

Property, and the Seller does not warrant that it has title to such Attached Goods or Unattached Goods. Further, the Buyer agrees that the Seller will not be liable for the removal of any chattels found on the Property prior to or on the date of closing. On closing, the Buyer may have possession of the Attached Goods and Unattached Goods which are then on or about the Property on an "as is" basis, and the Seller will not provide a Bill of Sale, Warranty, or other title document to the Buyer. Further, there will be no adjustment or abatement of any kind to the Purchase Price with respect to any Attached Goods or Unattached Goods.

REAL PROPERTY REPORT & COMPLIANCE

3. The Seller is not required to provide the Buyer with a real property report or compliance certificate. Should the Seller provide the Buyer with a copy of a survey or real property report, the Buyer agrees that any use of or reliance upon such document shall be at the Buyer's own risk. The Buyer must satisfy itself that the survey or real property report which the Seller might provide accurately reflects the Property and the buildings and improvements located thereon as they currently exist and the Seller shall not be responsible for any errors or omissions which might exist on such document. The Seller does not represent or warrant the accuracy or validity of the said survey or real property report or compliance certificate.

CONDOMINIUM

4. If the Property is a condominium:
 - a) the Seller is not required to provide any condominium documentation to the Buyer and the Buyer shall be solely responsible to obtain any condominium documentation he may require. Without limiting the generality of the foregoing, the Buyer may obtain on his own and at his sole costs and expenses any estoppel certificate, copy of the condominium bylaws and financial statement for the Condominium Corporation that he may require;
 - b) the Buyer must satisfy himself with the condition of the condominium unit, the common property, and the financial condition of the condominium corporation and agrees that neither the Seller nor its agents, have made any representations or warranties pertaining to same including, without limiting the generality of the foregoing, the adequacy of any reserve fund the condominium corporation might have, any potential special assessments which might be levied by the condominium corporation or the existence of any legal actions pending against the condominium corporation;
 - c) the Seller shall be responsible for amounts payable up to the closing date on account of any condominium fees and special assessments levied by the condominium corporation.

GOODS AND SERVICES TAX (G.S.T.)

5. In addition to the purchase price payable thereunder, the Buyer shall pay to the Seller and indemnify the Seller against all Goods and Services Tax ("G.S.T.") payable on the purchase price as required by the *Excise Tax Act*. The Seller will not provide to the Buyer a Certificate of Exempt Supply, or any other certificate certifying that this purchase and sale transaction is not subject to the Goods and Services Tax. Should the Seller fail to collect G.S.T. from the Buyer, it shall not be construed by the Buyer as a certification by the Seller that no G.S.T. is payable by the Buyer hereunder, and the Buyer shall remain liable for any G.S.T. which might be payable with respect to this transaction.

ACCEPTANCE BY FACSIMILE

6. The Seller and Buyer agree that this contract may be signed in counterpart, and the acceptance of this offer communicated or confirmed by facsimile transmission shall be binding upon the parties. The Buyer agrees to promptly deliver an executed original Real Estate Purchase Contract to the Seller.

Buyer's Initial _____

Date: _____

FORECLOSURE PROCEEDING

7. This offer is being made pursuant to or in a Court of Queen's Bench foreclosure proceeding and, as such, the Offer may be accepted only by Order of said Court and is subject to the terms of that Order. Any agreement arising out of the Seller's acceptance of this Offer is conditional upon the approval thereof by the said Court.

Buyer's Initial

Date:

APPENDIX K

the original ORDER FIATDated this 26 day of July 2017

COURT FILE NUMBER 1401 - 12431 for Clerk of the Court

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ACCESS MORTGAGE CORPORATION (2004) LIMITED

RESPONDENT ARRES CAPITAL INC.



DOCUMENT

RECEIVERSHIP ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Cassels Brock & Blackwell LLP
Suite 1250 Millennium Tower,
440 – 2nd Avenue SW,
Calgary, Alberta, T2P 5E9

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

Attention: Jeffrey Oliver

FIAT
Let the within Order be filed despite
non-compliance with the following Rules/Practice Directions:
Alberta Rules of Court,
Rule 9.5(2)
"K. H. Eidsvik"
Justice/Deputy Registrar
Dated: July 26, 2017

DATE ON WHICH ORDER WAS PRONOUNCED:

FEBRUARY 13, 2015

NAME OF JUDGE WHO MADE THIS ORDER:

The Honourable Justice Strekaf

LOCATION OF HEARING:

Calgary, Alberta

UPON the application of Access Mortgage Corporation (2004) Limited in respect of Arres Capital Inc. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavits of David Murphy and Wes Serra, filed, and the Affidavit of Service of Richard Comstock, filed; **AND UPON** reading the consent of Alvarez & Marsal Canada Inc. to act as receiver ("**Receiver**") of the Debtor, filed; **AND UPON** hearing counsel for the Applicant and counsel for the Respondent; **IT IS HEREBY ORDERED AND DECLARED THAT:**

APPOINTMENT

1. Pursuant to Part 9 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15, Alvarez & Marsal Canada Inc., is hereby appointed Receiver, without security, of all of the Debtor's current and future Exigible Property, as defined in this Order, wherever situate, including all proceeds thereof.
2. For the purposes of this Order, "**Debtor's Property**" shall mean all of the property of the Debtor, of every nature or kind whatsoever, including without limitation, real property and personal property, interests in mortgages, debt instruments, security agreements, negotiable instruments,

accounts receivable, and cash, whether held legally by or beneficially for the Debtor and whether or not such property has been assigned or purported to have been assigned by the Debtor to any third party since May 1, 2009, however;

- (a) Subject to the Receiver's determinations in paragraph 4 of this Order, the Debtor shall have sole authority to operate and conduct its business including the administration of trust agreements and mortgage administration agreements that may currently be in force and to prosecute actions as a plaintiff or defend actions brought against the Debtor. In the event of a disagreement as to whether or not a trust agreement or mortgage administration agreement may currently be in force, the Receiver shall be at liberty to apply to the Court for advice and directions.
3. For the purposes of this Order, "**Exigible Property**" shall mean any of the Debtor's Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings.
 4. In exercising its powers pursuant to this Order but not necessarily prior to such exercise of its powers, the Receiver shall first determine and calculate which of the Debtor's Property is Exigible Property. For the purpose of making such determination, the Receiver shall make inquiries regarding the following having regard to the relevant time period commencing May 1, 2009 and ending on the date of such determination:
 - (a) which property is owned by the Debtor and/or in which property the Debtor has an interest;
 - (b) the extent to which any property owned by the Debtor or in which property the Debtor has an interest has been assigned to any third party (the "**Assigned Property**");
 - (c) the validity and priority of the assignment of any Assigned Property;
 - (d) if any property, including cash, was transferred by the Debtor to any third party out of the ordinary course of business;
 - (e) the validity of any accounts receivable of the Debtor including, without limitation, those items described in Schedule A to the Statutory Declaration-Financial Statement of Debtor (Corporate Debtor) sworn by Wes Serra on behalf of the Debtor on October 20, 2014; and
 - (f) the practicality of enforcing on the valid accounts receivable of the Debtor;

DEBTOR NOT TO DISPOSE OF DEBTOR'S PROPERTY AND THE RECEIVER TO HOLD THE DEBTOR'S PROPERTY

5. The Debtor is hereby enjoined and restrained from disposing of the Debtor's Property until such time as the Receiver determines that such Debtor's Property, or portion thereof, is not included in the Exigible Property or there is a further Court Order respecting such Debtor's Property.
6. Notwithstanding any of the terms of this Order, particularly paragraphs 2 through 5, nothing in this Order shall be interpreted or applied to prevent, enjoin or restrain the Debtor or its counsel from complying with, or assisting in compliance with, Court Orders granted prior to the date of this Order or from providing or executing on directions, instructions, or processes which are set out in the terms of Court Orders granted prior to the date of this Order and the Receiver shall not act or take steps contrary to any such prior Court Orders, where applicable, without further Court Order.
7. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid only in accordance with the terms of this Order or any further order of this Court.
8. Should either the Court or the Receiver determine that any of the Debtor's Property held by the Receiver is not Exigible Property, then the Receiver shall release such property to the owner of the property either to such person directly or by way of their legal counsel, if applicable within a reasonable period of time.

RECEIVER'S POWERS

9. The Receiver shall prepare a report to the Court with respect to the findings of the Receiver with respect to the matters set forth in paragraph 4, above.
10. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Exigible Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Exigible Property and any and all proceeds, receipts and disbursements arising out of or from the Exigible Property;
 - (b) to receive, preserve and protect the Exigible Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Exigible Property to safeguard it, the engaging of independent security personnel, the

taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts owed or hereafter owing to the Debtor, regardless of whether such monies and accounts are Debtor's Property or Exigible Property, subject to the terms of this Order;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Debtor's Property, the Exigible Property, the receivership and to share information, all subject to such terms as to confidentiality as the Receiver deems advisable;
- (f) to enter into agreements with any trustee in bankruptcy appointed in respect of the Exigible Property, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (g) to register a copy of this Order and any other Orders in respect of the Exigible Property against title to any of the Debtor's Property pending a determination as to the Exigible Property as set out in this Order; and,
- (h) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

11. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, financial institutions, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Debtor's Property in such Person's possession or control, shall grant immediate and continued access to and control of the Debtor's Property to the Receiver, and shall deliver all such Debtor's Property (excluding Debtor's Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request, with such request to only

be made by the Receiver in strict compliance with the terms of this Order and without transferring legal title to any such Debtor's Property to the Receiver until and unless such Debtor's Property is determined to be Exigible Property, unless otherwise ordered by the Court.

12. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the **"Records"**) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communications or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver shall be entitled to receive access from the Debtor's legal representatives and from the Debtor to all statements of account for legal services rendered and trust statements and trust account records for the Debtor since May 1, 2009, but the Receiver shall keep all such statements of account and trust statements strictly confidential except as is necessary to comply with this Order. In the event that the Receiver requires access from the Debtor's legal representatives and/or from the Debtor to all statements of account for legal services rendered and trust statements and trust account records for any party related to, associated or affiliated with the Debtor since May 1, 2009, the Receiver shall be at liberty to apply to the Court for advice and directions.
13. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

14. No proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. All rights and remedies (including, without limitation, set-off rights) against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

16. No Person discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

NOTICE OF ACTIONS TO BE PROVIDED TO RECEIVER

17. The Receiver shall be entitled to receive from any and all Persons having notice of this Order formal written notice of any and all future applications, appeals, actions or proceedings in which the Debtor is a party or sought to be added as a party (the **"Actions"**), including any Actions which have been scheduled for hearing but have not yet been heard, as required pursuant to the applicable Rules of Court relating to such Actions and such notice shall be properly served upon the Receiver or the solicitor for the Receiver.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
 - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

THE STAYED ACTIONS

- 19. The following actions (the “**Stayed Actions**”) are hereby stayed pending further Order of the Court or the consent of all of the parties to such Stayed Actions, respectively:

- (a) ABQB Action No. 1401-14106;
- (b) ABQB Action No. 1501-01106;
- (c) ABQB Action No. 1401-03476

LIMITATION ON THE RECEIVER'S LIABILITY

20. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Exigible Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law.

RECEIVER'S ACCOUNTS

21. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Exigible Property, as security for such fees and disbursements, incurred both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Exigible Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.
22. The Receiver and its legal counsel shall pass their accounts from time to time.
23. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Exigible Property in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.
24. In the event that the Exigible Property, or any proceeds, receipts and disbursements arising out of or from the Exigible Property, are insufficient to pay the Receiver's Charge or the accounts rendered by the Receiver from time to time relating to the performances of its duties and obligations pursuant to this Order, then and only then shall the Applicant and its successors and assigns be liable for payment of such funds to the Receiver.
25. The Applicant and the Receiver are granted leave of this Court to enter into whatever payment arrangements and/or engagement terms are jointly agreeable to each of them in respect of

paragraph 24, above, but such payment arrangement or engagement terms shall be producible on the request of any of the parties to this Order.

ALLOCATION

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge amongst the various assets, if any, comprising the Exigible Property.

GENERAL

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. The Receiver shall complete and submit to the Court and the parties to this action a Receiver's report respecting the matters set forth in paragraphs 4 and 9 of this Order by no later than 120 days from the date this Order is filed with this Honourable Court or such other time as may be agreed by the parties or as directed by this Honourable Court.
31. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
32. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. The costs of this Application are hereby reserved and shall be determined at a later date by this Honourable Court.
34. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

EFFECT OF ORDER

35. If an order is granted adjudging Arres bankrupt, in either of Court File Nos. ABQB 25-094212 or 094786 (the "**Bankruptcy Order**"), then this order shall be stayed upon the later of the expiry of the time for appeal from the Bankruptcy Order, or if Arres appeals the Bankruptcy Order, then the dismissal of Arres' appeal.

FILING

36. This Order is issued and shall be filed in Court of Queen's Bench Action No. 1401-12431 and in the Stayed Actions and in any other action which the Receiver deems appropriate in its discretion.

" K. M. Eidsvik "
Justice of the Court of Queen's Bench of Alberta

for J. Strekauf

APPENDIX L

COURT FILE NUMBER 0903-17684 and 0903-17685

CLERK'S STAMP

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

RESPONDENT (PLAINTIFF) ARRES CAPITAL INC.

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

RESPONDENTS (NON-PARTIES)

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

I hereby certify this to be a true copy of
the original Order Confirming Sale
dated this 10 day of Feb 2016
Monica Neufeld
for Clerk of the Court

RESPONDENT (INTERVENOR)

TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY)

1798583 ALBERTA LTD.

DOCUMENT

ORDER CONFIRMING SALE AND VESTING TITLE

Feb 10, 2016
Let this order be filed immediately
notwithstanding that it
varies from the template

[Signature]
M.C.C.Q.B.A.

- 2 -

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

PELLETIER LITIGATION
3300, 205 – 5th Avenue SW
Calgary, AB T2P 2V7
T. 403.407.2600
F. 403.407.2601

Ryan P. Pelletier
D. 403.407.2630
File: 13002.007

DATE ON WHICH ORDER WAS PRONOUNCED:	^{February} January 1, 2016
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary
NAME OF MASTER JUSTICE WHO MADE THIS ORDER:	Laycock

UPON the application of the Respondent/Plaintiff: AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the “**Foreclosure Direction Order**”); AND UPON noting the within Order-Sale to Plaintiff, granted by Master W. Breitreuz on February 3, 2014 and as amended by Master L.A. Smart (together the “**Order-Sale to Plaintiff**”); AND UPON noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the “**Stay Order**”); AND UPON noting the within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the “**Unit 55 Sale Order**”); AND UPON noting the order of Justice Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the “**Dismissal Order**”); AND UPON noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the “**Timberock Discharge Order**”); AND UPON noting the within Consent Order, filed October 13, 2015 (the “**Consent Listing Order**”); AND UPON noting the decision of the Court of Appeal on appeal of Justice Strekaf’s Dismissal Order, as Court of Appeal File No. 1501-0006AC (the “**Appeal Decision**”);

And upon hearing counsel for the Plaintiff; And upon

___ no one appearing for the defendant(s)

___ hearing from the defendant(s)

☒ hearing from counsel for the defendant(s);

IT IS HEREBY ORDERED THAT:

1. In this order the mortgaged lands are the following:

Condominium Plan 0827766

Unit 48

And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS

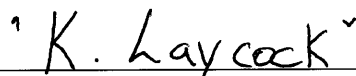
2. The Offer to Purchase submitted by Aksinia Volkova (the "Purchaser") in the amount of \$225,000 plus GST (being \$236,250 total) for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchaser held by the Clerk of the Court shall be forwarded to the plaintiff's counsel. Any deposit of the Purchaser held by the judicial listing real estate agent, less commission payable, shall be forwarded to the plaintiff's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
3. The Purchaser shall, on or before the 12 day of February, 2016 (the "Closing Date") either pay to the plaintiff's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the plaintiff's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this order.
4. The plaintiff's lawyer shall distribute the sale proceeds as follows:
 - (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by paying out any registered financial encumbrancer ranking prior to the plaintiff's mortgage, if any, and;
 - (d) by paying to Canada Revenue Agency, the amount any Goods and Services Tax ("GST") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by paying the remainder, if any, into Court to be held by the Clerk of the Court to the credit of this Action pending further Order of this Honourable Court.
5. The proceeds of sale shall be held by the Court pursuant to the direction of the Court of Appeal and shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds are held specifically without prejudice to the position of each or all of Terrapin Mortgage Investment Corp ("Terrapin"), 1798583 Alberta Ltd. ("175 AB"), and Arres Capital Inc. ("Arres Capital") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage granted by 179 AB to Terrapin should have been registered on those Units transferred to by Arres Capital to 179 AB.

