

December 16, 2013, filed, the Affidavit of Truth of Brian Sekiya, sworn December 20, 2013, filed, the Affidavit of Truth of Holly Sekiya, sworn December 20, 2013, filed, the Affidavit of Truth of Linda Jaeger, sworn December 16, 2013, filed, the Affidavit of Truth of Steve Reilly, sworn December 16, 2013, filed, the Affidavit of Truth of Mickey Ikuta, sworn December 16, 2013, filed, the Affidavits of Truth of Lester Ikuta, sworn December 16, 2013, filed, the Affidavit of Verification of Statements in application for Bankruptcy Order sworn by David Murphy, on the 12th day of June, 2017, filed, the Supplementary Affidavit of David Murphy, sworn July 13, 2017, filed, the Notice of Disputing Application, filed, the Consent of Alvarez & Marsal Canada Inc. to act as trustee, filed; and upon hearing the submissions of counsel for the Applicant and counsel for Arres;

And upon it appearing to the Court that the following acts of bankruptcy have been committed within 6 months preceding the filing of the Application:

- (a) Arres has ceased to meet its liabilities generally as they have become due;

And upon being satisfied that Arres has been duly served;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Arres, a company incorporated and registered under the laws of the Province of Alberta and having an office in Calgary, in the Province of Alberta, be and is hereby adjudged bankrupt and a bankruptcy order is hereby made against Arres.
2. Alvarez & Marsal Canada Inc. in the Province of Alberta, has been appointed as trustee of the estate of the bankrupt, without the requirement to give security under the *Bankruptcy and Insolvency Act*.
3. Service of the Notice of the Hearing of this Application upon Arres is deemed good and sufficient.
4. The costs of and incidental to the within application and bankruptcy order shall be paid to the Applicant out of the assets of the bankrupt's estate after taxation of the accounts.

Dated at Calgary, Alberta this 26th day of July, 2017

"K.M. Eldsvik"

APPENDIX B

ARRES CAPITAL INC
Financial Statements
Year Ended July 31, 2013
(Unaudited - See Notice To Reader)

ARRES CAPITAL INC
Index to Financial Statements
Year Ended July 31, 2013
(Unaudited - See Notice To Reader)

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NOTICE TO READER

On the basis of information provided by management, I have compiled the balance sheet of Arres Capital Inc as at July 31, 2013 and the statement of income and deficit for the year then ended.

I have not performed an audit or a review engagement in respect of these financial statements and, accordingly, I express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Calgary, Alberta
January 8, 2014

CHARTERED ACCOUNTANT

ARRES CAPITAL INC**Balance Sheet****July 31, 2013**

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(Unaudited - See Notice To Reader)

	2013	2012
ASSETS		
CURRENT		
Funds held in trust	\$ 584,994	\$ 775,214
Prepaid expenses	756	584
	585,750	775,798
CAPITAL ASSETS (Note 1)	14,759	15,365
	\$ 600,509	\$ 791,163
LIABILITIES AND SHAREHOLDER'S DEFICIENCY		
CURRENT		
Bank indebtedness	\$ 698	\$ 13,669
Accounts payable	25,748	42,379
Income taxes payable	21,024	-
Due to related parties	17,379	40,970
Funds held in trust	584,994	775,214
	649,843	872,232
LONG TERM DEBT	-	96,584
	649,843	968,816
SHAREHOLDER'S DEFICIENCY		
Share capital	3,000	3,000
Deficit	(52,334)	(180,653)
	(49,334)	(177,653)
	\$ 600,509	\$ 791,163

The accompanying notes are an integral part of these financial statements

ARRES CAPITAL INC
Statement of Income and Deficit
Year Ended July 31, 2013
(Unaudited - See Notice To Reader)

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	2013	2012
REVENUE	\$ 307,076	\$ 215,130
EXPENSES		
Salaries and wages	62,593	112,111
Professional fees	45,584	27,316
Rental	20,815	11,045
Office	8,703	11,168
Interest and bank charges	5,260	12,457
Insurance	4,541	14,994
Memberships	2,009	1,464
Referral fee (recovered)	1,465	(9,991)
Telephone	1,239	1,293
Meals and entertainment	207	-
Management salaries	-	34,000
Amortization	6,515	10,321
	158,931	226,178
INCOME (LOSS) BEFORE INCOME TAXES	148,145	(11,048)
INCOME TAXES (RECOVERED)	19,826	(28,595)
NET INCOME	128,319	17,547
DEFICIT - BEGINNING OF YEAR	(180,653)	(198,200)
DEFICIT - END OF YEAR	\$ (52,334)	\$ (180,653)

The accompanying notes are an integral part of these financial statements

ARRES CAPITAL INC
Notes to Financial Statements
Year Ended July 31, 2013
(Unaudited - See Notice To Reader)

642

1. CAPITAL ASSETS

	Cost	Accumulated amortization	2013 Net book value	2012 Net book value
Equipment	\$ 41,630	\$ 33,143	\$ 8,487	\$ 3,961
Computer equipment	121,946	115,674	6,272	11,404
	\$ 163,576	\$ 148,817	\$ 14,759	\$ 15,365

APPENDIX C

ARRES CAPITAL INC.
Balance Sheet
As of July 31, 2014

11:52 AM
09/15/2017
Accrual Basis
July 31, 14

ASSETS

Fixed Assets

Assets

Computers - 45%	126,246.13
OFFICE FURNITURE & EQUIPMENT	41,630.36
Accum Deprec Computers 45%	-119,678.84
ACCUM DEPRECIATION - OFFICE	-34,840.79

Total Assets	13,356.86
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Total Fixed Assets	13,356.86
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Other Assets

Due from Arres Holdings-ASSETS	337,731.85
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Total Other Assets	337,731.85
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TOTAL ASSETS	351,088.71
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LIABILITIES & EQUITY

Liabilities

Current Liabilities

Other Current Liabilities

Due from Arres Management Inc	99,416.73
Accrued Liabilities	3,000.00
Referral fee payable	4,320.00
Due to Arres Holding Inc	309,784.69
Promissory Note Payable	100.00
TAX PAYABLE - Federal	5,204.80
TAX PAYABLE - Provincial	1,440.12

Total Other Current Liabilities	423,266.34
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Total Current Liabilities	423,266.34
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Total Liabilities	423,266.34
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Equity

Retained Earnings	-75,177.63
SHARE CAPITAL Class A & C	3,000.00

Total Equity	-72,177.63
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TOTAL LIABILITIES & EQUITY	351,088.71
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APPENDIX D

COURT FILE NUMBER 1101-03481

COURT COURT OF QUEEN'S BENCH OF ALBERTA

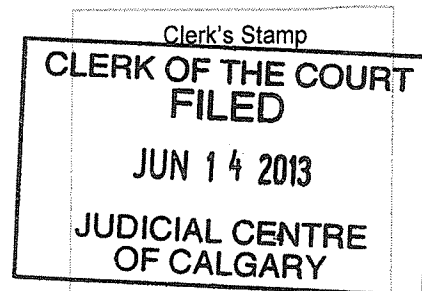
JUDICIAL CENTRE CALGARY

PLAINTIFF(S)/
APPLICANT(S) ACCESS MORTGAGE CORPORATION
(2004) LIMITED

DEFENDANT(S)/
RESPONDENT(S) ARRES CAPITAL INC.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT BRIAN N. CLARK of CLARK & ASSOCIATES,
Solicitor for the Plaintiff
#203, 136--17th Avenue N.E.
Calgary, Alberta T2E 1L6
Telephone: (403) 520-2011
Facsimile: (403) 230-3509
File No.: 3150-1



I hereby certify this to be a true copy of
the original order
Dated this 14 day of June 2013
H. B. Ho
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: May 24, 2013

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice S.L. Hunt McDonald

LOCATION OF HEARING: **Calgary, Alberta**

UPON THE APPLICATION of the Plaintiff; AND UPON hearing submissions from Counsel for the Plaintiff and from Counsel for the Defendant;

IT IS HEREBY ORDERED THAT:

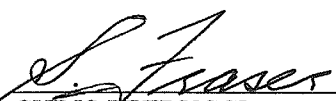
1. The Plaintiff, Access Mortgage Corporation (2004) Limited, shall have summary judgment as against the Defendant in the sum of \$1,028,879.99, less any amounts that have already been paid and applied by the Plaintiff to reduce the said indebtedness of \$1,028,879.99.
2. In the event the parties are unable to agree on the amount already paid and applied by the Plaintiff to the said indebtedness of \$1,028,879.99, this aspect of the matter shall be set down for an accounting to be done before this Honourable Court.
3. In the event the parties encounter any matters that require clarification or further direction the matter may be brought back to this Honourable Court for determination.
4. The Plaintiff shall be entitled to interest on the judgment amount pursuant to the *Judgment Interest Act*, from and after June 30, 2009.

