1520 – 4<sup>th</sup> Street SW  
 Calgary, AB T2R 1H5  
 tharres@telus.net  
 Tel: (403) 261-9955

Tracy Hildenbrand  
 Email:

Fax: (403) 264-9954

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**LOAN SUMMARY – Graybriar Greens PHASE 2 – Stony Plain**

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**Applicant:** Graybriar Greens Inc.

**Applicant  
Principals:** Graybriar Land Company – Directors are Wes Serra, Bill  
 McQuitty, Chris Saunders, Doreen Richards

**Applicant  
Project:**

The applicants are looking to start Phase 2 of a multi family housing project on a portion of a nine acre parcel of land located in Stony Plain. The directors of Graybriar Land Company Ltd. have agreed to sell this land to Graybriar Greens on a phase by phase basis. Graybriar Greens and Pat High will then develop the land and build the units under the Joint Venture Agreement. Phase one which is well underway contains a total of 24 units (6 four-plex buildings), all of which are sold and will be completed in the next few months as long as the rain holds off long enough for the work to be done. The units range in size from 980 sq ft to 1200 sq ft (most of which are the bigger units) and will be affordable entry level housing which is much required in the Edmonton area given the rapid growth taking place there at this time.

The plan Phase 2 calls for a total of 52 units (13 four-plex buildings) which are all sold with reservation deposits. These units are sold for prices ranging from \$210,000.00 to \$280,000.00 with an average sale price of \$248,000.00. The total sale value of the units which is based on the average sale price which is being conservative given there is more larger units than small is \$12,896,000.00.

The big picture for the 9 acres is 30 four-plex buildings for a grand total of 120 units. All 120 units are sold with reservation deposits and therefore all that is left to do is build them all. In total there will be 3 Phases, Phase 1 will have 6 buildings units, Phase 2 will be 13

buildings, Phase 3 will be 11 buildings (44 units).

There has been much site preparation completed to date for the entire project. It is the plan to dig all basements for all 52 units in the near future and the buildings are being pre-fabricated off site and delivered so once the rain lets up and the basements can be dug prior to winter, the buildings will progress faster than usual construction. Also, the entire site is ready to be paved and that will start as soon as it dries up.

**Proposed  
Financing:**

The loan amount will be \$9,700,000.00

**Financing  
Details:**

The initial advance will pay for the land required for the second phase, interest reserve, payment for the servicing the land in this phase (which is already complete), landscaping and the infrastructure for this phase. Additionally we will fund the construction of the 13 buildings over time while taking all the necessary net sales proceeds as the units are closed.

**Terms:**

**Mortgage Position:** First

**Interest Rate:** 15%

**Term:** 1 year

**Open for Term**

**Repayment:** Monthly Interest only from 4 month interest reserve to be set up and further interest reserve to be set aside with each advance.

**LTV:** Not to exceed 75% of once completed value determined by pre-sales of the buildings.

**Summary:** The applicant is well known partner to Arres Capital. We are borrowing on the successful design elements and cost effectiveness of the project from Timber Creek in Radium. Timber Creek is currently into their project just over a year with 48/48 units now sold WITHOUT ever having had a show suite, plan works.

Patrick High is from the town of Stony Plain. Aside from his experience in the Edmonton area, he has hired an Alderman to be the realtor for the project and 120 of 120 units are reserved for sale. This will be a benefit as it will likely fast-track some traditionally slower items from the town.

Sincerely,

Arres Capital Inc.