6. The plaintiff shall file and forward to the assessment officer an affidavit of receipts and disbursements accounting for funds disbursed pursuant to the preceding paragraph within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
7. The defendant, any tenants, and any other occupants shall, on or before the Closing Date deliver up to the Purchaser vacant possession of the mortgaged lands. Service of this order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
8. Upon written confirmation from the plaintiff's lawyer that it has received or is satisfied that it will receive payment from the Purchaser, the Registrar of Land Titles shall cancel the existing certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

Aksinia Volkova
of
504 Graybriar Green
Stony Plain, AB T7Z 0G1

(or such other transferee as directed by the plaintiff's counsel in correspondence sent to the Registrar of Land Titles at the time this order is submitted for registration) free and clear of the plaintiff's mortgage and all subsequent encumbrances, but subject to:

- a. Instrument No. 082 100 457 – Utility Right of Way
 - b. Instrument No. 082 409 616 - Easement
 - c. Instrument No. 082 409 617 – Utility Right of Way
 - d. Instrument No. 082 409 619 - Agreement
9. Subject to paragraph 5 of this Order, any interest in the mortgaged lands of the defendant, anyone claiming through the defendant, or any other subordinate encumbrancer is hereby extinguished.
 10. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this order, set out in Rule 9.35(1)(a), are hereby waived.
 11. The Registrar of Land Titles shall comply with this order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.



MASTER IN CHAMBERS

APPENDIX M

I hereby certify this to be a true copy of
the original Order
dated this 15 day of March 2016
for Clerk of the Court

COURT FILE NUMBER 0903-17684 and 0903-17685

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

RESPONDENT
(PLAINTIFF) ARRES CAPITAL INC.

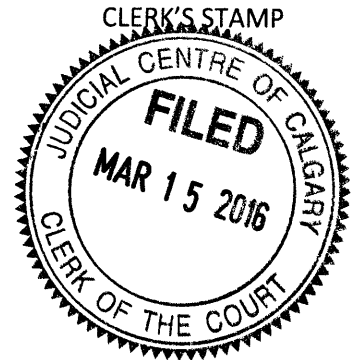
NON-PARTICIPANTS
(DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. AND
GRAYBRIAR GREENS INC.

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

RESPONDENT
(INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT
(INTERESTED PARTY) 1798583 ALBERTA LTD.

DOCUMENT ORDER CONFIRMING SALE AND VESTING TITLE



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

PELLETIER LITIGATION
3300, 205 – 5th Avenue SW
Calgary, AB T2P 2V7
T. 403.407.2600
F. 403.407.2601

Ryan P. Pelletier
D. 403.407.2630
File: 13002.007

DATE ON WHICH ORDER WAS PRONOUNCED:	March 10, 2016
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary
NAME OF MASTER WHO MADE THIS ORDER:	A. Robertson

UPON the application of the Respondent/Plaintiff: AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the “**Foreclosure Direction Order**”); AND UPON noting the within Order-Sale to Plaintiff, granted by Master W. Breitreuz on February 3, 2014 and as amended by Master L.A. Smart (together the “**Order-Sale to Plaintiff**”); AND UPON noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the “**Stay Order**”); AND UPON noting the within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the “**Unit 55 Sale Order**”); AND UPON noting the order of Justice Strekauf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the “**Dismissal Order**”); AND UPON noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the “**Timberock Discharge Order**”); AND UPON noting the within Consent Order, filed October 13, 2015 (the “**Consent Listing Order**”); AND UPON noting the decision of the Court of Appeal on appeal of Justice Strekauf’s Dismissal Order, as Court of Appeal File No. 1501-0006AC (the “**Appeal Decision**”); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 48, granted by Master K. Laycock and filed February 10, 2016 (the “**Unit 48 Sale Order**”);

And upon hearing counsel for the Plaintiff; And upon

☒ no one appearing for the defendant(s)

☐ hearing from the defendant(s)

☐ hearing from counsel for the defendant(s);

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.

2. In this order the mortgaged lands are the following:

Condominium Plan 0827766

Unit 63

And 83 Undivided One Ten Thousandth Shares in the Common Property

Excepting thereout all mines and minerals

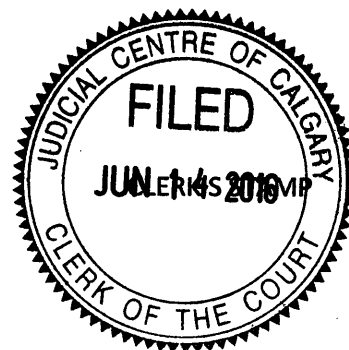
3. The Offer to Purchase submitted by Carolyn Ann Miller (the "Purchaser") in the amount of \$241,000, inclusive of GST, for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchaser held by the Clerk of the Court shall be forwarded to the plaintiff's counsel. Any deposit of the Purchaser held by the judicial listing real estate agent, less commission payable, shall be forwarded to the plaintiff's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchaser shall, on or before the 7th day of April, 2016 (the "Closing Date") either pay to the plaintiff's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the plaintiff's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this order.
5. The plaintiff's lawyer shall distribute the sale proceeds as follows:
- (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by paying out any registered financial encumbrancer ranking prior to the plaintiff's mortgage, if any, and;
 - (d) by paying to Canada Revenue Agency, the amount any Goods and Services Tax ("GST") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by paying the remainder, if any, into Court to be held by the Clerk of the Court to the credit of this Action pending further Order of this Honourable Court.

11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this order, set out in Rule 9.35(1)(a), are hereby waived.
12. The Registrar of Land Titles shall comply with this order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.



MASTER IN CHAMBERS

APPENDIX N



COURT FILE NUMBER 0903-17684 and 0903-17685

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

RESPONDENT ARRES CAPITAL INC.
(PLAINTIFF)

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

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

RESPONDENT TERRAPIN MORTGAGE INVESTMENT CORP.
(INTERVENOR)

RESPONDENT 1798583 ALBERTA LTD.
(INTERESTED PARTY)

DOCUMENT ORDER CONFIRMING SALE AND VESTING TITLE

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

Dated this 14 day of June 2016

[Signature]
for Clerk of the Court

- 2 -

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

PELLETIER LITIGATION
3300, 205 – 5th Avenue SW
Calgary, AB T2P 2V7
T. 403.407.2600
F. 403.407.2601

Ryan P. Pelletier
D. 403.407.2630
File: 13002.007

DATE ON WHICH ORDER WAS PRONOUNCED:	June 14, 2016
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary
NAME OF MASTER WHO MADE THIS ORDER:	J. FARRINGTON

UPON the application of the Respondent/Plaintiff: AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the "**Foreclosure Direction Order**"); AND UPON noting the within Order-Sale to Plaintiff, granted by Master W. Breitzkreuz on February 3, 2014 and as amended by Master L.A. Smart (together the "**Order-Sale to Plaintiff**"); AND UPON noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the "**Stay Order**"); AND UPON noting the within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the "**Unit 55 Sale Order**"); AND UPON noting the order of Justice Strekauf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "**Dismissal Order**"); AND UPON noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the "**Timberock Discharge Order**"); AND UPON noting the within Consent Order, filed October 13, 2015 (the "**Consent Listing Order**"); AND UPON noting the decision of the Court of Appeal on appeal of Justice Strekauf's Dismissal Order, as Court of Appeal File No. 1501-0006AC (the "**Appeal Decision**"); AND UPON noting the within Orders Confirming Sale and Vesting Title for Units 48 and 63, granted by Masters K. Laycock and A. Robertson, respectively, and filed February 10, 2016 and March 15, 2016 (the "**Previous Sale Orders**");

And upon hearing counsel for the Plaintiff; And upon



☒ no one appearing for the defendant(s)

☐ hearing from the defendant(s)

☐ hearing from counsel for the defendant(s);

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.

2. In this order the mortgaged lands are the following:

Condominium Plan 0827766

Unit 65

And 83 Undivided One Ten Thousandth Shares in the Common Property

Excepting thereout all mines and minerals

3. The Offer to Purchase submitted by Leah Marie Farquharson and Duncan Farquharson (the "Purchasers") in the amount of \$240,000, inclusive of GST, for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchasers held by the Clerk of the Court shall be forwarded to the plaintiff's counsel. Any deposit of the Purchasers held by the judicial listing real estate agent, less commission payable, shall be forwarded to the plaintiff's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchasers shall, on or before the 24th day of June, 2016 (the "Closing Date") either pay to the plaintiff's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the plaintiff's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchasers is entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this order.
5. The plaintiff's lawyer shall distribute the sale proceeds as follows:
- (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by paying out any registered financial encumbrancer ranking prior to the plaintiff's mortgage, if any, and;
 - (d) by paying to Canada Revenue Agency, the amount any Goods and Services Tax ("GST") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by paying the remainder, if any, into Court to be held by the Clerk of the Court to the credit of this Action pending further Order of this Honourable Court.

6. The proceeds of sale shall be held by the Court pursuant to the direction of the Court of Appeal and shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds are held specifically without prejudice to the position of each or all of Terrapin Mortgage Investment Corp ("Terrapin"), 1798583 Alberta Ltd. ("175 AB"), and Arres Capital Inc. ("Arres Capital") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage granted by 179 AB to Terrapin should have been registered on those Units transferred to by Arres Capital to 179 AB.
7. The plaintiff shall file and forward to the assessment officer an affidavit of receipts and disbursements accounting for funds disbursed pursuant to the preceding paragraph within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
8. The defendant, any tenants, and any other occupants shall, on or before the Closing Date deliver up to the Purchasers vacant possession of the mortgaged lands. Service of this order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
9. Upon written confirmation from the plaintiff's lawyer that it has received or is satisfied that it will receive payment from the Purchasers, the Registrar of Land Titles shall cancel the existing certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

Leah Marie Farquharson and Duncan Farquharson
of
1001 Graybriar Green
Stony Plain, AB T7Z 0G1

(or such other transferee as directed by the plaintiff's counsel in correspondence sent to the Registrar of Land Titles at the time this order is submitted for registration) free and clear of the plaintiff's mortgage and all subsequent encumbrances, but subject to:
 - a. Instrument No. 082 100 457 – Utility Right of Way
 - b. Instrument No. 082 409 616 - Easement
 - c. Instrument No. 082 409 617 – Utility Right of Way
 - d. Instrument No. 082 409 619 - Agreement
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the defendant, anyone claiming through the defendant, or any other subordinate encumbrancer is hereby extinguished.

- 5 -

11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this order, set out in Rule 9.35(1)(a), are hereby waived.

12. The Registrar of Land Titles shall comply with this order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.

13. An original or copy of
this Order may be filed
in both Action 0903-17684
and 0903-17685. ✓



MASTER IN CHAMBERS

APPENDIX O

I hereby certify this to be a true copy of
the original order
dated this 28 day of Aug 2017

for Clerk of the Court

0903-17684 and 0903-17685

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

CALGARY

RESPONDENT
(PLAINTIFF)

ARRES CAPITAL INC.

NON-PARTICIPANTS
(DEFENDANTS)

GRAYBRIAR LAND COMPANY LTD. AND
GRAYBRIAR GREENS INC.

RESPONDENTS
(NON-PARTIES)

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

RESPONDENT
(INTERVENOR)

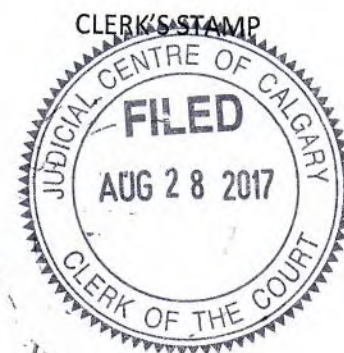
TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT
(INTERESTED PARTY)

1798583 ALBERTA LTD.

DOCUMENT

ORDER CONFIRMING SALE AND VESTING TITLE



- 2 -

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

PELLETIER LITIGATION
3300, 205 – 5th Avenue SW
Calgary, AB T2P 2V7
T. 403.407.2600
F. 403.407.2601

Ryan P. Pelletier
D. 403.407.2630
File: 13002.007

DATE ON WHICH ORDER WAS PRONOUNCED:	August 25, 2017
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary
NAME OF MASTER WHO MADE THIS ORDER:	A. Robertson

UPON the application of the Respondent/Plaintiff: AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the "**Foreclosure Direction Order**"); AND UPON noting the within Order-Sale to Plaintiff, granted by Master W. Breitreuz on February 3, 2014 and as amended by Master L.A. Smart (together the "**Order-Sale to Plaintiff**"); AND UPON noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the "**Stay Order**"); AND UPON noting the within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the "**Unit 55 Sale Order**"); AND UPON noting the order of Justice Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "**Dismissal Order**"); AND UPON noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the "**Timberock Discharge Order**"); AND UPON noting the within Consent Order, filed October 13, 2015 (the "**Consent Listing Order**"); AND UPON noting the decision of the Court of Appeal on appeal of Justice Strekaf's Dismissal Order, as Court of Appeal File No. 1501-0006AC (the "**Appeal Decision**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 48, granted by Master K. Laycock and filed February 10, 2016 (the "**Unit 48 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 63, granted by Master A. Robertson and filed March 15, 2016 (the "**Unit 63 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 65, granted by Master J. Farrington and filed June 14, 2016 (the "**Unit 65 Sale Order**");

And upon hearing counsel for the Plaintiff; And upon

AK

☒ no one appearing for the defendant(s)

☐ hearing from the defendant(s)

AK

☒ hearing from counsel for the defendant(s); *Terrapin Mortgage Investment Corp.*

AK

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.
2. In this order the mortgaged lands are the following:

Condominium Plan 0827766
Unit 69
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting thereout all mines and minerals
3. The Offer to Purchase submitted by Donna Nicholson (the "**Purchaser**") in the amount of \$225,000, inclusive of GST, for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchaser held by the Clerk of the Court shall be forwarded to the plaintiff's counsel. Any deposit of the Purchaser held by the judicial listing real estate agent, less commission payable, shall be forwarded to the plaintiff's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchaser shall, on or before the 15 day of September, 2017 (the "**Closing Date**") either pay to the plaintiff's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the plaintiff's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this order.
5. The plaintiff's lawyer shall distribute the sale proceeds as follows:
 - (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by paying out any registered financial encumbrancer ranking prior to the plaintiff's mortgage, if any, and;
 - (d) by paying to Canada Revenue Agency, the amount any Goods and Services Tax ("GST") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by paying the remainder, if any, into Court to be held by the Clerk of the Court to the credit of this Action pending further Order of this Honourable Court.

6. The proceeds of sale shall be held by the Court pursuant to the direction of the Court of Appeal and shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds are held specifically without prejudice to the position of each or all of Terrapin Mortgage Investment Corp ("Terrapin"), 1798583 Alberta Ltd. ("175 AB"), and Arres Capital Inc. ("Arres Capital") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage granted by 179 AB to Terrapin should have been registered on those Units transferred to by Arres Capital to 179 AB.
7. The plaintiff shall file and forward to the assessment officer an affidavit of receipts and disbursements accounting for funds disbursed pursuant to the preceding paragraph within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
8. The defendant, any tenants, and any other occupants shall, on or before the Closing Date deliver up to the Purchaser vacant possession of the mortgaged lands. Service of this order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
9. Upon written confirmation from the plaintiff's lawyer that it has received or is satisfied that it will receive payment from the Purchaser, the Registrar of Land Titles shall cancel the existing certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

Donna Nicholson
of
1101 Graybriar Green
Stony Plain, AB T7Z 0G1

(or such other transferee as directed by the plaintiff's counsel in correspondence sent to the Registrar of Land Titles at the time this order is submitted for registration) free and clear of the plaintiff's mortgage and all subsequent encumbrances, but subject to:

- a. Instrument No. 082 100 457 – Utility Right of Way
 - b. Instrument No. 082 409 616 - Easement
 - c. Instrument No. 082 409 617 – Utility Right of Way
 - d. Instrument No. 082 409 619 - Agreement
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the defendant, anyone claiming through the defendant, or any other subordinate encumbrancer is hereby extinguished.