5. The Plaintiff is entitled to its costs of this action calculated under Column 4 of Schedule "C" of the Rules of Court.


Justice of the Court of Queen's Bench of Alberta

Approved as the Order granted:

BLAKE, CASSELS & GRAYDON LLP

 SEAN FRASER
for CHRIS PETRUCCI
Solicitors for the Defendant

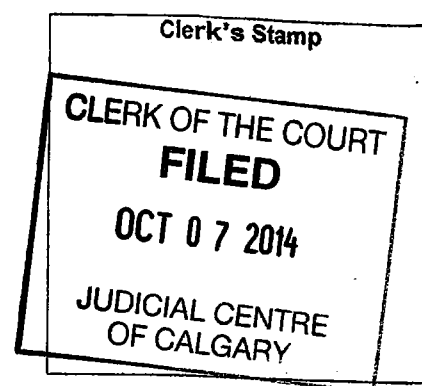
COURT FILE NUMBER 1101 - 03481

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) ACCESS MORTGAGE CORPORATION
(2004) LTD.

DEFENDANT(S) ARRES CAPITAL INC.

DOCUMENT **Order**ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENTWarren Benson Amantea LLP
Attention: Brian E. Silver
1413 - 2nd Street S.W.
Calgary, Alberta T2R 0W7
Tel: 403-228-7007 Fax: 403-244-1948
File No. 14-0295I hereby certify this to be a true copy of
the original order
Dated this 7 day of Oct 2014
[Signature]
for Clerk of the CourtDATE ON WHICH ORDER WAS PRONOUNCED: **September 25, 2014**NAME OF MASTER WHO MADE THIS ORDER: **Master Andrew Robertson Q.C.**LOCATION OF HEARING: **Calgary, Alberta**

UPON THE APPLICATION of the Applicant, Arres Capital Inc. ("Arres"); AND UPON having heard representations of the Applicant and the Respondent;

AND UPON hearing read the Application of Arres;

AND UPON hearing read the Order granted by Madam Justice S. L. Hunt McDonald in this action on May 24, 2013 (the "said Order") which granted Summary Judgment to Access Mortgage Corporation (2004) Limited ("Access") against Arres in the sum of \$1,028,879.99 less any amounts that have already been paid and applied by Access to reduce the set indebtedness;

AND UPON hearing read the Consent Order granted by Master J. T. Prowse Q.C., on January 17, 2014;

AND UPON hearing read the Affidavits of Wes Serra, Jim Brander, David Murphy, and Kim Robinson, filed;

AND UPON hearing read the Transcripts from the Oral Questioning of Jim Brander, filed;

AND UPON hearing read the Briefs filed on behalf of each of Access and Arres with respect to this Application;

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AND UPON hearing representation from Counsel for Access and from Counsel for Arres;

AND UPON determining that the Court is functus officio as a result of the said Order having been granted and entered;

IT IS HEREBY ORDERED THAT:

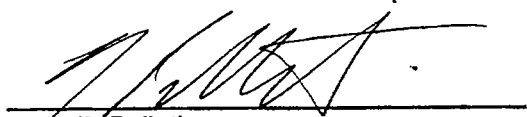
1. Arres' Application to permit and direct the Counterclaim attached as Schedule "A" to its Application filed in this Action on May 29, 2014 is denied;
2. Arres' Application permitting the amendment of the Amended Statement of Defence filed in this Action is denied;
3. Access and Arres are directed to apply before the Honourable Madam Justice S. L. Hunt McDonald for advice and directions with respect to the accounting contemplated in the said Order.
4. Access is awarded costs against Arres in the sum of \$1,500.00 plus disbursements payable forthwith.
5. A facsimile or electronic signature of Counsel hereon is deemed good and sufficient.


Justice of the Court of Queen's Bench of Alberta

JUR CLERK

Consented to by the Solicitor for the
Defendant Arres Capital Inc.:

PELLETIER LAW


Ryan P. Pelletier

In the Court of Appeal of Alberta

Citation: Access Mortgage Corporation (2004) Limited v Arres Capital Inc., 2014 ABCA 280

Date: 20140923

Docket: 1301-0190-AC

Registry: Calgary

Between:

Access Mortgage Corporation (2004) Limited

Respondent
(Plaintiff)

- and -

Arres Capital Inc.

Appellant
(Defendant)

The Court:

**The Honourable Mr. Justice Peter Martin
The Honourable Mr. Justice Thomas W. Wakeling
The Honourable Madam Justice Rosemary Nation**

Memorandum of Judgment

Appeal from the Order by
The Honourable Madam Justice S.L. Hunt McDonald
Dated the 24th day of May, 2013
Filed on the 14th day of June, 2013
(Docket: 1101-03481)

Memorandum of Judgment

The Court:

I. Introduction

[1] The appellant¹ contests the validity of a summary judgment order made against it in a debt action and an order granting the respondent² leave to file a writ of enforcement.

II. Questions Presented

[2] Was the respondent entitled to summary judgment for the amount of the unpaid debt – \$1,028,879.99 – under r. 7.3(1) of the *Alberta Rules of Court*, Alta. Reg. 124/2010?

[3] Should the motions judge have declined to grant the respondent leave to file a writ of enforcement before the accounting, which was a feature of the summary judgment order, was completed on the condition that any funds recovered as a result of the enforcement of the writ must be held in an interest bearing trust account pending the hearing of the appeal?

III. Brief Answers

[4] Rule 7.3(1)(a) of the *Alberta Rules of Court* states that summary judgment may be granted if “there is no defence to a claim”. The appellant has no defence to the respondent’s claim. It follows that summary judgment was warranted.

[5] While the Court accepts that the motions judge’s decision to allow the respondent to file a writ of enforcement before the accounting was finalized is unusual, it will not interfere. The motions judge’s order was subject to a condition which adequately protected the appellant’s interests.

IV. Applicable Provisions of the *Alberta Rules of Court*

[6] Rule 7.3 of the *Alberta Rules of Court* is as follows:

7.3(1) A party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

(a) there is no defence to a claim or part of it;

...

¹ The appellant, Arres Capital Inc., is the defendant in a debt action commenced by the respondent, Access Mortgage Corporation (2004) Limited. This judgment will refer to Arres Capital Inc. as the “appellant” or “Arres Capital”.

² This judgment will refer to Access Mortgage Corporation (2004) Limited as the “respondent” or “Access Mortgage”.

(2) The application must be supported by an affidavit swearing positively that one or more of the grounds described in subrule (1) have been met or by other evidence to the effect that the grounds have been met.

(3) If the application is successful the Court may, with respect to all or part of a claim, and whether or not the claim is for a single and undivided debt, do one or more of the following:

...

(b) if the only real issue to be tried is the amount of the award, determine the amount or refer the amount for determination by a referee.

V. Statement of Facts

[7] In an August 1, 2004 agreement Arres Capital promised to provide Access Mortgage with brokerage and management services for the respondent's mortgage investment business.³ In return, the respondent promised to pay the appellant a fee calculated in accordance with a formula for the services provided. The formula, in effect, gave the appellant a portion of the respondent's profits.

[8] The respondent had to pay a stipulated sum each month during the respondent's fiscal year with a year-end reconciliation to deal with over or under payment.

[9] This arrangement worked well for several years. Access Mortgage made a profit from its mortgage business and Arres Capital earned a handsome fee. But in 2008 the world economy faltered. Severe problems in the American subprime mortgage market contributed to this dilemma. Canada and Alberta were adversely affected. Many of the mortgagors under mortgages brokered by the appellant were unable to meet their obligations under their mortgages with the respondent and the demand for mortgages diminished greatly.⁴

[10] This new business climate destroyed the efficacy of the fee formula under the August 1, 2004 agreement. The year-end reconciliation for the respondent's fiscal year ending March 31, 2009 revealed that the appellant was entitled to no fee for the April 1, 2008 to March 31, 2009 period and that the respondent had overpaid the appellant by \$1,028,879.99. This is not in dispute.⁵

³ This judgment will refer to this agreement as the "August 1, 2004 agreement".

⁴ Ronald R. Engel, a former director and officer of Access Mortgage, in paragraph 12 of his affidavit sworn October 31, 2012, stated that "[b]y October 2008 mortgages totalling \$17 million of the \$42 million in mortgage loans were impaired".