11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this order, set out in Rule 9.35(1)(a), are hereby waived.
12. The Registrar of Land Titles shall comply with this order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.
13. An original or copy of this Order may be filed in both Action 0903-17684 and 0903-17685.



MASTER IN CHAMBERS

APPENDIX P

i hereby certify this to be a true copy of ⁸⁶⁶
the original Order
Dated this 01 day of Nov. 2017

for Clerk of the Court



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

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

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

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

DOCUMENT ORDER CONFIRMING SALE AND VESTING TITLE

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

- 2 -

DATE ON WHICH ORDER WAS PRONOUNCED: November 1, 2017
 LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre
 NAME OF MASTER WHO MADE THIS ORDER: Master A. Robertson

UPON the application of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of Arres Capital Inc. pursuant to an order issued by the Honourable Madam Justice Strekaf on February 13, 2015 and entered on July 26, 2017, as subsequently amended and restated on October 23, 2017 (the "**Receivership Order**"); AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the "**Foreclosure Direction Order**"); **AND UPON** noting the within Order-Sale to Plaintiff, granted by Master W. Breitreuz on February 3, 2014 and as amended by Master L.A. Smart (together the "**Order-Sale to Plaintiff**"); **AND UPON** noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the "**Stay Order**"); **AND UPON** noting with within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the "**Unit 55 Sale Order**"); **AND UPON** noting the order of Justice Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "**Dismissal Order**"); **AND UPON** noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the "**Timberock Discharge Order**"); **AND UPON** noting the within Consent Order, filed October 13, 2015 (the "**Consent Listing Order**"); **AND UPON** noting the decision of the Court of Appeal on appeal of Justice Strekaf's Dismissal Order, as Court of Appeal File No. 1501-0006AC (the "**Appeal Decision**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 48, granted by Master K. Laycock and filed February 10, 2016 (the "**Unit 48 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 63, granted by Master A. Robertson and filed March 15, 2016 (the "**Unit 63 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 65, granted by Master J. Farrington and filed June 14, 2016 (the "**Unit 65 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 69, granted by Master A. Robertson on August 25, 2017 and filed August 28, 2017 (the "**Unit 69 Sale Order**"); **AND UPON** hearing counsel for the Plaintiff;

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.

2. In this Order the mortgaged lands are the following:

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

3. The Offer to Purchase submitted by Duncan Farquharson and Leah Marie Farquharson (the "**Purchasers**") in the amount of \$225,000, inclusive of GST, for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchasers held by the Clerk of the Court shall be forwarded to the Receiver's counsel. Any deposit of the Purchasers held by the judicial listing real estate agent, less commission payable, shall be forwarded to the Receiver's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchasers shall, on or before November 30, 2017 or such other date as may be agreed to by the Receiver and the Purchasers in writing (the "**Closing Date**") either pay to the Receiver's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the Receiver's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchasers are entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this Order.
5. The Receiver's lawyer shall distribute the sale proceeds as follows:
- (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the Plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by payout out any registered financial encumbrancer ranking prior to the Plaintiff's mortgage, if any, and;

- 4 -

- (d) by paying to Canada Revenue Agency, the amount of any Goods and Services Tax ("**GST**") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any; and
 - (f) by paying the remainder, if any, into Court.
6. The proceeds of sale shall paid into Court shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds are held specifically without prejudice to the position of each or all of Terrapin Mortgage Investment Corp. ("**Terrapin**"), 1798583 Alberta Ltd. ("**179 AB**"), and Arres Capital Inc. ("**Arres Capital**") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage entered by 179 AB to Terrapin should have been registered on those Units transferred by Arres Capital to 179 AB.
7. The Receiver shall file and forward to the assessment officer an affidavit of receipts and disbursements accounting for funds disbursed pursuant to the preceding paragraph within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
8. The Defendant, any tenants, and any other occupants shall, on or before the Closing Date, deliver up to the Purchasers vacant possession of the mortgaged lands. Service of this Order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this Order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
9. Upon written confirmation from the Receiver's lawyer that it has received or is satisfied that it will receive payment from the Purchasers, the Registrar of Land Titles shall cancel the exiting certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

- 5 -

Duncan Farquharson
and
Leah Marie Farquharson
Both of:
1003 Graybriar Green
Stony Plain
Alberta T7Z 0G1
as Joint Tenants

(or such other transferee as directed by the receiver's counsel in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear of the Plaintiff's mortgage and all subsequent encumbrances, but subject to:

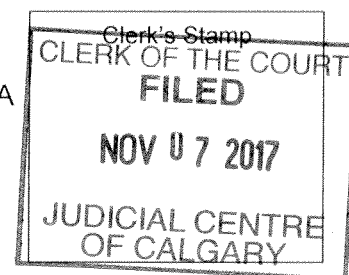
- (a) Instrument No. 082 100 457 – Utility Right of Way;
 - (b) Instrument No. 082 409 616 – Easement;
 - (c) Instrument No. 082 409 617 – Utility Right of Way;
 - (d) Instrument No. 082 409 619 – Agreement.
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the Defendant, anyone claiming through the Defendant, or any other subordinate encumbrancer is hereby extinguished.
11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this Order, set out in Rule 9.35(1)(a), are hereby waived.
12. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.
13. An original or copy of this Order may be filed in both Action 0903-17684 and 0903-17685.



M.C.Q.B.A.

APPENDIX Q

COURT FILE NUMBER 1701- 14947
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFF ARRES CAPITAL INC.
 DEFENDANT 875892 ALBERTA LTD., WESLEY SERRA
 and STACI SERRA



DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCarthy Tétrault LLP
 Suite 4000, 421 7th Avenue SW
 Calgary AB T2P 4K9
 Attention: Sean F. Collins / Walker W. MacLeod / Amelia Tritter
 Telephone: 403-260-3531 / 3710 / 3613
 Facsimile: 403-260-3501
 Email: scollins@mccarthy.ca / wmacLeod@mccarthy.ca / atritter@mccarthy.ca

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

STATEMENT OF FACTS RELIED UPON:

The Parties

1. The Plaintiff, Arres Capital Inc. ("**Arres**"), is a body corporate incorporated pursuant to the laws of the Province of Alberta.
2. The Defendant, 875892 Alberta Ltd. ("**875 Alberta**") is, to the best knowledge of the Plaintiff, a body corporate incorporated pursuant to the laws of the Province of Alberta.
3. The Defendant, Wesley Serra ("**Wes**"), is, to the best knowledge of the Plaintiff, an individual residing in the Province of Alberta.
4. The Defendant, Staci Serra ("**Staci**"), is, to the best knowledge of the Plaintiff, an individual residing in the Province of Alberta.

5. The Defendant Wes was, at all material times, the sole director and shareholder of Arres.
6. The Defendants Wes and Staci were, at all material times, related persons by marriage.
7. The Defendant 875 Alberta was, at all material times, wholly owned and controlled by Staci.
8. Pursuant to an amended and restated receivership order issued by the Court of Queen's Bench of Alberta on October 23, 2017 (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. (the "**Receiver**") has been appointed as receiver of all of Arres' Exigible Property (as such term is defined in the Receivership Order). The Exigible Property includes, without limitation, any interest that Arres has in a cause of action. Pursuant to a paragraph 3(j) of the of the Receivership Order, the Receiver was granted exclusive authority to initiate proceedings on behalf of Arres and the Receiver has commenced this Action for the benefit of Arres and its other creditors.

The Transfers

9. In the period commencing in January 1, 2009 to and continuing through to July 2012, Wes caused Arres to make various transfers of accounts receivable due to Arres to Staci and to 875 Alberta (collectively, the "**Transfers**"). It is unknown whether Arres received appropriate consideration from either Staci or 875 Alberta for the Transfers.

Improper Conveyances

10. Arres states that Wes caused Arres to make the Transfers when Arres was in insolvent circumstances, unable to pay its debts in full or with knowledge that Arres was on the eve of insolvency and made with intent to defeat, hinder, delay or prejudice Arres' creditors. As a result thereof, the Transfers are void as against Arres' creditors who have been injured, delayed or prejudiced by the Transfers pursuant to section 1 of the *Fraudulent Preferences Act* (Alberta) (the "**FPA**").

Breach of Fiduciary Duty

11. Arres states that Wes had a duty, arising pursuant to section 122(1) of the *Business Corporations Act* (Alberta) (the "**ABCA**") and at common law, to act honestly, in good

faith with a view to the best interests of Arres and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Arres states that Wes breached such duty by causing Arres to enter into the Transfers with persons who are related to him and that Arres has suffered damages as a result of such breach.

Breach of Trust

12. Arres states that the Defendants wrongfully caused the Transfers to be made by Arres without any consideration or, in the alternative, without adequate consideration, and have caused damages to Arres thereby. Arres further states that the Defendants have perpetrated a breach of trust and that each of Staci and 875 Alberta hold any monies received in respect of the Transfers in trust and for the benefit of Arres
13. In addition and in the alternative, Arres states that the Defendants, individually and collectively, knowingly assisted, with the knowledge of the wrongful conduct, in a breach of trust against Arres in effecting the Transfers.
14. In addition and in the alternative, Staci and 875 Alberta received any monies received in respect of the Transfers for their own use and benefit with the actual knowledge, wilful blindness to the obvious, without making reasonable inquiry or with knowledge of the circumstances that would reasonably cause inquiry into the nature of the monies received or a breach of trust.

Oppression

15. Arres states that, pursuant to section 239(b)(iv) of the ABCA, it is a proper person to make an application under Part 19 of the ABCA and that it therefore a complainant within the meaning of Part 19 of the ABCA.
16. Arres states that, in causing Arres to make the Transfers without consideration, Wes has effected a result that is oppressive, unfairly prejudicial and exhibited unfair disregard for the interests of Arres and its creditors.
17. Arres states that, in causing Arres to make the Transfers without consideration, Wes exercised his powers as director and officer of Arres in a manner that was oppressive, unfairly prejudicial or exhibited unfair disregard for the interests of Arres and its creditors.

18. Arres states that the conduct of Wes, as particularized herein, has caused Arres to suffer damages. The particulars of the damages suffered by Arres shall be proven at the Trial of this Action.

Unjust Enrichment

19. Arres states that, in causing the Transfers to be made without consideration, the Defendants were unjustly enriched, Arres was correspondingly deprived and there is no juristic reason for the enrichment or the corresponding deprivation. Arres is entitled, *inter alia*, to restitution on a *quantum meruit* basis of the value of the Transfers and the amount of all monies received by the Defendants arising from or relating to the Transfers.
20. Arres does not anticipate the length of this trial will exceed 25 days.
21. Arres proposes that the trial of this action shall be heard at the Court House, in the City of Calgary, in the Province of Alberta.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS as follows:

- (a) A declaration that the Transfers are void pursuant to section 1 of the FPA;
- (b) A declaration that Arres has a constructive trust over all monies received by the Defendants arising or resulting from the Transfers;
- (c) Judgment against each of the Defendants, on a joint and several basis, in such amount as may be proven at the trial of this Action;
- (d) An award of damages against each of the Defendants, on a joint and several basis, in such amount as may be proven at the trial of this Action;
- (e) A declaration that Wes has breached section 122(1) of the ABCA;
- (f) A declaration that Wes has acted in a manner that is oppressive, unfairly prejudicial and exhibited unfair disregard for the interests of Arres;

- (g) Interest on all amounts declared owing by each of the Defendants in an amount determined by this Honourable Court or, in the alternative, pursuant to the *Judgment Interest Act* (Alberta);
- (h) Costs of this Action on such basis as this Honourable Court may deem appropriate in the circumstances in the exercise of its discretion; and
- (i) Such other relief as this Honourable Court deems just in the circumstances.

NOTICE TO THE DEFENDANT

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

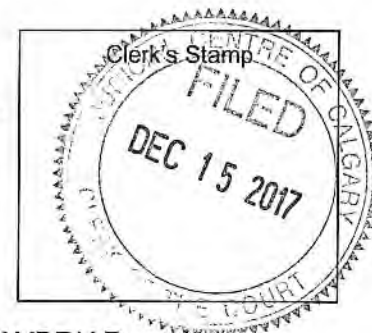
You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND by serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

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

APPENDIX R

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



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

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

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

DOCUMENT AMENDED ORDER CONFIRMING SALE AND VESTING TITLE

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

I hereby certify this to be a true copy of
 the original *[Signature]*

Dated this 15 day of December 2017

[Signature]
 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED:

DECEMBER 15, 2017

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary Courts Centre

NAME OF MASTER WHO MADE THIS ORDER:

Master

UPON the application of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of Arres Capital Inc. pursuant to an order issued by the Honourable Madam Justice Strekaf on February 13, 2015 and entered on July 26, 2017, as subsequently amended and restated on October 23, 2017 (the "**Receivership Order**"); **AND UPON** noting the within Order of Master L.A. Smart, dated March 8, 2010 (the "**Foreclosure Direction Order**"); **AND UPON** noting the within Order-Sale to Plaintiff, granted by Master W. Breitkreuz on February 3, 2014 and as amended by Master L.A. Smart (together the "**Order-Sale to Plaintiff**"); **AND UPON** noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the "**Stay Order**"); **AND UPON** noting with within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the "**Unit 55 Sale Order**"); **AND UPON** noting the order of Justice Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "**Dismissal Order**"); **AND UPON** noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the "**Timberock Discharge Order**"); **AND UPON** noting the within Consent Order, filed October 13, 2015 (the "**Consent Listing Order**"); **AND UPON** noting the decision of the Court of Appeal on appeal of Justice Strekaf's Dismissal Order, as Court of Appeal File No. 1501-0006AC (the "**Appeal Decision**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 48, granted by Master K. Laycock and filed February 10, 2016 (the "**Unit 48 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 63, granted by Master A. Robertson and filed March 15, 2016 (the "**Unit 63 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 65, granted by Master J. Farrington and filed June 14, 2016 (the "**Unit 65 Sale Order**"); **AND UPON** noting the within Order Confirming Sale and Vesting Title for Unit 69, granted by Master A. Robertson on August 25, 2017 and filed August 28, 2017 (the "**Unit 69 Sale Order**"); **AND UPON** hearing counsel for the Plaintiff, Terrapin Mortgage Investment Corp. and the Respondents (Non-Parties);

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.

2. In this Order the mortgaged lands are the real property interest of Graybriar Land Company Ltd. (the "**Registered Owner**") and legally described as follows:

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

(the "**Mortgaged Lands**").

3. The Offer to Purchase submitted by Duncan Farquharson and Leah Marie Farquharson (the "**Purchasers**") in the amount of \$225,000, inclusive of GST, for the purchase of the Mortgaged Lands (the "**Purchase Agreement**") is hereby approved and accepted and any deposit of the Purchasers held by the Clerk of the Court shall be forwarded to the Receiver's counsel. Any deposit of the Purchasers held by the judicial listing real estate agent, less commission payable, shall be forwarded to the Receiver's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchasers shall, on or before November 30, 2017 (the "**Closing Date**") either pay to the Receiver's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the Receiver's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchasers are entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this Order.
5. The Receiver's lawyer shall distribute the sale proceeds as follows:
- (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the Plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by payout out any registered financial encumbrancer ranking prior to the Plaintiff's mortgage, if any, and;

- (d) by paying to Canada Revenue Agency, the amount of any Goods and Services Tax ("**GST**") payable as a result of the sale transaction approved by this Order, if any, and;
 - (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by holding the remainder, if any, pursuant to further order of this Honourable Court.
6. The proceeds of sale shall be held by the Court pursuant to the direction of the Court of Appeal and shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds shall be held specifically without prejudice to the positions of each or all of Terrapin Mortgage Investment Corp. ("Terrapin"), 1798583 Alberta Ltd. ("179 AB"), and Arres Capital Inc. ("Arres") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage ranted by 179 AB to Terrapin should have been registered on those Units transferred by Arres to 179 AB.
7. The Receiver shall file and forward to the Assessment Officer an affidavit of Receipts and Disbursements accounting for the funds disbursed pursuant to paragraph 5 within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
8. The Defendant, any tenants, and any other occupants shall, on or before the Closing Date, deliver up to the Purchasers vacant possession of the mortgaged lands. Service of this Order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this Order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
9. Upon written confirmation from the Receiver's lawyer that it has received or is satisfied that it will receive payment from the Purchasers, the Registrar of Land Titles shall cancel

the exiting certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

Duncan Farquharson
and
Leah Marie Farquharson
Both of:
1003 Graybriar Green
Stony Plain
Alberta T7Z 0G1
as Joint Tenants

(or such other transferee as directed by the receiver's counsel in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear of the Plaintiff's mortgages and all subsequent encumbrances, which are further particularized below:

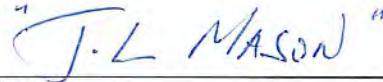
- (a) Instrument Number 072 008 561: Mortgage, Mortgagee – Arres Capital Inc., in the original principal amount of \$2,800,000;
- (b) Instrument Number 072 008 562: Caveat re: Assignment of Rents, Caveator – Arres Capital Inc.;
- (c) Instrument Number 072 512 005: Mortgage, Mortgagee Arres Capital Inc., in the original principal amount of \$9,700,000;
- (d) Instrument Number 072 512 006: Caveat re: Assignment of Rents and Leases, Caveator – Arres Capital Inc.;
- (e) Instrument Number 092 013 170: Builder's Lien, Lienor – Robman Enterprises Ltd., in the amount of \$701,685;
- (f) Instrument Number 092 013 173: Builder's Lien, Lienor – 1149294 Alberta Ltd., in the amount of \$68,524;
- (g) Instrument Number 092 021 175: Builder's Lien, Lienor – All Star Plumbing Ltd., in the amount of \$69,173;
- (h) Instrument Number 092 021 178: Builder's Lien, Lienor – W.A. Davis Electric Ltd., in the amount of \$106,695;

- (i) Instrument Number 092 049 405: Builder's Lien, Lienor – 397965 Alberta Ltd., Lienor – Jake's Construction Ltd., in the amount of \$8,761;
- (j) Instrument Number 092 057 352: Certificate of Lis Pendens, affects Instrument: 072 512 005;
- (k) Instrument Number 092 200 520: Certificate of Lis Pendens, affects Instrument: 092 013 170;
- (l) Instrument Number 092 231 992: Certificate of Lis Pendens, affects Instrument: 092 013 173;
- (m) Instrument Number 092 244 113: Certificate of Lis Pendens, affects Instrument: 092 021 175;
- (n) Instrument Number 092 244 159: Certificate of Lis Pendens, affects Instrument: 092 021 178;
- (o) Instrument Number 092 330 106: Writ, Creditor – Garden Valley Construction Ltd., in the amount of \$515,502 and costs if any, Action Number: 090309286;
- (p) Instrument Number 122 085 943: Caveat re: Agreement Charging Land, Caveator – Timberock North Home Development Limited;
- (q) Instrument Number 142 053 522: Order;
- (r) Instrument Number 142 056 642: Caveat re: Beneficial Owner (numerous caveators);
- (s) Instrument Number 142 302 277: Caveat re: Beneficial Owner, Caveator: Access Mortgage Corporation (2004) Limited; and
- (t) Instrument Number 152 240 650: Caveat re Condominium Fees, Caveator – Condominium Corporation no. 0827766;

but subject to the following encumbrances remaining on title:

- (u) Instrument No. 082 100 457 – Utility Right of Way;

- (v) Instrument No. 082 409 616 – Easement;
 - (w) Instrument No. 082 409 617 – Utility Right of Way;
 - (x) Instrument No. 082 409 619 – Agreement.
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the Defendant, anyone claiming through the Defendant, or any other subordinate encumbrancer, is hereby extinguished.
 11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this Order, set out in Rule 9.35(1)(a), are hereby waived.
 12. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.
 13. An original or copy of this Order may be filed in both Action 0903-17684 and 0903-17685.



M.C.Q.B.A.

APPENDIX S

COURT FILE NUMBER 0903-17684 and 0903-17685
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 RESPONDENT (PLAINTIFF) ARRES CAPITAL INC.
 NON-PARTICIPANTS (DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.



RESPONDENTS (NON-PARTIES)

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

I hereby certify this to be a true copy of
 the original
 Dated this 15 day of December
 for Clerk of the Court

RESPONDENT (INTERVENOR)

TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY)

1798583 ALBERTA LTD.

DOCUMENT

CONSENT ORDER CONFIRMING SALE AND VESTING TITLE

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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

DATE ON WHICH ORDER WAS PRONOUNCED:

December 14, 2017

LOCATION WHERE ORDER WAS PRONOUNCED:

Calgary Courts Centre

NAME OF MASTER WHO MADE THIS ORDER:

Master

JL MASON

UPON the application of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of Arres Capital Inc. pursuant to an order issued by the Honourable Madam Justice Strekaf on February 13, 2015 and entered on July 26, 2017, as subsequently amended and restated on October 23, 2017 (the "**Receivership Order**"); AND UPON noting the within Order of Master L.A. Smart, dated March 8, 2010 (the "**Foreclosure Direction Order**"); AND UPON noting the within Order-Sale to Plaintiff, granted by Master W. Breitzkreuz on February 3, 2014 and as amended by Master L.A. Smart (together the "**Order-Sale to Plaintiff**"); AND UPON noting the temporary stay of the Order-Sale to Plaintiff, granted by Justice S.D. Hillier on February 14, 2014 (the "**Stay Order**"); AND UPON noting with within Order granted by Master L.A. Smart on February 28, 2014 which directed the sale of Unit 55 (the "**Unit 55 Sale Order**"); AND UPON noting the order of Justice Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "**Dismissal Order**"); AND UPON noting the within Order of Master J.T. Prowse, filed July 22, 2015 (the "**Timberock Discharge Order**"); AND UPON noting the within Consent Order, filed October 13, 2015 (the "**Consent Listing Order**"); AND UPON noting the decision of the Court of Appeal on appeal of Justice Strekaf's Dismissal Order, as Court of Appeal File No. 1501-0006AC (the "**Appeal Decision**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 48, granted by Master K. Laycock and filed February 10, 2016 (the "**Unit 48 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 63, granted by Master A. Robertson and filed March 15, 2016 (the "**Unit 63 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 65, granted by Master J. Farrington and filed June 14, 2016 (the "**Unit 65 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 69, granted by Master A. Robertson on August 25, 2017 and filed August 28, 2017 (the "**Unit 69 Sale Order**"); AND UPON noting the within Order Confirming Sale and Vesting Title for Unit 67, granted by Master A. Robertson on November 1, 2017 and filed November 1, 2017 (the "**Unit 67 Sale Order**"); AND UPON hearing from counsel for the Respondents (Non-Parties);

IT IS HEREBY ORDERED THAT:

1. This Order shall be filed forthwith notwithstanding that it varies from the standard template for Orders confirming sale and vesting title in foreclosure actions.
2. In this Order the mortgaged lands are the real property interest of Graybriar Land Company Ltd. (the "**Registered Owner**") and legally described as follows:

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

(the "**Mortgaged Lands**").

3. The Offer to Purchase submitted by Shawn Dunbar (the "**Purchaser**") in the amount of \$225,000, inclusive of GST, for the purchase of the Mortgaged Lands (the "**Purchase Agreement**") is hereby approved and accepted and any deposit of the Purchaser held by the Clerk of the Court shall be forwarded to the Receiver's counsel. Any deposit of the Purchaser held by the judicial listing real estate agent, less commission payable, shall be forwarded to the Receiver's counsel. All other offers are hereby rejected and all deposits received from any other offerors shall be returned to them immediately.
4. The Purchaser shall, on or before January 31, 2018 (the "**Closing Date**") either pay to the Receiver's counsel the adjusted purchase price, or enter into reasonable conveyancing arrangements with the Receiver's counsel to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the mortgaged lands pursuant to paragraph 6 of this Order.
5. The Receiver's lawyer shall distribute the sale proceeds as follows:
 - (a) by paying the amount owing to the municipality in which the mortgaged lands are located with respect to municipal property taxes, assessments, penalties and interest and any other overdue charges owing to the said municipality with respect to the mortgaged lands, ranking prior to the Plaintiff's mortgage, if any, and;
 - (b) by paying any outstanding condominium fees owing with respect to the mortgaged lands, if any, and;
 - (c) by payout out any registered financial encumbrancer ranking prior to the Plaintiff's mortgage, if any, and;
 - (d) by paying to Canada Revenue Agency, the amount of any Goods and Services Tax ("**GST**") payable as a result of the sale transaction approved by this Order, if any, and;

- 4 -

- (e) by paying the real estate commission and the GST thereon to the judicial listing real estate agent, if any, and;
 - (f) by paying the remainder, if any, into Court.
6. The proceeds of sale paid into Court pursuant shall be entirely without prejudice to the positions or claims of any of the parties in the within Actions such that the funds realized from the sale of the property shall be effectively alternate, but equivalent security for the property. The proceeds shall be held specifically without prejudice to the positions of each or all of Terrapin Mortgage Investment Corp. ("Terrapin"), 1798583 Alberta Ltd. ("179 AB"), and Arres Capital Inc. ("Arres") that the Order-Sale to Plaintiff should have been registered, the property should have transferred pursuant to the terms of the Order-Sale to Plaintiff, and the relevant Mortgage ranted by 179 AB to Terrapin should have been registered on those Units transferred by Arres to 179 AB.
7. The Receiver shall file and forward to the Assessment Officer an affidavit of receipts and disbursements accounting for the funds disbursed pursuant to paragraph 5 within one month of the Closing Date, or receipt of the adjusted purchase price, whichever is later.
8. The Defendant, any tenants, and any other occupants shall, on or before the Closing Date, deliver up to the Purchaser vacant possession of the mortgaged lands. Service of this Order may be made on the occupants by posting same on the main entrance door to the mortgaged lands. A Civil Enforcement Agency has authority, after service of this Order has been effected, to evict any occupant of the mortgaged lands on the later of the aforesaid date or 20 days after the posting has occurred.
9. Upon written confirmation from the Receiver's lawyer that it has received or is satisfied that it will receive payment from the Purchaser, the Registrar of Land Titles shall cancel the exiting certificate of title to the mortgaged lands and shall issue a new certificate of title in the name of:

Shawn Dunbar
of
1004 Graybriar Green
Stony Plain, Alberta, T7Z 0G1

- 5 -

(or such other transferee as directed by the Receiver's lawyer in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear of the Plaintiff's mortgages and all subsequent encumbrances, which are further particularized below:

- (a) Instrument Number 072 008 561: Mortgage, Mortgagee – Arres Capital Inc., in the original principal amount of \$2,800,000;
- (b) Instrument Number 072 008 562: Caveat re: Assignment of Rents, Caveator – Arres Capital Inc.;
- (c) Instrument Number 072 512 005: Mortgage, Mortgagee Arres Capital Inc., in the original principal amount of \$9,700,000;
- (d) Instrument Number 072 512 006: Caveat re: Assignment of Rents and Leases, Caveator – Arres Capital Inc.;
- (e) Instrument Number 092 013 170: Builder's Lien, Lienor – Robman Enterprises Ltd., in the amount of \$701,685;
- (f) Instrument Number 092 013 173: Builder's Lien, Lienor – 1149294 Alberta Ltd., in the amount of \$68,524;
- (g) Instrument Number 092 021 175: Builder's Lien, Lienor – All Star Plumbing Ltd., in the amount of \$69,173;
- (h) Instrument Number 092 021 178: Builder's Lien, Lienor – W.A. Davis Electric Ltd., in the amount of \$106,695;
- (i) Instrument Number 092 049 405: Builder's Lien, Lienor – 397965 Alberta Ltd., Lienor – Jake's Construction Ltd., in the amount of \$8,761;
- (j) Instrument Number 092 057 352: Certificate of Lis Pendens, affects Instrument: 072 512 005;
- (k) Instrument Number 092 200 520: Certificate of Lis Pendens, affects Instrument: 092 013 170;

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- (l) Instrument Number 092 231 992: Certificate of Lis Pendens, affects Instrument: 092 013 173;
- (m) Instrument Number 092 244 113: Certificate of Lis Pendens, affects Instrument: 092 021 175;
- (n) Instrument Number 092 244 159: Certificate of Lis Pendens, affects Instrument: 092 021 178;
- (o) Instrument Number 092 330 106: Writ, Creditor – Garden Valley Construction Ltd., in the amount of \$515,502 and costs if any, Action Number: 090309286;
- (p) Instrument Number 122 085 943: Caveat re: Agreement Charging Land, Caveator – Timberock North Home Development Limited;
- (q) Instrument Number 142 053 522: Order;
- (r) Instrument Number 142 056 642: Caveat re: Beneficial Owner (numerous caveators);
- (s) Instrument Number 142 302 277: Caveat re: Beneficial Owner, Caveator: Access Mortgage Corporation (2004) Limited;
- (t) Instrument Number 142 336 570: Certificate of Lis Pendens, affects Instrument: 072008561 and Instrument: 072 512 005;
- (u) Instrument Number 142 336 572: Certificate of Lis Pendens by Terrapin Mortgage Investment Corp.; and;
- (v) Instrument Number 152 240 642: Caveat re Condominium Fees, Caveator – Condominium Corporation no. 0827766;

but subject to the following encumbrances remaining on title:

- (w) Instrument No. 082 100 457 – Utility Right of Way, Grantee – FortisAlberta Inc.;
- (x) Instrument No. 082 409 616 – Easement;

- 7 -

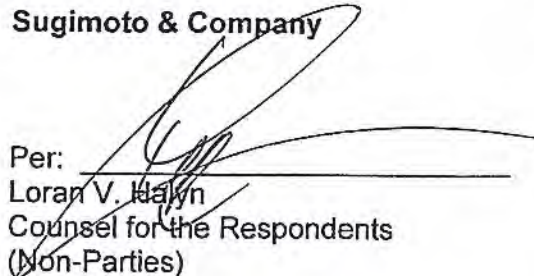
- (y) Instrument No. 082 409 617 – Utility Right of Way, Grantee – The Town of Stony Plain;
 - (z) Instrument No. 082 409 619 – Agreement re: Easement, Restrictive Covenant, Party Wall and Encroachment.
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the Defendant, anyone claiming through the Defendant, or any other subordinate encumbrancer is hereby extinguished.
 11. Compliance with Rule 9.34(4) and the requirement for service of documents prior to entry of this Order, set out in Rule 9.35(1)(a), are hereby waived.
 12. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding Section 191(1) of the *Land Titles Act*.
 13. An original or copy of this Order may be filed in both Action 0903-17684 and 0903-17685.



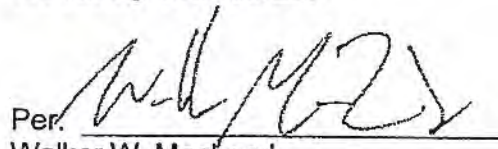
M.C.Q.B.A.

ORDER CONSENTED TO:

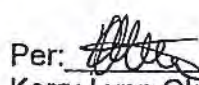
Sugimoto & Company

Per: 
Loran V. Hahn
Counsel for the Respondents
(Non-Parties)

McCarthy Tétrault LLP

Per: 
Walker W. MacLeod,
Counsel for Alvarez & Marsal Canada Inc.,
Receiver of the Defendant, Arres Capital
Inc.

Bishop & McKenzie LLP

Per: 
Kerry Lynn Okita
Counsel for the Intervenor,
Terrapin Mortgage Investment Corp.

APPENDIX T

TERRAPIN'S SECURED CREDITOR CLAIM
FACTUAL BACKGROUND

I. Arres Mortgage and Foreclosure

1. Graybriar Land Company Ltd. owned lands being developed into condominium units. These condominium developments were known as Graybriar Phase I and Graybriar Phase II.

2. By a Memorandum of Mortgage made under the *Land Titles Act* dated the 5th day of November, 2006 (the "First Arres Mortgage"), Graybriar Land Company Ltd. mortgaged to the Defendant, Arres, the following lands:

PLAN 052 0941
BLOCK 1
LOT C

(the "Lands") for securing payment of the principal sum of \$2,800,000.00, together with interest, payable both before and after maturity, default, and judgment.

3. By a Memorandum of Mortgage made under the *Land Titles Act* dated the 15th day of August, 2007 (the "Second Arres Mortgage"), Graybriar Land Company Ltd. mortgaged to the Defendant, Arres, the Lands for securing payment of the principal sum of \$9,700,000.00, together with interest, payable both before and after maturity, default, and judgment.