⁵ Paragraph 6 of the appellant's factum "confirms that for the Respondent's fiscal year of April 1, 2008 to March 31, 2009, the amount that was paid to [the appellant] was \$1,028,879.99 and the corrected amount to be paid for Arres [Capital] for the same time period, pursuant to the calculation set out in the Management Agreement was \$0.00"

[11] Both sides wanted to continue their relationship. But it had to be restructured. The appellant would not continue to provide mortgage services for no fee.

[12] On May 5, 2009 the parties entered into an interim management agreement.⁶ The recitals acknowledged that the August 1, 2004 agreement was “no longer a viable contract”; that the appellant was indebted to the respondent “in the amount of \$1,028,879.99 ... in respect of amounts advanced under ... [the August 1, 2004 agreement] in advance of fees to be earned ... [and that] the debt was incurred as a result of the change in the real estate market that was not anticipated or contemplated at the time of the original negotiation and drafting of the management contract”; and that “the Parties ... desire to create a new contract that provides for management services and will provide for the elimination of the debt”.

[13] Operative provisions in the May 5, 2009 agreement stated that the August 1, 2004 agreement was terminated; that the respondent would pay the appellant \$70,000 for services the appellant provided in April 2009; and that the appellant would provide a senior officer of the respondent with office space so that he could work with the appellant’s employees on the respondent’s files; and that there are no collateral agreements. Of particular interest is the following term:

The Board of Directors for Access [Mortgage] agree to make its best efforts to provide Arres [Capital] with a comprehensive proposal with respect to its services prior to the end of May, 2009. This will include among other things: a proposal for the future services to be rendered by Arres [Capital] to Access [Mortgage] ... and a basis for eliminating the Debt, to be ratified by the Board and its shareholders at the Annual General Meeting.

[14] On May 26, 2009 the appellant and the respondent entered into a management agreement terminable by either party upon “giving the party notice in writing one month in advance of such termination”.⁷ The recital part of the May 26, 2009 agreement acknowledged that the respondent “requires the necessary management of its files some of which are in good standing and many of which are impaired” and that the appellant “has the resources to assist Access [Mortgage] in the management of its investments”. The May 26, 2009 agreement obligated the respondent to pay the appellant “the sum of \$70,000 for managerial services provided for the month of May”. Another provision stipulated that “[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction contemplated in this Agreement except as set out in this Agreement.”

⁶ This judgment will refer to this agreement as the “May 5, 2009 agreement” or the “May 5, 2009 interim management agreement”.

⁷ This judgment will refer to this agreement as the “May 26, 2009 agreement” or the “May 26, 2009 management agreement”. The May 26, 2009 agreement appears in the respondent’s extracts of key evidence with a different handwritten date.

[15] The respondent continued to pay the appellant after May 2009 a monthly fee of \$70,000 until a new arrangement was agreed upon. This may have happened around September 2009.⁸

[16] The respondent's board of directors never ratified a proposal for the delivery of future services by the appellant as "a basis for eliminating the debt".

[17] The respondent's board of directors did discuss the appellant's indebtedness after May 5 2009.⁹ At issue was not whether to forgive the debt, but when would the respondent take action to enforce collection of the outstanding debt. An example is the following extract from a May 19, 2010 board meeting:

13. Arres Capital Outstanding Debts

Up to now, Access [Mortgage] has held off filing a statement of claim to recover the \$1.028 million in receivable, to avoid "rocking the boat" as it may push Arres [Capital] into bankruptcy. The two year statute of limitation for this claim amount would expire March 31, 2011. Currently there is no advantage to take this action. Access [Mortgage] will reserve its position to file to a time when it is advantageous to do so.

[18] The August 18, 2009 minutes also dealt with the subject: "There was a discussion about the receivable of approximately \$1 million due from Arres [Capital]. It was concluded that now was not the time to settle considering that the Board has not yet seen how Arres [Capital] will invoice Access [Mortgage] or how the working relationship will proceed from this point in time forward". Board minutes indicate that Mr. Serra, Arres Capital's president, attended the August 18, 2009 meeting.

[19] Mr. Serra claimed that he was surprised to hear Access Mortgage take the position at the August 18, 2009 board meeting that the appellant still owed the respondent over \$1 million. This prompted Mr. Serra, on August 20, 2009, to write Mr. Engel and other Access Mortgage board members. Part of his letter dealt with the debt issue:

⁸ Paragraph 29 of Wesley Serra's affidavit sworn December 7, 2012 and filed December 10, 2012 reads as follows: "August, 2009 was the last month that Access [Mortgage] paid Arres [Capital] for the services [under the May 26, 2009 agreement]. I don't remember exactly when, but I believe it was sometime in the summer of 2009 that Ron Engal told me that Access [Mortgage] was terminating the ... [May 26, 2009 agreement]". Mr. Serra is the president of Arres Capital.

⁹ The minutes of the July 10, 2009 board meeting report that "[n]o decision was made on the collection or settlement of the amount due by Arres [Capital] to Access [Mortgage] (\$1,028,000). This will be considered once the initial reaction of Arres [Capital] to the motion is understood". Mr. Serra did not attend the July 10, 2009 meeting. So did the August 11, 2010 minutes: "Moved ... that Access [Mortgage] commence an action for the recovery of the \$1.028M owned by Arres [Capital]. Motion defeated ... Moved that the Board ... revisit before March 2011 to determine when Access [Mortgage] should commence action."

We confirm your agreement to waive and release Arres [Capital] from all previous fees paid in respect of management activities undertaken by Arres [Capital] in the amount of \$1,028,879.99. In that regard, we would like Access [Mortgage] to provide a written proposal to Arres [Capital] in order to finalize the particulars of the release in a manner that is suitable to both parties.

[20] The respondent never replied to this letter. Instead, it terminated the relationship regulated by the May 26, 2009 management agreement. A new fee formula was negotiated.¹⁰

[21] At an August 23, 2010 meeting of the respondent's board of directors the respondent decided to commence an action against the appellant for the recovery of the debt.

[22] On August 27, 2010 the respondent presented a formal demand to the appellant for repayment of the debt of \$1,028, 879.99. The appellant made no payment.

[23] On March 11, 2011 the respondent commenced an action in the Court of Queen's Bench of Alberta against the appellant for the "sum of \$1,028,879.99 being the amount by which Access [Mortgage] overpaid Arres [Capital] in respect of Arres [Capital] management services together with interest pursuant to the *Judgment Interest Act*"

[24] The appellant filed a statement of defence and an amended statement of defence. While the appellant admitted entering into the August 1, 2004 agreement, it asserted that it was entitled to the fees the respondent paid it in the period April 1, 2008 to March 31, 2009. It also maintained that the respondent promised to waive the debt if the appellant would continue to provide management services to the respondent in April 2009 for \$70,000. This, it alleges, was the effect of the May 5, 2009 interim management agreement. The appellant took the position that the respondent "released Arres [Capital] from the Alleged Debt pursuant to the terms of the ... [May 5, 2009 agreement]".

[25] The defence also contained other features. It maintained that the May 26, 2009 management agreement represented the "comprehensive proposal" that the respondent had promised to present before the end of May 2009 in the May 5, 2009 interim management agreement. According to the appellant, the "resolution that was reached was that Arres [Capital] agreed to continue providing the services to the Plaintiff [respondent] in exchange for eliminating the Alleged Debt and for payment of \$70,000 monthly As a result, the Alleged Debt was no longer a debt owing by Arres [Capital] to the Plaintiff [respondent]".

¹⁰ Paragraphs 44 and 45 of Mr. Engel's affidavit are as follows: "44. The invoices of Arres [Capital] were to be based on the time each employee of Arres [Capital] spent on a loan file in respect of which ... [Access Mortgage] had an interest 45. ... [T]he average monthly management fee for the 7 months from May to November in 2010 was \$3,426.71 per month as submitted by Arres [Capital]. ..."

[26] There was a second alternative argument. The appellant asserted that the respondent failed to provide a comprehensive proposal to the appellant to eliminate the debt before the end of May, 2009. This failure leads to the following consequence:

11. Had Arres [Capital] known that the Plaintiff [the respondent] would continue to demand payment for the Alleged Debt, it would not have entered into the Interim Management Agreement and would not have continued to provide the services to the Plaintiff [respondent].

12. As a result ..., the Plaintiff [respondent] has released Arres [Capital] from the Alleged Debt.

[27] Additional alternative arguments incorporate waiver, estoppel and frustration.

[28] On May 28, 2012 the respondent filed for summary judgment. It relied on affidavits of David Murphy filed May 28, 2012 and Ronald R. Engel sworn on October 31, 2012.

[29] On December 10, 2012 the appellant filed an affidavit of Wesley Serra sworn on December 7, 2012.

[30] Justice Hunt McDonald heard the summary judgment application on May 21, 2013 and gave oral reasons on May 24, 2013. She granted summary judgment.

[31] Justice Hunt McDonald noted that the appellant produced nothing in writing which supported Mr. Serra's affidavit evidence that the respondent forgave the debt as part of the consideration for the appellant continuing to provide services to the appellant after March 31, 2009. The May 5, 2009 interim management agreement expressly acknowledged that the appellant owed the respondent \$1,028,879.99 on account of advances the respondent paid the appellant under the August 1, 2004 agreement.

[32] The motions judge determined that the respondent never did forgive the appellant's debt:

Mr. Serra of Arres [Capital] takes the adamant position that the parties had agreed to release Arres [Capital] from the debt.¹¹ Arres [Capital] has produced no evidence of such an agreement. Many discussions took place about the debt elimination, but an agreement was never reached. In fact, relations between the parties deteriorated to the point that Mr. Serra of Arres [Capital] refused to participate in any discussions. Arres [Capital] employees Wendy McKenna and

¹¹ The basis for this viewpoint is grounded in events which occurred before May 5, 2009 and some after. For example, paragraph 16 of the appellant's factum reads as follow: "Shortly after the May 5 agreement, Serra confirmed his understanding that the Alleged Debt had been forgiven, and was to be written off as forgiven by the Respondent, with Kim Robinson, an employee of the Respondent who reported to the Respondent's Corporate Secretary, Chris Saunders".

Albert Snook told Ron Engel of Access [Mortgage] that, if he wished to discuss ... Arres [Capital] indebtedness, it should be with them and not with Mr. Serra.¹²

[33] Justice Hunt McDonald also rejected the appellant's argument that the respondent breached the following provision in the May 5, 2009 interim management agreement:

3. The Board of Directors for Access [Mortgage] ... agree to make its best efforts to provide Arres [Capital] with a comprehensive proposal with respect to its services prior to the end of May, 2009. This will include among other things: a proposal for future services to be rendered by Arres [Capital] to Access [Mortgage] ... and a basis for eliminating the Debt, to be ratified by the Board and the shareholders at the Annual General Meeting.

She came to the conclusion

that the phrase "use best efforts" is not an obligation. If the principal of Arres [Capital] refuses to discuss the issue, then the parties are at an impasse. In his affidavit, Wes Serra points to the Executive Committee Meeting Minutes dated March 8, 2009 Mr. Serra says that the minutes prove that the parties had agreed to elimination of the debt. The Minutes provided that the executive committee would propose to the next meeting of the board of directors that Arres [Capital] be paid a flat fee of 3 percent for management services starting April 1, 2009. A comment followed that:

This should allow Arres [Capital] to manage our fund and retire some of the advance that has delivered.

The board of directors of Access [Mortgage] never followed through on the executive committee's proposal. I also point out that the word "elimination" is not synonymous with forgiveness.

[34] The motions judge also dismissed the appellant's argument that it agreed to provide brokerage services to the respondent after March 31, 2009 for a monthly fee of \$70,000 and provide office space for Mr. Engel because the respondent had promised to forgive the debt. She noted that "[t]here is no mention of forgiveness or an agreement to eliminate the debt in either of the May, 2009 agreements signed by the parties." According to the terms of the May 5 interim management and the May 26, 2009 management agreements, "[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction".

[35] As the appellant had asserted that it had made some payments to the respondent to reduce the debt, the order pronounced May 24, 2013 and entered June 11, 2013¹³ stated that the

¹² The evidence does not indicate when this conversation occurred.

¹³ This judgment will refer to this order as the "June 11, 2013 order".

respondent “shall have summary judgment as against the ... [appellant] in the sum of \$1,028,879.99 less any amounts that have already been paid and applied by the ... [respondent] to reduce the ... indebtedness of \$1,028,879.99”. Another provision in the June 11, 2013 order stipulated that an accounting will be undertaken if the parties “are unable to agree on the amount already paid and applied by the ... [respondent] to the ... indebtedness”.

[36] In a subsequent order pronounced on October 24, 2013¹⁴ Justice Hunt McDonald agreed to hear on November 6, 2013 applications by the appellant for a stay of any enforcement proceedings until the appellant’s appeal against the June 11, 2013 order could be heard and by the respondent for leave to file a writ of enforcement. The October 24, 2013 order also set out the terms governing the accounting aspect of the June 11, 2013 order.¹⁵

[37] At the hearing on November 6, 2013 the respondent conceded that the appellant had already paid \$12,158.08 to reduce the debt owed to the respondent. The appellant challenged this calculation. It asserted that the proper setoff number is not less than \$1,842,986.31.

[38] Both counsel agreed at the November 6, 2013 hearing that the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 requires a writ of enforcement to be for a sum certain.

[39] On November 6, 2013, at the conclusion of argument, the motions judge dismissed the appellant’s stay application and granted the respondent’s application to file a writ of enforcement and press ahead with enforcement before the accounting contemplated by the June 11, 2013 order was completed.¹⁶ The key paragraph of the order pronounced November 6, 2013 provided that if the respondent “recover[s] any funds from ... [the appellant] as a result of enforcement proceedings related to the Writ, such funds shall be retained in an interest bearing trust account pending hearing of ... [the appellant’s] appeal of the [June 11, 2013] order in the Court of Appeal.”

[40] Counsel informed us at the hearing of this appeal that Master Prowse gave an order on January 17, 2014 which was entered on January 20, 2014.¹⁷ The recitals indicated that some but not all of the steps set out in an October 24, 2013 order had been completed. With the consent of the parties, the master relieved the parties of their obligations to comply with uncompleted steps in

¹⁴ This judgment will refer to this order as the October 24, 2013 order.

¹⁵ The October 24, 2013 order directed Arres Capital to “file and serve an affidavit providing all of the details, accounting and supporting documentation pertaining to its assertion that it has paid monies to Access [Mortgage] which reduces the amount of indebtedness of Arres [Capital] to Access [Mortgage] by November 14, 2013”. Access Mortgage, if it wished to question the affiant, must do so before November 30, 2013. Any undertaking arising from questioning must be answered by January 3, 2014. Access Mortgage had to file any affidavit it relied on by January 10, 2014. Questioning on this affidavit had to be completed by January 17, 2014 and any undertakings arising had to be provided before January 25, 2014. The order stipulated that the accounting application would be heard either by Justice Hunt McDonald or a master on a date to be determined before January 31, 2014.

¹⁶ This judgment will refer to this order as the November 6, 2013 order.

¹⁷ This judgment will refer to this order as the January 17, 2014 order.

the October 24, 2013 order and adjourned the accounting application *sine die*. Master Prowse also directed that the parties may apply to the Master for direction and advice if they were unable to agree on a new schedule and other issues.

[41] On November 27, 2013 a single judge of the Court of Appeal stayed the summary judgment orders pending the disposition of the appeal. 2013 ABCA 400, ¶6.

VI. Analysis

A. Standard of Review

[42] To succeed on its challenge to the grant of summary judgment – the parties were agreed on the test for summary judgment – the appellant must convince the Court that the motions judge’s decision was unreasonable. *Dingwall v. Dornan*, 2014 ABCA 89, ¶19; *P. Burns Resources Ltd. v. Locke, Stock & Barrel Co.*, 2014 ABCA 40, ¶11 & *Magellan Morada Investment Limited Partnership v. Miller*, 2009 ABCA 124, ¶12. The appellant alleges that the motions judge erred in failing to find that the May 5 and May 26, 2009 agreements demonstrate that the respondent promised to forgive the loan in return for the appellant’s promise to continue to provide brokerage services and to give an officer of the respondent office space. To successfully challenge the legal effect given to contract language, the appellant must convince this Court that the contested decision is incorrect. *Alberta Giftwares Ltd. v. The Queen*, [1974] S.C.R. 584, 588; *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 261; *Reid Crowther Ltd. v. Simcoe & Erie Insurance Co.*, [1993] 1 S.C.R. 252, 272; *Scott v. Wawanesa Mutual Insurance Co.*, [1989] 1 S.C.R. 1445, 1465; *Liverpool & London & Globe Insurance Co. v. Canadian General Electric Co.*, [1981] 1 S.C.R. 600, 615; *Doerner v. Bliss & Laughlin Industries Ltd.*, [1980] 2 S.C.R. 865, 872 & *Dreco Energy Services Ltd. v. Wenzel*, [2008] 10 W.W.R. 445, 450 (Alta. C.A. 2008). Contra R. Kerans & K. Willey, *Standards of Review Employed by Appellate Courts* 142 (2d ed. 2006). To successfully challenge a factual determination, the appellant must establish that the determination is the product of palpable and overriding error. *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 248.