4. On or about November 2008, Graybriar Land Company Ltd. defaulted under the First Arres Mortgage and/or the Second Arres Mortgage.

5. On or about February 24 and March 5, 2009, Arres commenced two actions against Graybriar Land Company Ltd. The first, Action No: 0903-17685 with respect to Graybriar Phase I and the second, Action No. 0903-17684 with respect to Graybriar Phase II. These two actions were consolidated into one action referring to both action numbers (the "Foreclosure Action").

6. On or about March 8, 2010, Master Smart granted an order in the Foreclosure Action which allowed the registration of the condominium plan and development of the individual condominium units (the "Development Order").

7. On or about June 6, 2010, Master Smart granted an order in the Foreclosure Action which allowed for the listing and sale of the individual condominium units (the "Listing Order").

8. Following the Development Order and the Listing Order, the condominium plan was registered, the individual condominium units were developed, listed and most were sold.

9. As of January 2014, there were seven remaining condominium units which remained unsold.

10. In or about January 2014, Arres applied within the Foreclosure Action, with notice, for an Order for Sale to Plaintiff of the seven remaining units, namely:

CONDOMINIUM PLAN 0827766
 UNITS 48, 55, 63, 65, 67, 68, AND 69
 AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE
 COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Units").

11. On or about February 3, 2014, Master Breitzkreuz granted an Order for Sale to Plaintiff of the Units. On or about February 7, 2014, this Order was amended by Master Smart (the "Order for Sale to Plaintiff").

II. Terrapin Mortgage to 179 AB and the Serra Guarantee

12. In or about January 2014, 179 AB and Arres arranged to transfer four of the Units, namely units 48, 55, 68, and 69 to 179 AB (the "179 AB Units").

13. The principal of 179 AB is Staci Serra. The principal of Arres is Wes Serra. Staci and Wes Serra are married.

14. The terms of the agreement with respect to the transfer of the 179 AB Units from Arres to 179 AB are unknown by Terrapin.

15. In or about January 2014, 179 AB applied to Terrapin for a mortgage on the 179 AB Units.

16. 179 AB represented to Terrapin that it had or would have good title to the 179 AB Units, and that it had the right to mortgage the 179 AB Units.



17. By way of a commitment letter on or about January 23, 2014, Terrapin agreed to loan 179 AB the sum of \$426,000.00 and 179 AB agreed to provide mortgage security over the 179 AB Units to Terrapin.

18. By a Memorandum of Mortgage made under the *Land Titles Act* dated the 5th day of February, 2014, (the "Terrapin Mortgage"), 179 AB mortgaged to Terrapin the 179 AB Units, namely:

CONDOMINIUM PLAN 0827766
 UNITS 48, 55, 68, AND 69
 AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE
 COMMON PROPERTY
 EXCEPTING THEREOUT ALL MINES AND MINERALS,

for securing payment of the principal sum of \$426,000.00, together with interest, payable both before and after maturity, default, and judgment.

19. It was a term of the Terrapin Mortgage that 179 AB would pay the principal sum and interest thereon at the annual interest rate of prime plus 3.0%, at a minimum of 8.0% until January 31, 2015, and would thereafter accrue at the rate of prime plus 9.0%, at a minimum of 14.0%.

20. It was a term of the Terrapin Mortgage that the funds advanced would be repaid by monthly interest payments from the date of advance to January 31, 2015, at which time the sum of all advances and all other outstanding amounts would be paid in full.

21. It was a further term of the Terrapin Mortgage that all costs, charges, and expenses of enforcing the indebtedness of 179 AB to Terrapin, including legal fees on a solicitor and its own client basis, would be paid by 179 AB.

22. On the 5th day of February, 2014, the Defendant, Serra, executed a Guarantee of Mortgage in favour of Terrapin with respect to the indebtedness of 179 AB to Terrapin under the Terrapin Mortgage (the "Guarantee").

23. Also on the 5th day of February, 2014, the Defendant, Serra, attended before a Notary Public in and for the Province of Alberta, which resulted in a Certificate of Notary Public being executed in accordance with the provisions of the *Guarantee Acknowledgement Act*, R.S.A. 2000, c. G-11, as amended.

24. It was a term of the Guarantee that Serra would be responsible to pay to Terrapin all debts and liabilities of 179 AB to Terrapin, including all principal, interest costs, charges and expenses, plus interest calculated at the rates under the Terrapin Mortgage from the date of demand, compounded monthly.

25. It was a further term of the Guarantee that Serra would pay to Terrapin all costs, charges, and expenses, including legal fees on a solicitor and its own client basis, incurred by Terrapin in the enforcement of the Guarantee.

26. On or about February 12, 2014, Terrapin advanced funds in the amount of \$426,000.00 (the "Terrapin Funds") to counsel for 179 AB on trust conditions.

27. On or about February 13 and 14, 2014 counsel for 179 AB distributed the Terrapin Funds in the following manner:

- a. \$235,000.00 was paid into Court in Action No. 1201-16440 for the benefit of Arres;
- b. \$138,444.61 was paid directly to 179 AB; and
- c. Fees paid in the following amounts:
 - i. \$300.00 for title insurance to First Canadian Title Insurance;
 - ii. \$966.00 for estoppel certificates to Core Management Group;
 - iii. \$956.88 for outstanding condominium fees to Condominium Corporation 0827766;
 - iv. \$8,460.41 for outstanding property taxes to the Town of Stony Plain;
 - v. Payment to solicitors for 179 AB; and
 - vi. Payment to solicitors for Terrapin.

28. On or about February 14, 2014, counsel for 179 AB submitted documents to the Registrar of Land Title, directing:

- a. the transfer of title of clear title of the 179 AB Units to 179 AB, including the discharge of the First Arres Mortgage and the Second Arres Mortgage, and the registration of the Terrapin Mortgage on the 179 AB Units; and
- b. the transfer of clear title to Arres of the three Remaining Units, namely units 63, 65, and 67 (the "Arres Units").

29. These documents included a certified copy of the Order for Sale to Plaintiff, correspondence directing the Registrar of Land Titles to transfer the 179 AB Units into the name of 179 AB and to register the Terrapin Mortgage against the 179 AB Units, and correspondence directing the Registrar of Land Titles to transfer the Arres Units to Arres. Both pieces of correspondence were authored by Wes Serra for Arres and on Arres letterhead.

30. The Registrar of Land Titles returned the registration package with a rejection notice directing that it required the correspondence to be on Arres' counsel's letterhead.

III. The Stay of the Order Sale to Plaintiff

31. On or about February 14, 2014, an emergency telephone application was made by the plaintiffs (the "Richcrooks Plaintiffs") in Action No. 1301-10892 (the "Richcrooks Action"). The Richcrooks Plaintiffs claimed that Arres lacked authority or standing on the First Arres Mortgage and the Second Arres Mortgage to apply for or obtain the Order for Sale to Plaintiff and claimed beneficial ownership of the Units, despite only having equitable mortgage interests.

32. The Richcrooks Plaintiffs applied, without notice to 179 AB or to Terrapin, for a stay of the Order for Sale to Plaintiff. Justice S.D. Hillier granted an order staying the Order for Sale to Plaintiff pending further order of the Court (the "Stay Order").

33. As a result of the Stay Order, title to the 179 AB Units was not transferred to 179 AB and the Terrapin Mortgage was not registered against title to the 179 AB Units. Title to the Units remained in the name of Graybriar Land Company Ltd. with the First Arres Mortgage and the Second Arres Mortgage registered.

IV. The Sale of Unit 55

34. On or about February 28, 2014, unit 55, which is one of the 179 AB Units, was sold to third party purchasers for the amount of \$269,900.00 by order of Master Smart ("Order for Sale of Unit 55") in the Foreclosure Action.

Attached.

35. The application and granting of the Order for Sale of Unit 55 were made without notice to or the consent of Terrapin.



36. The Order for Sale of unit 55 directed the net sale proceeds to be held in trust pending further order of the Court with respect to the Stay Order.

V. The Proceeds of Sale from Unit 55 and Property Management of the Units

37. Since the Order Sale to Plaintiff and the Stay Order, it was unclear who was responsible for the management of the Units. The construction manager appointed in the Foreclosure Action in 2010, Timberock, had managed the Units during the period from February 2014 to June 2015 and had not been paid for their services.

38. In June 2015, Timberock brought an application for discharge as Construction Manager and for recovery of their outstanding fees (the “Timberock Application”).

39. On June 26 2015, the Timberock Application was heard before Master Prowse who granted an order directing, among other relief, the following:

- a. Timberock to transfer the unit 55 proceeds of sale to counsel for Terrapin; and
- b. Terrapin to hold the unit 55 proceeds of sale in trust and administer the management of the Units through a property manager.

40. Terrapin has been administering the property management of the Units that date and continues to manage the Units until such time as they are sold.

VI. The Judicial Sale Process

41. Throughout litigation, the parties engaged in negotiations to have the Arres Units and the 179 AB Units sold by judicial process and proceeds held in trust pending litigation on the parties rights and priorities. These negotiations resulted in the Consent Judicial Listing Order, granted by Justice Neufeld on October 13, 2015 (the “Judicial Listing Order”).

Attached.

42. The Judicial Listing Order was endorsed as amended by the Court of Appeal in December 2015 as noted below.

VII. Litigation on the Stay Order and the Merits of the Richcrooks Claims

43. The Stay Order and the Richcrooks Plaintiffs' against Arres, have been the subject of numerous hearings before the Court of Queen's Bench and the Court of Appeal:

- a. On June 26, 2014, the matter was before Justice Strekaf, who along with other relief, granted Terrapin intervener status in the Foreclosure Action based on their equitable mortgage interest in the 179 AB Units and extended stay of the Order Sale to Plaintiff.
- b. On September 15, 2014, the matter was before Justice Strekaf who directed the Richcrooks Plaintiffs to seek specific relief and extended the stay of the Order Sale to Plaintiff.
- c. On October 7, 2014, the matter was before Justice Strekaf who directed the parties to negotiate a consent order whereby the Arres Units and the 179 AB Units would be sold, proceeds held in trust, and entitlement to proceeds litigated by the parties. Justice Strekaf extended the stay of the Order Sale to Plaintiff.
- d. On December 17, 2014, the matter returned before Justice Strekaf who vacated the Stay Order as of January 15, 2015 (the "December 17, 2014 Strekaf Order") on the basis that the Undertaking as to Damages provided by the Richcrooks Plaintiffs was not meaningful.
- e. The Richcrooks Plaintiffs appealed the December 17, 2014 Strekaf Order to the Alberta Court of Appeal.
- f. On January 23, 2015, an application for an interim stay of the December 17, 2014 Strekaf Order was heard and granted by Justice McDonald of the Alberta Court of Appeal.
- g. On December 9, 2015, the full hearing on the merits was heard and the appeal granted by Chief Justice Fraser, Justices Rowbotham and Watson of the Alberta Court of Appeal.
- h. Chief Justice Fraser directed the Arres Units and the 179 AB Units be sold and the proceeds paid into Court pending further litigation on rights and priorities. Chief Justice Fraser noted the following:

The most appropriate course for all concerned, **including the creditor Terrapin Mortgage Investment Corp. who advanced money on the strength of the foreclosure order**, is to require that the proceeds of the judicial sales of the seven units be paid in to Court and then have the Court determine who has the rights to such proceeds and whose rights have priority. (*emphasis added*)

44. Since the decision of the Court of Appeal, the Richcrooks Plaintiffs have taken no action to appeal, set aside, or further proceed on the merits of their allegations against Arres.

45. The only action taken by the Richcrooks Plaintiffs has been the following:
- a. An application for partial summary judgment application which was heard by Master Prowse on May 24, 2017 and dismissed on June 28, 2017, and
 - b. An application to add Plaintiffs to the Richcrooks Action, to be heard on January 24, 2018.

VIII. Terrapin Action Against Arres, 179 AB, and Staci Serra

46. Terrapin has commenced an action against Arres, 179 AB, and Staci Serra.
47. The action was being held as against Arres and 179 AB.
48. Terrapin has obtained judgement against Staci Serra for the debt as well as solicitor client costs in all of the above noted actions.

IX. The Current Situation

49. Five of the Units have been sold by the Judicial Sale Process, namely units 48, 63, 65, 69, and 67. Money has been paid into Court on the first four units in the amount of **\$806,926.64**.

Attached are the Money Paid into Court records for the four units.

50. Funds for unit 67 have not been paid into Court at this time, but shall be following closing.
51. At this time only one unit remains unsold, namely unit 68.
52. Counsel for Terrapin continues to hold the proceeds of sale of Unit 55 and to pay for the property management of the Units from same. At this time, Terrapin holds **\$153,469.72** in trust.

Attached are:

***the Statement of Receipts and Disbursements from August 2015 to November 2017 and
the Statement of Disbursements by Unit from August 2015 to November 2017.***

APPENDIX U

Arres Capital Inc. - In Receivership

Summary of Receiver's Fees and Disbursements

July 26, 2017 to April 30, 2018

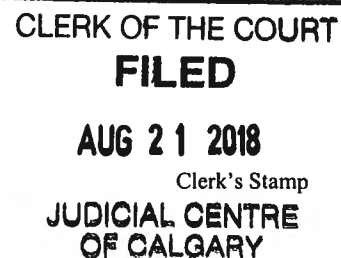
Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
1	August 31, 2017	\$ 51,868.50	\$ 411.23	\$ 52,279.73	\$ 2,613.99	\$ 54,893.72
2	September 30, 2017	52,121.50	415.44	52,536.94	2,626.85	55,163.79
3	December 15, 2017	43,417.50	294.22	43,711.72	2,185.57	45,897.29
4	March 31, 2018	22,575.00	1,260.91	23,835.91	1,191.80	25,027.71
5	April 30, 2018	4,325.00	52.00	4,377.00	218.85	4,595.85
TOTAL		\$ 174,307.50	\$ 2,433.80	\$ 176,741.30	\$ 8,837.06	\$ 185,578.36

APPENDIX V

Arres Capital Inc. - In Receivership

Summary of the Receiver's counsel (McCarthy) Fees and Disbursements
 July 26, 2017 to April 30, 2018

Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
1	August 31, 2017	\$ 8,483.00	\$ 31.20	\$ 8,514.20	\$ 425.71	\$ 8,939.91
2	September 30, 2017	18,947.00	8.50	18,955.50	947.43	19,902.93
3	October 30, 2017	19,924.50	1,129.00	21,053.50	1,052.33	22,105.83
4	November 31, 2017	5,103.50	361.97	5,465.47	257.93	5,723.40
5	December 15, 2017	6,440.00	0.00	6,440.00	322.00	6,762.00
6	December 30, 2017	3,457.50	0.00	3,457.50	172.88	3,630.38
7	January 31, 2018	16,715.00	211.75	16,926.75	836.19	17,762.94
8	February 28, 2018	3,339.50	0.00	3,339.50	166.98	3,506.48
9	March 31, 2018	3,445.00	93.00	3,538.00	172.50	3,710.50
10	April 30, 2018	3,613.50	38.00	3,651.50	181.88	3,833.38
TOTAL		\$ 89,468.50	\$ 1,873.42	\$ 91,341.92	\$ 4,535.83	\$ 95,877.75



COURT FILE NUMBER 1401 - 12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LIMITED

DEFENDANT ARRES CAPITAL INC.

DOCUMENT **THIRD REPORT OF THE RECEIVER**

AUGUST 17, 2018

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

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

COUNSEL

MCCARTHY TETRAULT LLP
Suite 4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean F. Collins/Walker W. MacLeod/Pantelis
Kyriakakis
Phone: (403) 260-3531 / 3710 / 3613
Fax: (403) 260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca /
pkiriakakis@mccarthy.ca

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LISTING OF APPENDICES TO THE THIRD REPORT OF THE RECEIVER

APPENDIX A

APPENDIX B

APPENDIX C

INTRODUCTION

1. On July 26, 2017, the Court of Queen’s Bench of Alberta (the “**Court**”) entered an Order (the “**Receivership Order**”) whereby Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed receiver (the “**Receiver**”) of Arres Capital Inc. (“**Arres**”, the “**Company**” or the “**Debtor**”) pursuant to Part 9 of *Civil Enforcement Act* (“**CEA**”), R.S.A. 2000, c. C-15. The effective date of the Receivership Order (date of pronouncement) was February 13, 2015 (the “**Receivership Proceedings**”).
2. On July 26, 2017, the Court also granted an Order (the “**Bankruptcy Order**”) to adjudge Arres into bankruptcy and A&M was appointed as trustee (the “**Trustee**”) of the estate of the Arres, without security. On August 4, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed. On November 14, 2017, Arres was ordered to post security for costs of its appeal. Arres failed to post such costs and its appeal was dismissed. Accordingly, Arres is also a bankrupt.
3. On October 23, 2017, the Receiver sought advice and direction from this Honourable Court to amend the Receivership Order. The Receiver informed the Court that it did not believe it could properly administer the estate of the Debtor on the current terms of the Receivership Order. As a result, an amended and restated order to the Receivership Order (the “**Amended Receivership Order**”) was granted by Madame Justice B.E.C Romaine that, amongst other things, amended the existing Receivership Order to that of the Alberta Model Receivership Order.
4. The purpose of this third report of the Receiver (the “**Third Report**” or “**this Report**”) is to provide this Honourable Court with information in respect of the Litigation Schedule Agreement as discussed further below.

5. Capitalized words or terms not defined or ascribed a meaning in the Third Report are as defined or ascribed a meaning in the Receivership Order, Amended Receivership Order, the Graybriar Claims Process Order and / or the filed reports of the Receiver.
6. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

7. In preparing this Third Report, the Receiver has relied primarily upon stakeholders involved in various Arres' projects, as well as certain financial information contained in Arres' books and records. As discussed further herein, the Receiver has encountered some difficulties in this regard due to the incomplete nature of Arres' books and records. The Receiver has not performed an audit, review or other verification of such information.

BACKGROUND

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

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

ADDITIONAL CLAIMS INFORMATION

Overview

12. The Receiver, Terrapin Mortgage Investment Corporation (“**Terrapin**”) and Mr. Wesley Serra, Ms. Staci Serra and 875892 Alberta Ltd. (collectively, the “**Related Parties**”) entered into a scheduling agreement for the purposes of determining Claims that are being advanced by Terrapin and the Related Parties to the Graybriar Funds (the “**Litigation Schedule Agreement**”). The Receiver is submitting this Report in accordance with the Litigation Schedule Agreement and for the purposes of providing certain relevant facts and information to the Court.
13. As discussed in the First Report (and, in particular, at paragraphs 27 to 31 thereof) and in the Second Report (in particular, paragraphs 16 to 23 thereof), the Debtor’s records are incomplete and not up to date. This has led to various challenges in locating records and in verifying alleged Claims, including the quantification of Claims.

The Trust Agreements

14. The Debtor and approximately 76 different investors (the “**Graybriar Investors**”) in the “Graybriar Mortgages” entered into trust agreements pertaining to the mortgage investment made by the Graybriar Investors (the “**Trust Agreements**”). The Receiver understands that all of the Trust Agreements were prepared by the Debtor and / or its legal counsel.

15. The Receiver has reviewed the amount of \$2,537,000 identified as being advanced by or otherwise owing by the Related Parties to the Debtor at paragraph 37 of the Affidavit of Mr. Serra. The Receiver has confirmed that the sum of \$97,500 was advanced by Ms. Serra to the Debtor on or about September 30, 2010 as discussed in the Second Report. Other than this amount, the Receiver has been unable to substantiate any of the other amounts reportedly advanced by the related parties to the debtor based on its review of Arres' financial records (ie. Balance sheet and financial statements). In addition, the Receiver has been unable to identify the recording of the respective \$2.35M liability of the Debtor to any of the Related Parties in the Arres' accounting records.
16. The Receiver has reviewed the amount of \$2,079,747 identified as owing to Arres, and subsequently assigned to the Related Parties, at paragraph 35 of the Affidavit of Mr. Serra. The Receiver advises as follows in respect of the amounts claimed:
 - a) \$425,771 Renewal Fee: The Receiver understands that this amount is claimed based on the Renewal Agreement between the Debtor and Graybriar attached as Exhibit "J" to the Affidavit of Mr. Serra and includes accrued interest. The Receiver has not been able to identify the recording of this amount as an account receivable in Arres' financial records;
 - b) \$484,425 Administrative Costs: The Receiver has been unable to locate any records to substantiate or verify the amount claimed as owing to Arres. The Receiver has not been able to identify the recording of this amount as an account receivable in Arres' financial records;

- c) \$735,512 Administrative Spread: The Trust Agreements that have been tendered into evidence do not appear to identify a spread rate that can be charged by the Debtor and the Receiver has therefore been unable to substantiate or verify the amount claimed as owing to Arres. The Receiver has not been able to identify the recording of this amount as an account receivable in Arres' financial records; and
- d) \$432,078 Home Warranty Advance: The Receiver has been unable to locate any records to suggest that this amount was advanced or paid by the Debtor to any Person. The Receiver has not been able to identify the recording of this amount as an account receivable in Arres' financial records.

The Sale to Plaintiff Application

- 17. Duncan and Craig LLP previously acted for the Debtor in various matters. In October 2013, counsel for certain investors in the Graybriar Mortgage corresponded with Duncan and Craig LLP in respect of claims advanced by investors. Copies of that correspondence are marked as Appendix "A" to this Report.
- 18. Duncan and Craig LLP acted for the Debtor in obtaining the Sale to Plaintiff Order on February 3, 2014. The Sale to Plaintiff Order was obtained by the Debtor without notice to investors who had previously advised Duncan and Craig LLP of claims they were making against the Debtor in respect of the Graybriar Mortgage. A copy of the transcript in respect of the Sale to Plaintiff Order is marked as Appendix "B" to this Report.

The Related Party Litigation

- 19. Paragraph 3(j) of the Amended Receivership Order authorizes and empowers the Receiver to initiate and prosecute proceedings in respect of the Debtor and the Related Parties. On November 7, 2017, the Receiver issued a Statement of Claim

against the Related Parties. A copy of the Statement of Claim is marked as Appendix “C” to this Report.

All of which is respectfully submitted this 17th day of August, 2018.

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



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

Appendix A

SUGIMOTO & COMPANY

BARRISTERS & SOLICITORS

SUITE 204, WEST ATRIUM
 2635 – 37 AVENUE N.E.
 CALGARY, ALBERTA, T1Y 5Z6
 TELEPHONE: (403) 291-4650
 FAX: (403) 291-4099

LORAN V. HALYN
 Direct Line: (403) 219-4213
 Email: lhalyn@sugimotolaw.com

OUR FILE NO. 15,146 LVH

October 23, 2013

DUNCAN & CRAIG LLP

Lawyers & Mediators
 2800 Scotia Place
 10060 Jasper Avenue
 Edmonton, Alberta T5J 3V9

VIA FAX (3 PAGES): 780-428-9683

Attention: Mr. Douglas Gahn, Q.C.

Dear Sir:

**Re: Trust Agreement Graybriar Greens Inc.
 Arres Capital Inc. and Richcrooks Enterprises (2000) Ltd. / Richcrooks Holdings Ltd.**

You may recall that we wrote to you on September 12, 2003 regarding the above-referenced matter. We have now been retained by many other Graybriar investors to advance claims against Arres Capital Inc. ("Arres") alleging mismanagement and misappropriation of funds received as trustee associated with the syndicated loan and mortgage granted to Graybriar.

We had sought your advice regarding the timing of any pending sales of Graybriar condominium units and requested your firm hold in trust the net sale proceeds from any future sales of Graybriar condominium units. We later spoke by phone and you confirmed that your firm was not prepared to hold up the distribution to Arres of net sale proceeds deriving from the sale of any Graybriar condominium units without a court order to that effect.

It may interest you to learn that the Graybriar investors have now received written notice from Arres that is has taken and retained virtually all of the net sale proceeds from the recent sale of two Graybriar condominium units totalling \$481,829.23, claiming a mortgage renewal fee relating to the renewal of the Graybriar mortgage back in 2008. Arres' letter in this regard is enclosed.

This is a remarkable and disturbing development considering our understanding that the Graybriar mortgage had been foreclosed some time ago. As counsel for Arres in that foreclosure, we would appreciate your advice regarding the status of that foreclosure, particularly whether there has been a final order or judgment issued regarding the amount owing under the mortgage and if so, that you provide us with a filed copy of the same.

We are presently investigating what recourse the Graybriar investors may have regarding this substantial appropriation of funds by Arres so your very timely response is requested.

Yours truly,
SUGIMOTO & COMPANY
 Per:

LORAN V. HALYN
 encl.



Our File: 20-166013

Your File: 15,146LVH

Lawyer:

Telephone:

Email:

Fax:

Douglas P. Gahn, QC

780.441.4304

dpgahn@dcllp.com

780.969.6370

October 29, 2013

Via Fax - 1.403.291.4099

Sugimoto & Company
Barristers and Solicitors
204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6

Attention: Loran V. Halyn

Dear Sir:

**Re: Arres Capital Inc. v.
Richcrooks Enterprises (2000) Ltd. / Richcrooks Holdings Ltd.**

I acknowledge receipt of your correspondence dated October 23, 2013.

I can make no comment on the application by Arres Capital Inc. of any monies received towards outstanding fees. I have no information which might indicate that the application of those funds is proper, or not.

You have previously served upon our office a Garnishee Summons. In accordance with the requirements of that Garnishee, we have provided a written response to the Clerk of the Court and have provided to you a copy of that response. If you review that response, you will note that it indicates the mortgage registered in favour of Arres Capital Inc. remains registered on those condominium units listed therein. As a result, and in answer to your question, a Final Order or judgment was not issued. There is in place an Order allowing for the sale of the remaining condominium units and the distribution of those sale proceeds.

Yours truly,

DUNCAN CRAIG LLP

Per:

A handwritten signature in dark ink, appearing to read 'Douglas P. Gahn', is written over the 'Per:' line.

DOUGLAS P. GAHN, QC*

*Denotes Professional Corporation

DPG/dn

DCLLP-11269054-v1-131029_sugimoto.DOCX

www.dcllp.com

780.428.6036 • 1.800.782.9409 • Fax: 780.428.9683

2800 Scotia Place, 10060 Jasper Avenue, Edmonton, Alberta T5J 5V9

Duncan Craig LLP

Appendix B

Action No.: 0903 17685
E-File No.: EVQ14ARRESCAPITAL
Appeal No.: _____

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

BETWEEN:

ARRES CAPITAL INC.

Plaintiff

and

GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

Defendants

P R O C E E D I N G S

Edmonton, Alberta
February 3, 2014

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

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February 3, 2014 Morning Session	1
Application by Ms. Willey (Order for Sale to Plaintiff)	1
Order (Granted)	1
Certificate of Record	3
Certificate of Transcript	4

1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 February 3, 2014

Morning Session

4

5 Master Breitkreuz, Q.C.

Master in Chambers

6

7 A.L. Willey

For the Plaintiff

8 (No Appearance)

For the Defendants

9 S. Secord

Court Clerk

10

11

12 **Application by Ms. Willey (Order for Sale to Plaintiff)**

13

14 MS. WILLEY:

Good morning, Sir. Willey, first initial 'A',

15 with Duncan Craig LLP. I have two without notice matters for your consideration this
16 morning. The first, Sir, is in regards to a commercial foreclosure. The foreclosure was
17 heard in July, on July 6, 2010, pursuant to an order of Master Smart. He directed that the
18 title to this condominium be cleared and that all of the units were to be sold after the
19 receiver had built the project out. All the building -- all the units were to be sold through
20 the developer and as long as the price was higher than the schedule attached to the order
21 granted by Master Smart they may accept those without further application to the Court.

22

23 Sir, we have sold many of the units; however, as this has gone on for a significant period
24 of time our client, the plaintiff in this foreclosure action, are requesting an order for sale
25 to plaintiff on the remaining properties. The remaining properties they are offering to
26 purchase at higher than the list price in the order of Master Smart.

27

28 Sir, the only encumbrance on title since the title was cleared in 2010 was that of the
29 develop who we have spoke to their counsel and they advise that they take no position
30 today to our application. So, Sir, I am seeking an order for sale to plaintiff in this matter
31 and I'll pass up the form of order for your consideration. Sir, I also have the order of
32 Master Smart if you'd like to review same.

33

34 **Order (Granted)**

35

36 MASTER BREITKREUZ:

Thank you.

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38 MS. WILLEY:

Thank you, Sir.

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PROCEEDINGS CONCLUDED

1 **Certificate of Record**

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I, Shelagh Secord, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench held in courtroom 213 at Edmonton, Alberta on the 3rd day of February, 2014, and that I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2

3 I, Kathryn Fanter, certify that

4

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

8

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

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Digitally Certified: 2014-06-05 16:57:50

14

Kathryn Fanter, Transcriber

15

Order No. 47514-14-1

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35 Pages: 6

36 Lines: 198

37 Characters: 3028

38

39 File Locator: 2a075e7aec3811e3940e0017a4770810

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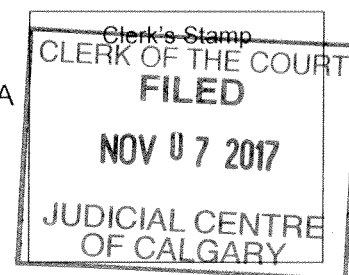
41

Wed Jun 4 16:33:21 2014

Detailed Transcript Statistics	
Order No. 47514-14-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	4
Total Pages:	6
Line Statistics	
Title Page Lines:	52
ToC Lines:	5
Transcript Lines:	141
Total Lines:	198
Visible Character Count Statistics	
Title Page Characters:	551
ToC Characters:	132
Transcript Characters:	2345
Total Billable Characters:	3028
Multi-Take Adjustment: (-) Duplicated Title Page Characters	2477

Appendix C

COURT FILE NUMBER 1701- 14947
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFF ARRES CAPITAL INC.
 DEFENDANT 875892 ALBERTA LTD., WESLEY SERRA
 and STACI SERRA



DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCarthy Tétrault LLP
 Suite 4000, 421 7th Avenue SW
 Calgary AB T2P 4K9
 Attention: Sean F. Collins / Walker W. MacLeod / Amelia Tritter
 Telephone: 403-260-3531 / 3710 / 3613
 Facsimile: 403-260-3501
 Email: scollins@mccarthy.ca / wmacLeod@mccarthy.ca / atritter@mccarthy.ca

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

STATEMENT OF FACTS RELIED UPON:

The Parties

1. The Plaintiff, Arres Capital Inc. ("**Arres**"), is a body corporate incorporated pursuant to the laws of the Province of Alberta.
2. The Defendant, 875892 Alberta Ltd. ("**875 Alberta**") is, to the best knowledge of the Plaintiff, a body corporate incorporated pursuant to the laws of the Province of Alberta.
3. The Defendant, Wesley Serra ("**Wes**"), is, to the best knowledge of the Plaintiff, an individual residing in the Province of Alberta.
4. The Defendant, Staci Serra ("**Staci**"), is, to the best knowledge of the Plaintiff, an individual residing in the Province of Alberta.

5. The Defendant Wes was, at all material times, the sole director and shareholder of Arres.
6. The Defendants Wes and Staci were, at all material times, related persons by marriage.
7. The Defendant 875 Alberta was, at all material times, wholly owned and controlled by Staci.
8. Pursuant to an amended and restated receivership order issued by the Court of Queen's Bench of Alberta on October 23, 2017 (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. (the "**Receiver**") has been appointed as receiver of all of Arres' Exigible Property (as such term is defined in the Receivership Order). The Exigible Property includes, without limitation, any interest that Arres has in a cause of action. Pursuant to a paragraph 3(j) of the of the Receivership Order, the Receiver was granted exclusive authority to initiate proceedings on behalf of Arres and the Receiver has commenced this Action for the benefit of Arres and its other creditors.

The Transfers

9. In the period commencing in January 1, 2009 to and continuing through to July 2012, Wes caused Arres to make various transfers of accounts receivable due to Arres to Staci and to 875 Alberta (collectively, the "**Transfers**"). It is unknown whether Arres received appropriate consideration from either Staci or 875 Alberta for the Transfers.

Improper Conveyances

10. Arres states that Wes caused Arres to make the Transfers when Arres was in insolvent circumstances, unable to pay its debts in full or with knowledge that Arres was on the eve of insolvency and made with intent to defeat, hinder, delay or prejudice Arres' creditors. As a result thereof, the Transfers are void as against Arres' creditors who have been injured, delayed or prejudiced by the Transfers pursuant to section 1 of the *Fraudulent Preferences Act* (Alberta) (the "**FPA**").