B. An Alberta Court May Grant Summary Judgment to a Plaintiff if There Is No Defence to a Claim

[43] Rule 7.3 of the *Alberta Rules of Court*, in force as of November 11, 2010, sets out the test which a court must use to measure the merits of an application for summary judgment. A court may grant a plaintiff summary judgment against the defendant if “there is no defence to a claim or part of it”. It may grant summary judgment for the defendant if “there is no merit to a claim or part of it”.

[44] The old summary judgment rule, r. 159(3) of the *Alberta Rules of Court*, Alta. Reg. 390/68, incorporated different language: “On hearing the motion, if the court is satisfied that there is no genuine issue for trial with respect to any claim, the court may give summary judgment against ... a defendant”.

[45] The principles which govern summary judgment in Alberta after November 1, 2010 are distilled in *Beier v. Proper Cat Construction*, 564 A.R. 357, 373-78 (Q.B. 2013):

[56] Most legal systems recognize that there is no reason to accord every party to an action full access to all stages of the litigation spectrum. The common law principle that a person has a right to be heard ... is not more important than speedy resolution of meritless claims or defences the continuation of which drive up the cost of litigation

...

[61] Rule 7.3 of the new *Alberta Rules of Court* allows a court to grant summary judgment to a moving party if the nonmoving party's position is without merit. A party's position is without merit if the facts and law make the moving party's position unassailable and entitle it to the relief it seeks. A party's position is unassailable if it is so compelling that the likelihood of success is very high.

[62] This may exist in a number of scenarios.

[63] First, the moving party is entitled to summary judgment if, as a plaintiff, it presents uncontroverted facts and law which entitle it to judgment against the nonmoving party. The court must be satisfied that the plaintiff has presented uncontested facts which establish all the essential elements of the action. ...

...

[65] There are a number of relevant principles which underly the fundamental norm that claims or defences that are so compelling the likelihood they will succeed is very high should be dealt with summarily.

[66] First, the legal or persuasive burden rests on the moving party. ... The moving party must present the facts which, in combination with the applicable law, make its position unassailable if the nonmoving party does not contest the facts and the law.

...

[68] Third, the motions court may not make findings of credibility and resolve contested fact issues. ... If a fact on which the moving party relies to support summary judgment is the subject of a credibility contest, the motions court must dismiss the summary judgment application. ... That a controversy over nonmaterial facts exists is irrelevant.

...

[70] Fifth, a nonmoving party's argument that questioning or trial may produce evidence which assists the nonmoving party is without merit.

[46] *O'Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5th 1, 16 (Q.B. 2013) explains why summary judgment is a valuable option in the dispute resolution process:

A summary judgment protocol recognizes that it is not unjust to deny a plaintiff with a meritless claim or a defendant with a meritless defence access to all stages of the litigation process. A litigant whose claim or defence is so weak that its chance of succeeding is very low, cannot reasonably expect the state to make available all parts of a publicly funded judicial process. ...

Legislators in the United Kingdom, Canada and United States have introduced summary judgment into their litigation model to ensure that dispute resolution takes place at the earliest point in the litigation continuum where it is just to do so. A summary judgment protocol promotes expeditious dispute resolution and efficient use of private and public legal resources.

[47] *Orr v. Fort McKay First Nation*, 2014 ABQB 111, ¶29 also extolls the virtues of summary judgment:

By its terms, the formulation of the test for summary judgment in *Beier v. Proper Cat Construction Ltd.* keeps ... the judge's attention focussed upon resolving litigation in a timely and cost-effective manner by imposing a proportionate remedy where it can be said that a claim or defence ought to succeed or fail without further process. In doing so, it promotes robust application of Alberta's summary judgment rule despite its preclusion of factual determinations.

C. The Motions Judge's Decision To Grant Summary Judgment Is Reasonable

[48] The facts which caused the motions judge to grant summary judgment are not in dispute.

[49] There are four of them.

[50] First, under the August 1, 2004 agreement, the appellant was entitled to no fee for the brokerage services it provided in the period commencing April 1, 2008 and ending March 31, 2009. Second, the respondent paid the appellant \$1,028,879.99 for brokerage fees in this time frame. Third, the respondent made a formal demand for repayment on August 27, 2010. Fourth, the appellant has not repaid the debt.

[51] There are no facts which support the appellant's allegation that in a subsequent agreement the respondent forgave the appellant's debt. Neither the May 5, 2009 nor the May 26, 2009 agreement is to this effect.

[52] The May 5, 2009 interim management agreement records the appellant's indebtedness to the respondent for \$1,028,974.99. An objective reading of this agreement, which is the proper

methodology for reading a bilateral commercial instrument,¹⁸ clearly leads to the conclusion that as of May 5, 2009 the appellant acknowledged that it owed the respondent \$1,028,879.99 and that the respondent had not forgiven this debt.¹⁹ Nothing in the May 5, 2009 agreement remotely supports the appellant's argument that the respondent, for consideration, had forgiven the appellant's debt. There is no express or implicit statement which plausibly supports such an interpretation. A reasonable person would expect nothing less.²⁰

[53] The May 5, 2009 agreement also contains aspirational elements. It reveals the parties "desire to create a new contract that provides for management services and will provide for the elimination of the debt". The agreement also contained a commitment by the respondent to "make its best efforts" to provide the appellant with a proposal before June 1, 2009 for a new management services contract that would have the effect of eliminating the debt. As of May 5, 2009 this was an unrealized aspiration.

[54] The appellant and the respondent did enter into the May 26, 2009 management services agreement. But, again, nothing in this agreement, objectively read, supports the appellant's claim

¹⁸ *Sattva Capital Corp. v. Creston Molly Corp.*, 2014 SCC 53, ¶49 ("in contractual interpretation, the goal of the exercise is to ascertain the objective intent of the parties - a fact specific goal - through the application of legal principles of interpretation"); *Re Lubberts Estate*, 2014 ABCA 216, n. 21 ("An objective analysis ... is adopted when attributing meaning to contractual terms which are the product of conscious choices made by more than one person"); *Ko v. Hillview Homes Ltd.*, 2012 ABCA 245, ¶27 ("The test for interpretation ... is objective; one party's subjective views about the agreement ... are irrelevant"); *ATCO Electric Ltd. v. Energy & Utilities Board*, [2004] 11 W.W.R. 220, 248-49 (Alta. C.A.) ("the search for the parties' intention is conducted on an objective basis, meaning that the focus is on what a reasonable person would infer from the words used"); S. Waddams, *The Law of Contracts* 105 (6th ed. 2010) ("The principal function of the law of contracts is to protect reasonable expectations engendered by promises. It follows that the law is not so much concerned to carry out the will of the promisor as to protect the expectation of the promisee"); A. Swan, *Canadian Contract Law* §8.2 (2d ed. 2009) ("courts ... have regard to the reasonable expectations created in one party by what the other said or did"); K. Lewison, *The Interpretation of Contracts* 19 (2004) ("the court is concerned to ascertain, not what is the intention of the actual parties to a contract, but what would have been the intention of the hypothetical reasonable parties, placed in the same position as the actual parties, and contracting in the words used by the actual parties"); Holmes, "The Theory of Legal Interpretation", 12 Harv. L. Rev. 417, 417-18 (1899) ("we ask not what this man meant, but what those words would mean in the mouth of a normal speaker of English using them in the circumstances in which they were used"); *Hobbs v. Esquimalt and Nanaimo Railway*, 29 S.C.R. 450, 468-69 (1889) ("it appears incredible that a ... land company ... would reasonably suppose that in dealings with third persons for the sale of land, the word 'land' means land with the reservation of minerals"); *Hallmark Pool Corp. v. Storey*, 144 D.L.R. 3d 56, 65 (N.B.C.A. 1983) ("we are not concerned [in contract interpretation] with the real intention or mental state of Hallmark") & *Toll (FGCT) Pty Ltd. v. Alphapharm Pty Ltd.*, 211 A.L.R. 342, ¶40 (H.C. 2004) ("It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of each party to believe").

¹⁹ Evidence before the motions judge reveals that the directors of the respondent never intended the May 5, 2009 agreement to relieve the appellant of the obligation to pay back \$1,028,879.99.

²⁰ See *E.P.A. Ultimate Concepts Inc. v. Innovative Insurance Corp.*, 2007 ABCA 358, ¶7 ("had the parties intended to impose a requirement on EPA to consult with IIC prior to settling claims, they could easily have specified that in the contract").

that the respondent has forgiven the appellant's debt.²¹ There is no statement to that effect anywhere in the May 26, 2009 agreement. A reasonable observer would expect this to be in the agreement if this was the intention of both parties. In this case, silence is not golden.