Breach of Fiduciary Duty

11. Arres states that Wes had a duty, arising pursuant to section 122(1) of the *Business Corporations Act* (Alberta) (the "**ABCA**") and at common law, to act honestly, in good

faith with a view to the best interests of Arres and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Arres states that Wes breached such duty by causing Arres to enter into the Transfers with persons who are related to him and that Arres has suffered damages as a result of such breach.

Breach of Trust

12. Arres states that the Defendants wrongfully caused the Transfers to be made by Arres without any consideration or, in the alternative, without adequate consideration, and have caused damages to Arres thereby. Arres further states that the Defendants have perpetrated a breach of trust and that each of Staci and 875 Alberta hold any monies received in respect of the Transfers in trust and for the benefit of Arres
13. In addition and in the alternative, Arres states that the Defendants, individually and collectively, knowingly assisted, with the knowledge of the wrongful conduct, in a breach of trust against Arres in effecting the Transfers.
14. In addition and in the alternative, Staci and 875 Alberta received any monies received in respect of the Transfers for their own use and benefit with the actual knowledge, wilful blindness to the obvious, without making reasonable inquiry or with knowledge of the circumstances that would reasonably cause inquiry into the nature of the monies received or a breach of trust.

Oppression

15. Arres states that, pursuant to section 239(b)(iv) of the ABCA, it is a proper person to make an application under Part 19 of the ABCA and that it therefore a complainant within the meaning of Part 19 of the ABCA.
16. Arres states that, in causing Arres to make the Transfers without consideration, Wes has effected a result that is oppressive, unfairly prejudicial and exhibited unfair disregard for the interests of Arres and its creditors.
17. Arres states that, in causing Arres to make the Transfers without consideration, Wes exercised his powers as director and officer of Arres in a manner that was oppressive, unfairly prejudicial or exhibited unfair disregard for the interests of Arres and its creditors.

18. Arres states that the conduct of Wes, as particularized herein, has caused Arres to suffer damages. The particulars of the damages suffered by Arres shall be proven at the Trial of this Action.

Unjust Enrichment

19. Arres states that, in causing the Transfers to be made without consideration, the Defendants were unjustly enriched, Arres was correspondingly deprived and there is no juristic reason for the enrichment or the corresponding deprivation. Arres is entitled, *inter alia*, to restitution on a *quantum meruit* basis of the value of the Transfers and the amount of all monies received by the Defendants arising from or relating to the Transfers.
20. Arres does not anticipate the length of this trial will exceed 25 days.
21. Arres proposes that the trial of this action shall be heard at the Court House, in the City of Calgary, in the Province of Alberta.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS as follows:

- (a) A declaration that the Transfers are void pursuant to section 1 of the FPA;
- (b) A declaration that Arres has a constructive trust over all monies received by the Defendants arising or resulting from the Transfers;
- (c) Judgment against each of the Defendants, on a joint and several basis, in such amount as may be proven at the trial of this Action;
- (d) An award of damages against each of the Defendants, on a joint and several basis, in such amount as may be proven at the trial of this Action;
- (e) A declaration that Wes has breached section 122(1) of the ABCA;
- (f) A declaration that Wes has acted in a manner that is oppressive, unfairly prejudicial and exhibited unfair disregard for the interests of Arres;

- (g) Interest on all amounts declared owing by each of the Defendants in an amount determined by this Honourable Court or, in the alternative, pursuant to the *Judgment Interest Act* (Alberta);
- (h) Costs of this Action on such basis as this Honourable Court may deem appropriate in the circumstances in the exercise of its discretion; and
- (i) Such other relief as this Honourable Court deems just in the circumstances.

NOTICE TO THE DEFENDANT

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

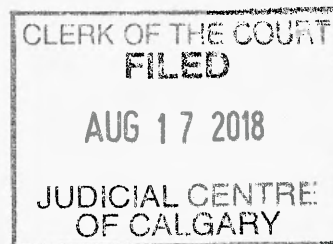
2 months if you are served outside Canada.

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

WARNING

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

COURT FILE NUMBER	1401-12431	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	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
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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.

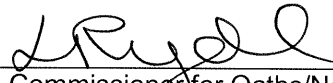
Secondary Graybriar Loan

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.

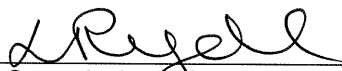
SWORN BEFORE ME at the City of Calgary, in)
 the Province of Alberta, this 17th day of August)
 2018)


 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 2nd 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 – 4th 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

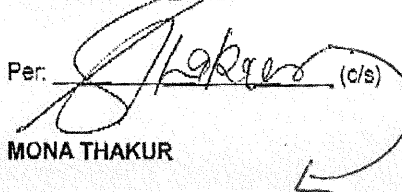
Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other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

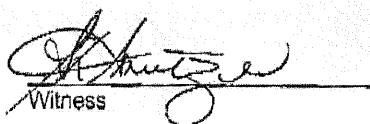
ARRES CAPITAL INC.

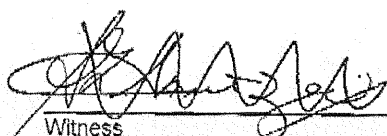
Per:  (c/s)
MONA THAKUR

Per: _____ (c/s)

MOHINDER THAKUR

Per: _____ (c/s)


Witness


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 – 10th 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 – 10th 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 – 10th Avenue SW, Calgary, AB, T2R 1H5
Attention: President.

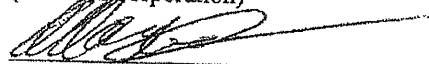
7.5 **Relationship.** Arres Capital is, and shall perform its duties hereunder as, an independent contractor on

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:

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

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

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.

Full name of Mortgage Broker

Address (including Postal Code)

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

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 – 4th 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 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;

FILE COPY

- 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 Proportionate Share 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 - 4th 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

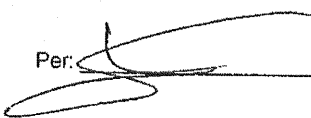
Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other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

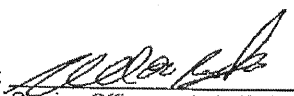
Per:  (c/s)

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"

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

Tracy Hildenbrand
 Email:

Fax: (403) 264-9954

LOAN SUMMARY – Graybriar Greens PHASE 2 – Stony Plain

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.

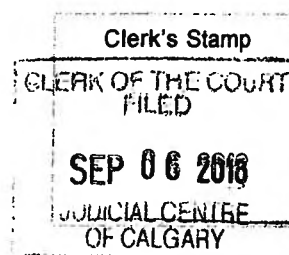
Patrick High is from the town of Stony Plain. Aside from his experience in the Edmonton area, he has hired an Alderman to be the realtor for the project and 120 of 120 units are reserved for sale. This will be a benefit as it will likely fast-track some traditionally slower items from the town.

Sincerely,

Arres Capital Inc.

COURT FILE NUMBER**1401-12431****COURT****COURT OF QUEEN'S BENCH OF ALBERTA****JUDICIAL CENTRE****CALGARY****APPLICANT****ACCESS MORTGAGE CORPORATION (2004) LIMITED****RESPONDENT****ARRES CAPITAL INC.****-and-****COURT FILE NUMBER****0903-17684 and 0903-17685****COURT****COURT OF QUEEN'S BENCH OF ALBERTA****JUDICIAL CENTRE****CALGARY****RESPONDENT (PLAINTIFF)****ARRES CAPITAL INC.****NON-PARTICIPANTS
(DEFENDANTS)****GRAYBRIAR LAND COMPANY LTD. And GRAYBRIAR
GREENS INC.****RESPONDENTS
(NON-PARTIES)**

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

**RESPONDENT
(INTERVENOR)****TERRAPIN MORTGAGE INVESTMENT CORP.****RESPONDENT
(INTERESTED PARTY)****11798583 ALBERTA LTD.**

-and-

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

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

DEFENDANTS ARRES CAPITAL INC. and WESLEY SERRA

THIRD PARTY Y-K PROJECTS LTD., ALLEN BECK and SHELLY BECK
DEFENDANTS

DOCUMENT **AFFIDAVIT OF WES SERRA**

ADDRESS FOR SERVICE **DBH LAW**
AND CONTACT 1200, 1015 – 4th Street S.W.
INFORMATION OF PARTY Calgary, Alberta T2R 1J4
FILING THIS DOCUMENT Attention: Judy Burke, Q.C.
 p. (403) 252-9937 f. (403) 263-8529
 Solicitor's File No. 60347

AFFIDAVIT OF WES SERRA

Sworn on this 6th day of September, 2018

1. I am a Respondent in the within action, and as such, have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on the basis of the information and belief, and where so stated, I verily believe the same to be true.
2. I have read the affidavit of David Murphy, sworn on August 17th, 2018 (the "**Affidavit of David Murphy**").
3. I was cross-examined on my affidavit of July 17th, 2018 (the "**July Affidavit**"), by counsel for the Receiver (the "**Cross-Examination**").

4. As part of my undertakings arising from the Cross-Examination, I was asked to produce any agreements with investors in relation to Graybriar that are not substantively identical to the Trust Agreement attached as Exhibit "X" to my July Affidavit (**"Undertaking 1"**).
5. In response to Undertaking 1, I provided a loan administration agreement in relation to the Graybriar, between Arres Capital Inc. (**"Arres"**) and Access Mortgage Corporation 2004 Ltd. (**"Access"**), dated July 28th, 2010 (the **"Loan Administration Agreement"**). Attached as **Exhibit "A"** to this affidavit is the Loan Administration Agreement.
6. I agree with paragraph 18 of David Murphy's Affidavit. Therefore, the Loan Administration Agreement and the Trust Agreement are separate agreements that relate to two different loans.
7. In response to paragraphs 12 and 13 of David Murphy's Affidavit, I disagree that Doreen Richards was unaware that a renewal fee was to be added to the principal of the Secondary Graybriar Loan.
8. A renewal agreement, dated November 11th, 2008, set out the terms and conditions upon which the Secondary Graybriar Loan was renewed (the **"Renewal Agreement"**). Attached to this affidavit as **Exhibit "B"** is the Renewal Agreement.
9. The Renewal Agreement has been signed by Chris Saunders, on behalf of Graybriar, who at the date of the Renewal Agreement, was a Director of Access and Director of Graybriar.
10. Doreen Richards, at the date of the Renewal Agreement, was also a Director of Access and Director of Graybriar. I verily believe that at the time Chris Saunders signed the Renewal Agreement, Doreen Richards was well aware of the terms within the Renewal Agreement.
11. The following is background information to assist the Court in understanding why Arres is seeking an Order declaring the assignments made from Arres to 875892 Alberta limited or Staci Serra or Stacia Serra or Wes Serra or Wesley Serra (the **"Assignees"**), valid and enforceable.
12. Arres is a corporation registered to carry on business in the Province of Alberta and is owned 100% by Mr. Wesley Serra (**"Wes"**)

13. Arres was a full service mortgage brokerage firm specializing in unconventional financing solutions, which would include, but is not limited to all types of residential and commercial, first and second mortgaged, builders' mortgages, debt consolidations and interim financing.
14. As part of its business, Arres arranged mortgage loans with borrowers, raised the mortgage funds through a group of private investors and then administered the mortgages as a trustee on behalf of the investors.
15. Arres, acting as a trustee for 76 investors (the **"Graybriar Investors"**), approved a mortgage to Graybriar Land Company Ltd. and Graybriar Greens Inc. (the **"Borrower"**) in the amount of \$9,700,000, for a period of one year, with a maturity date of September 1st, 2008, renewable at the discretion of Arres (the **"Graybriar Greens Phase 2 Mortgage"**).
16. Collectively, the Graybriar Investors invested approximately \$9,000,000 towards the Graybriar Greens Phase 2 Mortgage. As security, the Graybriar Greens Phase 2 Mortgage was registered against the Graybriar Phase 2 land.
17. Each Graybriar Investor executed a "Trust Agreement – Graybriar Greens Inc. – Phase 2" (the **"Graybriar Trust Agreement"**), setting out the terms and conditions upon which they were investing money towards the Graybriar Greens Phase 2 Mortgage. Comprising the Graybriar Trust Agreement is a Commitment Letter and a Loan Summary, respectively attached as Schedule A and Schedule B to the Graybriar Trust Agreement.
18. A copy of the Graybriar Trust Agreement is attached to the July Affidavit as Exhibit "X".
19. The only substantive difference in each Graybriar Trust Agreement is the name of the investor and the dollar amount they invested.
20. Pursuant to the Graybriar Trust Agreement, Arres was allowed to set off and deduct certain administrative costs, fees and expenses associated with Arres' management of the Graybriar Greens Phase 2 Mortgage, prior to distributing any and all proceeds thereafter, to the Graybriar Investors (the **"Graybriar Trust Agreement Fees"**).
21. By way of renewal letters signed by Graybriar Investors, the Graybriar Greens Phase 2 Mortgage was renewed on November 11th, 2008 for another year.

22. In addition, the Renewal Agreement, and pursuant to the terms of the Commitment Letter of the Graybriar Trust Agreement, Arres charged a renewal fee, not to exceed 2% of the principal balance owing on the Graybriar Greens Phase 2 Mortgage at the time of renewal.
23. As well, upon renewal of the Graybriar Greens Phase 2 Mortgage, Arres charged an interest rate spread of 0.5%, which is otherwise referenced in the Graybriar Trust Agreements, as further compensation, to Arres for administering and servicing the Graybriar Greens Phase 2 Mortgage. The initial interest rate spread was 0.0%.
24. On or about November 2008, the Borrower defaulted on the Graybriar Greens Phase 2 Mortgage.
25. In a letter dated January 30th, 2009, Arres notified Graybriar Investors that the Borrower was in financial difficulty and was unable to make interest payments on the mortgage. This letter is attached to this affidavit as **Exhibit "C"**.
26. On or about February or March of 2009, Arres commenced foreclosure proceedings against the Borrower (the "**Graybriar Foreclosure**").
27. Pursuant to a letter dated July 23rd, 2009, from Arres to the Graybriar Investors, the investors approved a \$300,000 priority mortgage to the Borrower. This letter is attached to this affidavit as **Exhibit "D"**.
28. Following another letter dated September 29th, 2009, from Arres to Graybriar Investors, investors approved a further \$181,560.00 priority mortgage to the Borrower. This letter is attached to this affidavit as **Exhibit "E"**.
29. By July of 2010, the total of the priority mortgage was approximately \$1,235,162.38, which had priority over the \$9,000,000 invested by the Graybriar Investors.
30. Co-lenders were permitted to contribute towards the priority mortgage. All co-lenders were required to enter into a loan administration agreement with Arres, on terms identical to the Loan Administration Agreement between Arres and Access (the "**Co-Lender Administration Agreements**").

31. The only substantive difference between Co-Lender Administration Agreements being the name of the co-lender and the dollar amount invested.
32. Together, the Co-Lender Administration Agreements operated as a separate and distinct agreement from the Graybriar Trust Agreement. Both of these agreements however, allowed Arres to assign its rights within them.
33. The Co-Lender Administration Agreements, like the Graybriar Trust Agreement, allowed Arres to set off and deduct certain administrative costs, fees and expenses associated with Arres' management of the Loan Administration Agreement, prior to distributing any and all proceeds thereafter to co-lenders (the **"Co-Lender Administration Fees"**).
34. Between 2007 and 2013, Arres executed a number of assignments, having assigned the Graybriar Trust Agreement Fees and Co-Lender Administration Fees to 875892 Alberta Ltd., a company registered and operating in Alberta, whose sole director is Staci Serra (**"875"**).
35. Graybriar Investors were frequently given notice of the assignments, and at minimum, were fully aware of the assignments.
36. An example of notice given to Graybriar Investors, in writing, is a document dated June 1st, 2009, indicating to Graybriar Investors, that Arres had sold all of its accounts receivables in the Graybriar project to Staci Serra. Further, that the assignment included all future advances and worked yet to be performed by Arres in the project (**"June Notice"**). The June Notice is attached to this affidavit as **Exhibit "F"**.
37. As well, and as noted in my July Affidavit, in a document dated December 5th, 2009, Arres was to advance \$287,360, of which some of it was, towards New Home Warranties (the **"New Home Warranty Agreement"**). The Lenders were 1499760 Alberta Ltd (**"149"**). and Wes. The borrower was Arres. Wes, acted as a guarantor in this transaction.
38. Pursuant to the New Home Warranty Agreement, 149 and Wes earned fees arising from ongoing monitoring costs in the same manner as prescribed in the Graybriar Trust Agreement (the **"New Home Warranty Fees"**).