[55] Nor is it open to the appellant to assert that a collateral agreement to this effect exists. A provision in the May 26, 2009 agreement states that "[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction contemplated in this Agreement ...".²²

[56] In any event, there was no evidence before the motions judge – no factual basis – which would serve as the foundation for a legal finding that the respondent, at any time, promised, measured objectively, to forgive the debt if the appellant delivered management services for a monthly fee of \$70,000 and provided Mr. Engel with office space. The motions judge dealt with the issue this way:

Mr. Serra of Arres [Capital] takes the adamant position that the parties had agreed to release Arres [Capital] from the debt. Arres [Capital] has produced no evidence of such an agreement. Many discussions took place about the debt elimination, but an agreement was never reached. *In fact, relations between the parties deteriorated to the point that Mr. Serra ... refused to participate in any discussions.* Arres' employees Wendy McKenna and Albert Snook told Ron Engel of Access [Mortgage] that, if he wished to discuss ... Arres' indebtedness, it should be with them and not with Mr. Serra (emphasis added).

[57] There is no basis whatsoever to characterize this fact determination – Mr. Serra refused to discuss the debt elimination issue – as palpably wrong.

[58] Mr. Serra may have honestly believed that the respondent forgave the appellant's debt. His August 20, 2009 letter to directors of the respondent supports such a claim. But, as noted above, a subjective approach is not warranted in attaching meaning to words intended to record promises made in contracts. The conduct of a contracting party is evaluated on an objective basis. Because more than one party is involved in this transaction a common and enforceable meaning must be given to the words which the parties have adopted to express their consensus. This is the role an objective assessment plays. Words cannot be given a legal effect that depends on the unique

²¹ Evidence before the motions judge reveals that the directors of the respondent never intended the May 26, 2009 agreement to relieve the appellant of the obligations to pay back \$1,028,879.99.

²² A. Swan, Canadian Contract Law § 8.60 (2d ed. 2009) ("The likelihood that a document will be held to be the final, integrated expression of the parties' agreement will be increased if the document contains an 'integration clause' or an 'entire agreement' clause. Such a clause typically states that the agreement represented by the document containing the clause supersedes all other agreements that the parties may have made and that the parties are not relying on any other representations ... that may have been made before the document was executed"). This is a rule of substantive law. See also *Bhasin v. Hrynew*, 2013 ABCA 98, ¶27; *Ko v. Hillview Homes Ltd.*, 2012 ABCA 245, ¶26 & *Gainers Inc. v. Pocklington Holdings Inc.*, 255 A.R. 373, 377 (C.A. 2000).

interpretation adopted by a party. The burden a promise represents to the promisor must be assessed objectively.

[59] In the end, the appellant asked the motions judge to dismiss the respondent's application for summary judgment because the appellant's director believed that the respondent had forgiven the debt owed by the appellant. This is not a sufficient basis to justify dismissal of the summary judgment application. *Papachase Indian Band No. 136 v. Canada*, [2008] 1 S.C.R. 372, ¶11 ("The defendant ... cannot rely on mere allegations"). As the motions judge correctly observed, "The allegations made by Arres are ... in the nature of wishful thinking..." See *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, 436-37 ("a self-serving affidavit is not sufficient in itself to create a triable issue in the absence of detailed facts and supporting evidence"); *Rogers Cable TV Ltd. v. 373041 Ontario Ltd.*, 22 O.R. 3d 25, 28 (Gen. Div. 1994) (in the absence of any evidence to corroborate the respondent's claim that the applicant forgave an admitted debt the Court granted summary judgment); *O'Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5th 1, 25-26 (Q.B. 2013) ("There is no evidence whatsoever that there was a collateral agreement that the 'Plaintiff was not entitled to negotiate the same or to demand payment until its recourse against the fund held by the City of Edmonton had been exhausted'") & *Pizza Pizza Ltd. v. Gillespie*, 75 O.R. 2d 225, 253 (Ont. Ct. (Gen. Div.) 1990) ("[the nonmoving party's] evidence consists of bold allegations or speculation and demonstrates a failure to respond specifically and cogently to the evidence tendered on behalf of Gillespie").

[60] This finding brings into play the observation in *Beier v. Proper Cat Construction*, 564 A.R. 357, 377 (Q.B. 2013) "[t]hat a controversy over nonmaterial facts ... is irrelevant".

[61] We are aware that the motions judge concluded that paragraph 3 of the May 5, 2009 agreement – the respondent's board agrees "to make its best efforts to provide ... [the appellant] with a comprehensive proposal" – is "not an obligation". With respect, we do not believe that this was an issue that the motions judge needed to explore.²³ It was not before her. The respondent's action is based on the August 1, 2004 agreement, not the May 5 or 26, 2009 agreements. The appellant's assertion that the respondent has breached a term of the May 5, 2009 agreement raises a separate issue. The appellant has not alleged in a counterclaim that the respondent has breached this provision in the May 5, 2009 agreement and claimed damages for this breach. If it had, a number of issues would arise. First, what is the nature of the obligation paragraph 3 imposes on the respondent? Second, did the respondent comply with the obligation? Third, if the respondent did not comply with any obligation paragraph 3 imposed on it, what would the damages be? If the respondent had complied with any obligation paragraph 3 represents and presented a comprehensive proposal, would it not be for naught if the appellant rejected it?

²³ It has been elsewhere. See *CSRS v. Embley*, 2008 BCCA 533, ¶115; *Wentworth Developments Inc. v. City of Calgary*, 1998 ABQB 158, ¶32 & *Amonson v. Martin Goldstein Professional Corp.*, 27 Alta. L.R. 3d 78, 89 (Q.B. 1994).

[62] The Court notes that the motions judge was alive to this issue. She found as a fact that “relations between the parties deteriorated to the point that Mr. Serra of Arres refused to participate in any discussions”.

[63] The appellant’s promissory estoppel argument fails because the motions judge concluded that the respondent never promised to forgive the appellant’s debt.

[64] To summarize, the motions judge concluded that the respondent presented uncontradicted evidence that the appellant owed the respondent \$1,028,879.99 under the August 1, 2004 agreement, that the respondent made a formal demand of the appellant for payment of this sum and that the appellant did not pay the debt – and that the governing law obliged the appellant to pay the appellant \$1,028,879.99. Summary judgment was the appropriate disposition. As stated in *O’Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5th 1, 16 (Q.B. 2013), “it is not unjust to deny ... a defendant with a meritless defence access to all stages of the litigation process”.

[65] We agree with the statement in *Beier v. Proper Cat Construction Ltd.*, 564 A.R. 357, 378 (Q.B. 2013) that “summary judgment is an important procedure which could be invoked more often than it is”. See also *Hryniak v. Mauldin*, 2014 SCC 7, ¶34 (“The summary judgment motion is an important tool for enhancing access to justice”).

D. The Court Will Not Interfere With the Motions Judge’s Exercise of Discretion To Allow the Respondent To File a Writ of Enforcement

[66] The motions judge issued her decision on November 6, 2013 granting the respondent leave to file a writ of enforcement for \$1,028,879.99 before the accounting process delineated in the June 11, 2013 order was completed, well aware that the *Civil Enforcement Act*, R.S.A. 2000, c. C-15, s. 25.1 and the *Civil Enforcement Regulation*, Alta. Reg. 276/95 required the writ be for a sum certain. She also directed that any funds recovered as a result of the existence of a writ of enforcement be held in trust pending the hearing of the appeal.

[67] While the Court accepts the appellant’s point that the motions judge’s decision to allow the respondent to file a writ of enforcement before the accounting process she created by her June 11, 2013 order is completed is unusual, she protected the appellant’s interest by requiring the respondent to hold any funds recovered in trust.

[68] We also note that both parties consented to the January 17, 2014 order which effectively eliminated the accounting protocol contained in the October 24, 2013 order.

[69] The Court affirms the motions judge’s decision granting Access Mortgage leave to file a writ of enforcement. The parties may return to Justice Hunt McDonald or, if she is not available, any other judge of the Court of Queen’s Bench, to address any residual accounting matters.

VII. Conclusion

[70] This appeal is dismissed.

Appeal heard on June 13, 2014

Memorandum filed at Calgary, Alberta
this 23rd day of September, 2014

Martin J.A.

Authorized to sign for: Wakeling J.A.

Nation J.

Appearances:

B.E. Silver and T.F. A. Derksen
for the Respondent

R.P. Pelletier
for the Appellant

APPENDIX E



Arres Capital Inc.
Suite 204, 1324-11th Avenue SW
Calgary, AB T3C 0M6 Canada
Tel: 403-261-9955 Fax: 403-264-9954

November 8, 2013

To Whom It May Concern,

As the Senior Analyst of Arres Capital Inc. ("Arres" or the "Company"), I have access to financial information of the Company that allows me to state, to the best of my knowledge, the following:

- That Arres does not have enough equity in the Company to satisfy a judgment of \$1.0 million;
- That based on historical information for the past five years, the Company does not anticipate to have a cash flow that will satisfy the aforementioned judgment after operating costs.
- The priority of any available cash flow is to be allocated to operating costs of the Company, which is estimated to be approximately \$30,000 per month.
- Whereas if there is a shortfall of cash to pay operating costs, such costs are to be paid via the way of shareholder loan.