39. I noted in my July Affidavit, that the cheque in the amount of \$105,000 as consideration towards the July 10th, 2010, assignment was accidentally omitted. Accordingly, attached to this affidavit as **Exhibit "G"** is the cheque in support of this assignment.
40. On or about March 8th, 2010, and June 6th, 2010, and pursuant to Orders from the Court, the condominium plan with respect to Graybriar Greens Phase 2 project was registered. Thereafter, individual condominium units were developed, listed and most were sold. On or about January of 2014, seven condominium units remained unsold.
41. By way of an application brought by Arres, on or about or about February 3rd, 2014, Master Smart granted an Order for Sale to the Plaintiff in Action 0903- 17685 transferring the title to seven Units in Graybriar Greens Phase 2 to Arres (the **"Foreclosure Order"**).
42. Arres' intention with respect to the Foreclosure Order was to take possession and ownership of four Units, specifically Units 48, 55, 68, 69 (the **"Four Units"**), which collectively had an approximate value of \$1,060,000.
43. Terrapin Mortgage Investment Corp. (**"Terrapin"**) had agreed to finance the acquisition of the Four Units by 1798585 Alberta Ltd., a company that was struck on or about June of 2017 (**"175"**). Staci Serra was a Director of 175, and 875 held 100% of the voting shares in 175.
44. 175 acquiring the Four Units, and any proceeds derived from their subsequent disposition would go towards the Graybriar Trust Agreement Fees and Loan Administration Fees owing to Staci Serra by way assignment from Arres. Any money advanced by Terrapin to 179 was to be secured by way of a mortgage against the Four Units.
45. Terrapin advanced \$426,000 to counsel for 179 on February 13th, 2014 (the **"Terrapin Mortgage"**) of which \$235,000 was advanced to the then Arres' counsel to be paid into Court, under Action No. 1201-16440, for the benefit of Arres. A further \$134,444.61 was advanced to 179. Any remainder was used to cover outstanding condominium fees, property taxes and any other incidental fees and costs.
46. On or about February 14th, 2014, counsel for 179 submitted documents to the Registrar of Land Title directing:

- a. the transfer of clear title of the Four Units to 179, including the discharge of the first and second Arres mortgages;
 - b. the registration of the Terrapin Mortgage; and
 - c. the transfer of clear title to Arres of the three remaining units.
47. However, also on February 14th, 2014, the Honourable Justice Hillier granted an Order staying the Foreclosure Order (the **"Stay Order"**). Approximately half of the Graybriar Investors was comprised of a group of investors referred to as the Richcrooks Investors. They alleged Arres did not have the authority obtain the Foreclosure Order.
48. On December 17th, 2014, the Honourable Justice Strekaf varied the Stay Order (the **"Strekaf Order"**).
49. Resulting from the Strekaf Order, Units 48, 68 and 69 would be transferred to 179, and a mortgage granted by 179 to and in favour of Terrapin in the amount of \$426,000 would be secured against title. As well, Units 63, 65 and 67 were to be transferred to Arres.
50. The Strekaf Order was subsequently appealed. The transfers as contemplated by the Strekaf Orders were never completed.
51. The Court of Appeal held that the judicial sale of the Units was a matter that subject to the control of the Court and that all proceeds from the judicially approved sale of the Units to be paid into Court and disbursed in accordance with any further Orders of the Court.
52. All of the Units have since been sold, and with the exception of Unit 55, all net proceeds in the approximate amount of \$1.38 million have been paid into Court (the **"Graybriar Funds"**). A further \$235,000 is held in Court from the Terrapin Mortgage (the **"Court Funds"**).
53. Alaverez & Marshal Inc. (**"A&M"**), was appointed receiver (the **"Receiver"**) of Arres, following an Order granted by the Court of Queen's Bench of Alberta on July 26th, 2017.
54. Also on July 26th, 2017, the Court granted an Order to adjudge Arres into Bankruptcy and A&M was appointed as trustee (the **"Trustee"**) of the estate of Arres, without security.

55. On August 4th, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed. Accordingly the Bankruptcy Order is stayed and A&M is taking no steps in the bankruptcy.
56. Pursuant to an Order granted by the Honourable Justice Romaine on June 4th, 2018, a claims process for determining any and all claims in respect of the Graybriar Funds was approved, and the Receiver was authorized to implement the claims process.
57. Arres has long asserted its priority over the Graybriar Funds, which according to Arres, belong to Staci Serra and 875 by way of assignment of its Graybriar Trust Agreement Fees (the "Graybriar Assignments").

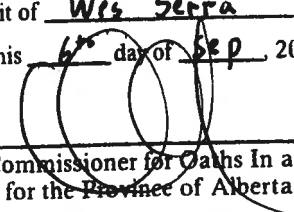
SWORN (OR AFFIRMED) BEFORE ME at
Calgary, Alberta, this 6th day of September,
2018.

(Commissioner for Oaths in and for the
Province
of Alberta)

IRMA ALVARADO
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires May 23, 2019

Wesley Serra

This is Exhibit "A" referred to in the
Affidavit of Wes Serra
dated this 6th day of Sep, 2018.


A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires May 23, 2019

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 – 10th 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 – 10th 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 – 10th 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 Inc403 261 9955

Name of Mortgage Broker:

Telephone:

N/A

Name of Submortgage Broker:

Civic address of property to be mortgaged:Condominium Plan 0827766 Unit C And 1660 undividedCondominium 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.

Arres 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)

**ARRES**

Capital Inc.

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 situation such as:

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

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

Contact

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

Arres Capital Inc.
#1002, 1520 - 4th Street S.W.
Calgary, Alberta T2R 1H5

Attention: Privacy Officer

This is Exhibit "B" referred to in the
Affidavit of Wes Serra
dated this 6th day of Sep, 2018.


A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires May 23, 2019

THIS AGREEMENT MADE AS OF AND EFFECTIVE THIS 11 DAY OF
November, 2008.

BETWEEN:

Graybriar Land Company Ltd. and Graybriar Greens Inc.
of the City of Calgary in the Province of Alberta
(Hereinafter referred to as the "Mortgagor")

OF THE FIRST PART

- and -

Arres Capital Inc
of the City of Calgary, in the Province of Alberta
(Hereinafter referred to as the "Mortgagee")

OF THE SECOND PART

RENEWAL AGREEMENT

WHEREAS by a certain Mortgage dated and registered in the Alberta Land Title Office. The Mortgagor did mortgage to the Mortgagee certain lands situated in the City of Stony Plain, in the Province of Alberta, as particularly described in the said Mortgage, to secure the sum of \$9,000,000.00 and interest at the rate of 15.5 % per annum.

AND WHEREAS the Mortgagor has requested and the Mortgagee has agreed that the Mortgage shall be renewed for a further term of one year.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. The term of the mortgage shall be renewed for one year commencing on September 01 2008 and continuing thereafter until September 01, 2009;
2. The Mortgagor shall pay the Mortgagee a renewal and administration fee of 2% of the total outstanding advanced amount as at the date of renewal, being September 01 2008. The total outstanding as of the renewal date is \$8,405,822.36 and therefore the renewal fee for the one year term will be \$336,232.89. This fee is deemed to be due and payable at the time of signing of this renewal agreement and interest will be applicable to this amount, however, it is agreed that this amount will be added to the principal amount outstanding and the full principal balance including this renewal amount is to be paid out in full prior to any discharge of this mortgage being granted. The new principal balance outstanding as of September 01 2008 will be \$8,742,055.25 and interest will be charged on this amount from September 01 2008 onwards.

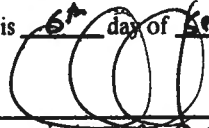
3. Interest only Payments shall commence on September 01 2008 and continue thereafter until September 01, 2009;
4. Interest shall remain at the rate of 15.5% per cent per annum and shall be calculated half yearly and not in advance.
5. If the Mortgagee presents a cheque executed by the mortgagor and that cheque is refused or dishonored for any reason including insufficient funds or stopped payment, then ONE HUNDRED AND TWENTY FIVE (\$125.00) Dollars shall be added to the principal amount then owing.
6. The Mortgagor, when not in default hereunder, shall have the privilege of prepaying the entire Principal balance outstanding hereunder.
7. All other terms of the Mortgage shall remain in full force and effect and shall be binding on both parties.

IN WITNESS WHEREOF the Mortgagor has executed this Agreement for Renewal as of the day and year first above written.

Graybriar Land Company Ltd. & Graybriar Greens Inc.

Per: 

This is Exhibit "C" referred to in the
Affidavit of Wes Serra
dated this 6th day of Sep, 2018


A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires May 23, 2019



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

WES SERRA
Email: wes@arrescapital.com
Fax: (403) 264-9954

January 30th, 2009

Attention: Graybriar Greens Phase 2 & 3 investors

RE: Graybriar Greens Phase 2 & 3 Project Status.

We have had some major changes in the Graybriar Greens project. Regrettably we have to advise you that the borrower is in financial difficulty and is unable to make the interest payments due on this loan. The current severe drop in demand in the Edmonton area housing market caused by the worldwide economic crisis has seriously affected cash flow for the borrower's project. Sales that were to be in place have evaporated as potential purchasers seen the market price drop. We are attempting to renegotiate sales where possible from this initial group of house purchasers. In addition, there has been major disruption in the management of the site.

Our initial speculation is that investors will see a return of funds overtime, but we are into a marketplace that will require patience. We are lead to believe that the sales of the units will be in excess of the mortgage amount. We are being overly cautious in making predictions due to extreme market uncertainty. While the world is not ending, we cannot see the relative reference points that would permit commercial certainty.

The borrower is preparing a plan which will be discussed with mortgage holders at a meeting to be held in the next 2-3 weeks. Meanwhile, we regret to advise that there will be no payments on this mortgage until further notice.

Thank you,

Wes Serra
Arres Capital

\bm

This is Exhibit "D" referred to in the
Affidavit of Wes Serra
dated this 6th day of Sep, 2018


A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires May 23, 2019

#205, 707 – 10th Avenue SW
Calgary, AB T2R 0B3
Tel: (403) 261-9955 Fax: (403) 264-9954

July 23, 2009

Re: Investors in Graybriar Greens Phase 2 Mortgage

Dear Investors,

We are writing to provide you with an update and to seek 2 approvals from you.

Update:

We have been in several discussions with your proposed Board of Directors as decided at the previous meeting which was held on March 11, 2009. The proposed Board members are as follows: Harold Sicherman, Lee Choinard, Dennis Seib and Arnold Fine.

The discussions and meetings were to ensure we were all of the same agreement on the method to proceed with the project, we wanted to make sure it is a smooth transition once the foreclosure is complete. We all agree we need to have the site cleaned up, complete preservation, have the show suite completed, and the signage for the property in place.

The foreclosure appears to still be a while out as we continue our dispute with the lien holders. They appear to come up with reason after reason to stall. We will 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 #1

Therefore we are seeking your approval for a \$300,000.00 priority mortgage, which will be dispensed over a two month period. We have used the process we will outline below to complete units on another file and it appears to be working very effectively and efficiently.

The plan for the \$300,000.00 is as follows:

- To get the entire site cleaned up.
- To complete the exterior siding and eaves on buildings 800, 900 and 1000. We need to do this for preservation and to prevent any deterioration of the property another benefit that will come from this is the whole site will have a more finished look.
- Complete building 2200 so it is ready for occupancy. Then prepare, finish and stage unit 2201 to be used for the show suite.
- Pour the slab (basement) in building 5 so it is able to house the material that is currently on site, the sea cans then can be removed. This will be aesthetically pleasing and will provide for more function. Also, we will no longer have the rental costs for the sea cans.

- Some landscaping in phase 1 will set the tone for the project and create the look of a project “under management” rather than “abandoned”. This will start to change the negative perceptions on a whole.
- Funds for signage and some advertising so we are able to attract people to the show suite.
- A small contingency fund of approx \$40,000.00 for items that may come up that will provide benefit to the project.

Our goal is to continue making progress in 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. With this plan we will be up and running and able to take pre sales within the next two months. Having pre sales will allow the new board to approach the banks and obtain conventional financing, once foreclosure is complete.

Because of the liens in place what we are proposing to the investors is as follows:

- The investors in the current \$9,000,000.00 mortgage must approve to agree to raise the \$300,000.00 in priority to them.
- As there are lien holders, this will not be a normal priority mortgage.
- What would have to happen is the investors in the \$9,000,000.00 mortgage agree to sell the first \$300,000.00 to the investors in the priority position.
- This would mean that the new investors would have their \$300,000.00 secured, and paid in priority, within the existing \$9,000,000.00 mortgage already advanced to date.
- Thus your current pro-rated portion of the \$300,000.00 could possibly be behind the lien holders. The end effect (based on \$300,000.00) to you is that 3.3% of your current investment would move to last position. An example would be if you lent \$100,000.00 in the original deal, \$3,330.00 would be the amount moving out of the existing first mortgage in exchange for the new \$300,000.00 in funds to complete the show suite, signs and clean-up.

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.

I approve the \$300,000 priority position as outlined above _____

I do not approve the \$300,000 priority position as outlined above _____

Approval # 2

Our second approval is for the proposed board to be officially approved and appointed so they are ready for when the title transfers to the new company. Please indicate your approval below.

I/we do approve and appoint:

Harold Sicherman, Dennis Seib,
Lee Chouinard and Arnold Fine
As the Board of Directors for Graybriar Greens Phase 2 _____

I/we do not approve and appoint:

Harold Sicherman, Dennis Seib,
Lee Chouinard and Arnold Fine
As the Board of Directors for Graybriar Greens Phase 2 _____

Please print full name

Signature

Please print full name

Signature

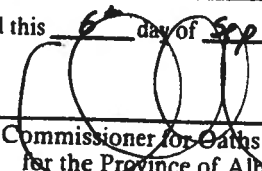
Once complete and you have ticked off on the **two** approvals required, please e-mail **both approval pages** back to gemma@arrescapital.com or fax to (403)264-9954 **BY MONDAY JULY 27, 2009 @ 12 NOON.**

Thank you in advance for your response.

Sincerely,
Arres Capital Inc.

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 "E" referred to in the
Affidavit of Wis Serra
dated this 6th day of Sep, 2018.

A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires May 23, 2019



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

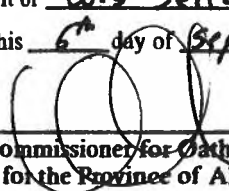
Authorization:_____
Please print full name_____
Signature_____
Please print full name_____
Signature

Once you have initialed your applicable choice and signed the authorization, please e-mail all three pages back to billie@arrescapital.com 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 CFI 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 "F" referred to in the
Affidavit of Mrs Serra
dated this 6th day of Sep, 2018


A Commissioner for Oaths In and
for the Province of Alberta

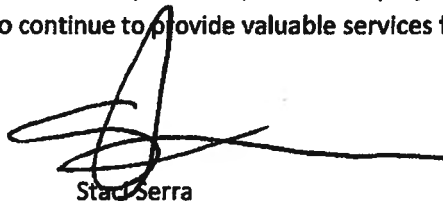
IRMA ALVARADO
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires May 23, 2019

Notice of Assignment**June 1 2009****To: Graybriar Investors**

Pursuant to assignments accepted and paid for in full, between Staci Serra and Arres Capital, Arres has sold all of its accounts receivable in the Graybriar project to Staci Serra. This assignment includes all future advances and work to be performed by Arres Capital on the project. This arrangement has facilitated Arres Capital's ability to continue to provide valuable services for the investors in the Graybriar mortgage.

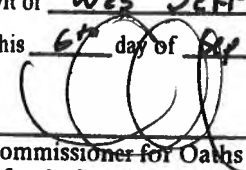


Arres Capital



Staci Serra

This is Exhibit "6" referred to in the
Affidavit of Wes Serra
dated this 6th day of Oct, 2018


A Commissioner for Oaths In and
for the Province of Alberta

IRMA ALVARADO
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires May 23, 2019

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Box 100 - 333 Ontario Road NE
Albany GA 31703

TO THE ORDER OF

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