Sincerely,

Conan Leung, CFA
Senior Analyst
Arres Capital Inc.

APPENDIX F

David Murphy

Sworn before me this 14th

day of November A.D. 2014

Form 14
Statutory Declaration

Financial Statement of Debtor
(Corporate Debtor)

1101-08481

File Number

BRIAN E. SILVER
Barrister and Solicitor

In accordance with section 35.10 of the *Civil Enforcement Regulation*, the Corporation must, within 15 days of being served with this form, provide the completed form to the enforcement creditor.

A. Debtor Information (Please Print)

I, ARRES CAPITAL INC
Full Name of Deponent

of 204 1324 11 AVE SW 403 261 9955
Address of Deponent Telephone Number of Deponent

am the President of ARRES CAPITAL INC
Position with Corporate Debtor Name of Corporate Debtor

of 204 1324 11 AVE S.W. 403 261 9955
Address of Corporate Debtor Telephone Number of Corporate Debtor

and I solemnly declare that the contents of this document are true and accurate.

B. Assets

Real Estate

List all real estate (homes, rental properties, cottages, condominiums, etc.) both within and outside the Province of Alberta in which the corporation owns an interest, including municipal address, legal description, purchase price, balance owing and current market value.

	Municipal Address	Legal Description	Purchase Price	Balance Owing	Current Market Value
1.	<u>NA</u>				
2.					
3.					

List the name and address of any mortgagee for each property described above, as well as the date the mortgage was granted and the amount outstanding on the mortgage.

	Name of Mortgagee	Address of Mortgagee	Date of Mortgage Granted	Amount Outstanding on Mortgage
1.	<u>NA</u>			
2.				
3.				

Motor Vehicles

List all motor vehicles, including cars, trucks, farm machinery, construction equipment, recreational vehicles, aircraft, etc. in which the Corporation owns an interest.

	Type - Make - Model - Year	Serial No.	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

If any of the above vehicles are subject to any liens or encumbrance, specify.

	Holder of Lien or Encumbrance	Date of Lien or Encumbrance	Balance Owning on Lien or Encumbrance
1.	NA		
2.			
3.			

List all fixtures, equipment and inventory.

	Type - Make - Model - Year	Serial Number, if Applicable	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

Bank Accounts

List all deposit accounts, term deposits, annuities, etc., specifying the following:

	Type of Deposit	Name of Institution	Account No.	Branch Address	Amount
1.	checking	BoFM	25159-1068898	ONY branch	Ø
2.					
3.					

Also, specify whether there are any conditions attached to redemption of the account, and, if applicable, any expiry dates.

	Conditions Attached to Redemption	Expiry Date, if Applicable
1.	N/A	
2.		
3.		

Receivables and Ongoing Contracts

List all receivables and ongoing contracts.

SEE ATTACHED Schedule "A"

	Name	Address	Amount Owning
1.			
2.			
3.			

Shares and Securities

If the corporation has holdings in a corporation, complete the following:

List all shares, options, warrants, etc., and their current market value.

	Name of Corporation	Type	Number	Current Market Value	Dividends Payable (if any)	Date Payable
1.	NA					
2.						
3.						

List all bonds and debentures held and their current market value.

	Name of Issuer	Class or Series	Quantity Held	Total Market Value
1.	N/A			
2.				
3.				

List location of all certificates for all corporate holdings and their respective name(s) and address(es).

	Location of Security Certificates or Other Evidence of Ownership of Securities	Name and Address of Broker(s)
1.	N/A	
2.		
3.		

Trust Properties

List all properties or interests held by a Trustee on the Corporation's behalf.

	Description of Assets Held	Location of Assets	Name and Address of Trustee
1.	NA		
2.			
3.			

Other Assets

List all other assets, specifying kind, value and location, and whether solely or jointly owned.

Type of Asset	Description	Sole Owner		Location	Value
		Yes	No		
Interest in other businesses	NA				
Promissory notes, judgment debts	NA				
Loans and mortgages receivable	NA				

List all other assets, specifying kind, value and location, and whether solely or jointly owned (e.g. art, jewellery, bullion).

Description of Asset	Sole Owner		Location	Value
	Yes	No		
NA				

C. Transfer of Property

Has the corporation given away, sold, assigned or otherwise transferred any property (land, buildings, vehicles, money, equipment, inventory, etc.) outside the ordinary course of business within the past year? Specify details below.

Description of Property	To Whom Transferred	Date of Transfer	How Much Money, if Any, Was Recovered By the Corporation?
NA			

D. Insurance


List all insurance policies in which the corporation is named beneficiary, including the insurance company granting the policy, the policy number, the amount, the person insured, the premium and its cash surrender value.

Insurance Company	Policy No.	Amount	Person Insured	Premium	Cash Surrender Value
WA					

E. Additional Income and Assets

List all income and assets not itemized above (legal action claims under insurance policies, etc.).

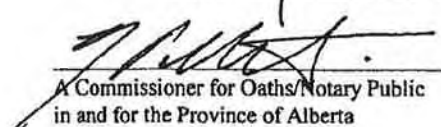
NA

 Wes Serra - Director

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at Calgary

Alberta, on Monday, October 20, 2014


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

Ryan P. Pelletier
Barrister & Solicitor
Print Name and Expiry Date

SCHEDULE "A"**FORM 14 – STATUTORY DECLARATION – FINANCIAL STATEMENT OF DEBTOR (CORPORATE DEBTOR)**

<u>Project</u>	<u>Total Receivable</u>
Chateau:	\$1,021,497.45
CM Millet:	\$260,036.44
Copper Oaks Millet:	\$209,830.24
Dockman:	\$997,397.65
Graybriar Greens 2:	\$1,027,057.95
Jervis:	\$980,171.38
Koeller:	\$1,371,883.69
Strathmore:	\$3,407,606.98
Timbercreek:	\$425,235.22
TOTAL:	\$9,700,717.00

Note 1: All amounts calculated with interest to September 30, 2014

Note 2: All amounts due pursuant and subject to Trust Agreements/Mortgage Administration Agreements between Arres Capital Inc. and each of the various Investors in each project.

APPENDIX G

Project	Party assigned to	Date	Consideration
Jervis	875892 Alberta Ltd.	11-Oct-11	\$ 96,000
Dockman	875892 Alberta Ltd.	11-Jul-12	\$ 105,360
Strathmore \$2 mil	875892 Alberta Ltd.	15-Mar-10	\$ 228,000
Burns Mortgage	875892 Alberta Ltd.	11-May-11	\$ 50,214
Timber Creek	875892 Alberta Ltd.	18-Oct-10	\$ 12,500
Koeller	875892 Alberta Ltd.	29-Jun-10	\$ 31,000
Chateau	875892 Alberta Ltd.	29-Jun-10	\$ 31,000
Graybriar Greens	875892 Alberta Ltd.	30-Sep-10	\$ 97,500
Copper Oaks Millet	Gordon & Mona Snyder	29-Feb-12	\$ 62,500
CTM Millet	Gordon & Mona Snyder	29-Feb-12	\$ 62,500

THIS IS EXHIBIT " D "
referred to in the Affidavit of

David Murphy

Sworn before me this 6th

day of January A.D. 2015

A COMMISSIONER FOR OATHS

BRIAN E. SILVER
Barrister and Solicitor

This agreement made the 11h day of October 2011

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Jervis Mortgage and its receivables derived from the loan administration agreement for the amount of \$96,000.

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Jervis Mortgage and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

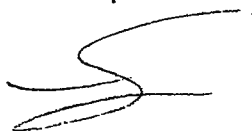
Parcel identifier 024-248-703 Parcel A, District Lot 4055 Group 1,
New Westminster District Imp39216
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave SW T2R 0B3 (Arres)
126 Spring Valley Way (Serra)

Arres Capital


Per:

875892 Alberta Ltd

Per: 

Staci Serra



This agreement made the 11h day of July 2012

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Dockman Mortgage and its receivables derived from the loan administration agreement for the amount of \$105,359.59.

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Dockman Mortgage and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

Plan 8210992 Block 2
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave sw T2R 0B3 (Arres)
126 Spring Valley Way (Serra)

Arres Capital

Per:

875892 Alberta Ltd

PER:

Staci Serra

**Assignment of Mortgage with Arres Capital & Arres Holdings
(Herein after called "Arres")**

This agreement made the day of March 15 2010

Between: Arres Capital / Arres holdings

A corporation with head office located in the city of Calgary
(Hereinafter "Arres") and
875892 Alberta Ltd / Staci Serra

WHEREAS Arres has agreed to assign \$330,000 of its mortgage investment with respect to the Strathmore lands Two million mortgage for an amount of \$228,000 as of February 2010. These amounts will be paid over time by request of Arres to Serra. No interest will be charged on the purchase price. In the event of partial payment proportionate amounts of the mortgage will swapped as the mortgage is paid until paid in full.

Whereas Serra will receive of all amounts owing under that portion of the mortgage loan administration agreement and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the project lands as follows:

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Staci Serra/ 875892 Alberta Ltd all of the original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement if any.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW t2r 0b3 (Arres)
126 Spring Valley Way Sw (Serra)

Arres Capital

Per: 

Arres Holdings

Per: 

Staci Serra 

875892 Alberta Ltd

Per: 

**This agreement made the 11 th day of May 2011
Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Burns Mortgage and its receivables derived from the loan administration agreement in the amount of \$50,213.56

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Burns Building mortgage and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the Burns Building

Lots 17,18,19,20 Blk 61 Plan A Calgary
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it administration receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)
126 Spring Valley Way SW (Serra)

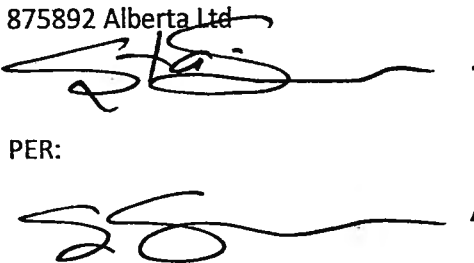
Arres Capital

Per:



875892 Alberta Ltd

PER:



This agreement made the 18th day of October 2010

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

**Between: Arres Capital A corporation with head office located in the city of
Calgary (Hereinafter "Arres")**
And
Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable and investment with respect to the Timber Creek Mobile and its receivables derived from the loan administration agreement in the amount of \$12,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Timber Creek and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of its receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)
126 Spring Valley Way (Serra)

Arres Capital

875892 Alberta Ltd

Per:

PER:

This agreement made the 29 th day of June 2010

Assignment of account receivable with Arres capital
(Herein after called "Arres")

Between: Arres Capital

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Kollar and Chateau Mortgage and its receivables derived from the loan administration agreement for the amount of \$31,000

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Kollar and Chateau Mortgage and of the principal investment and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

- A) land mortgage registered to Kollar. Lot 4 & 5 Plan 3010, Dist 486 Kootenay District
- B) Chateau PID 008-349-843Dist Lot 486 Kootenay District Plan 5563
PID 011-254-963Lot 1 District 486 Kootenay District Plan
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave sw T2R 0B3 (Arres)
126 Spring Valley Way (Serra)

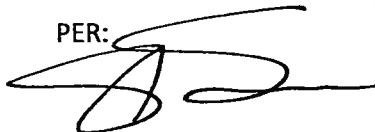
Arres Capital

Per:

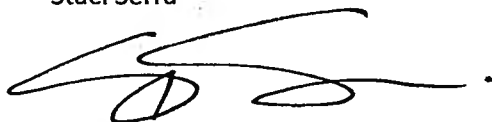


875892 Alberta Ltd

PER:



Staci Serra



May 11 2011

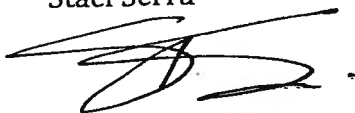
RE: Chateau Fees

By signing below , 875892 Alberta ltd and Staci Serra agree to swap the Burns building receivable with the funds that are now received and paid for the Chateau Assignment. The Chateau funds will be used by Arres for its ongoing operations.

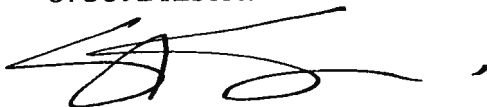
The amount of \$50,213.56 will be for the assignment price to be exchanged for the Burns Building Mortgage outstanding fees.

I authorize Arres Capital to utilize the amount of this assignment for their ongoing operations.

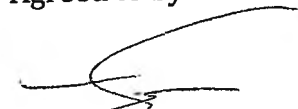
Staci Serra



875892 Alberta Ltd.



Agreed to by



Arres Capital Inc

This agreement made the 30th day of September 2010

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the GRAYBRIAR 2 Mortgage and its receivables derived from the loan administration agreement in the amount of \$97,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Graybriar 2 and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

land mortgage registered to plan 052-0941 block 1 lot c
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of its receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 ave sw t2r 0b3 (Arres)
126 Spring Valley Way (Serra)

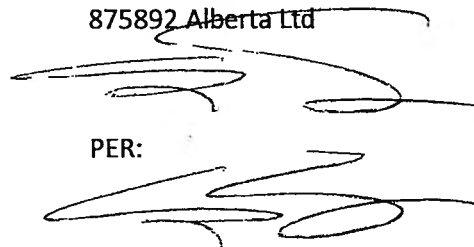
Arres Capital

Per:



875892 Alberta Ltd

PER:



Wes Serra

From: Albert Snook
Sent: Thursday, February 25, 2010 12:54 PM
To: 'Ron'
Subject: Assignment of Accounts receivable...
Attachments: ASSIGNMENT OF ACCOUNTS RECEIVABLES .doc

Attached is the assignment of accounts receivable agreement.

Please review and we will complete the agreement for each project where we can keep them separate. The following is a list of the projects that funds have been lent on.

1. Graywood Mews Phase 2 Project
2. Prospector Phase 1 Project
3. Prospector Phase 2 Project
4. Calibaba Vernon Project
5. Copper Oaks Millet Project
6. Coppertree Meadows Millet Project
7. Copperhorn Chalets (Koeller Holms) Project
8. Copperhorn Chateau
9. Jervis Bay Resort Mortgage
10. Graybriar Greens Phase 1 Project
11. Graybriar Greens Phase 2 Project
12. Strathmore Project
13. Timber Creek Mobile Homes Project

Please let me know if you have any comments or if this is good. If this is good I will get the 13 completed and send them over to you for signing.

Thanks

Albert Snook, CA
 Controller

Arres Capital Inc.
 #205, 707 - 10th Avenue SW
 Calgary, Alberta,
 Canada T2R 0B3

Phone: 403.261.9955
 Fax: 403.264.9954

Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.

Assignment of accounts receivable

This assignment dated the day of 29 February 2012

Whereas Arres capital is owed approximately \$ 62,500 for legal costs advanced to date and including time associated with legal matters related to mortgage registered in Copper Tree Meadows Inc. instrument no 072 239 832.

And whereas Gordon and Mona Snyder have agreed to advance funds to purchase \$62,500 of the receivable by payment of \$62,500 to Arres Capital Inc;

Now therefore, Arres Capital Inc., of the city of Calgary, in the Province of Alberta, hereinafter call the "assignor", in consideration of the sum of \$62,500 now paid by Gordon and Mona Snyder, hereinafter called the "assignee" (the receipt whereof is hereby acknowledged) do hereby grant, transfer, assign and set over unto the assignee, the interest in and to the accounts receivable together with the rate of interest of 15% per annum.

In witness whereof the parties have hereunto set their hand and seals this 29 February 2012.

Signed, sealed and delivered

Arres Capital Inc

In the presence of:

Witness to the signature of Arres Capital Inc

Per.

Witness to the signature of Gordon and Mona Snyder

Gordon and Mona Snyder

Gordon and Mona Snyder

This agreement made the 18th day of October 2010

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable and investment with respect to the Timber Creek Mobile and its receivables derived from the loan administration agreement in the amount of \$12,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Timber Creek and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)
126 Spring Valley Way (Serra)

Arres Capital

Per:

875892 Alberta Ltd

PER:

APPENDIX H

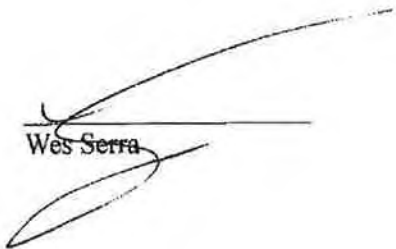
ASSIGNMENT AND ASSUMPTION

TO: Kelly Carins trustee for the Rise

RE: Assignment of amounts owing to Arres Capital due from the trust agreements. (As affirmed by court order of the plan of arrangement.)

1. Arres Capital assigned the administrative charges of the trust agreement with respect to the Rise mortgages to as attached to Wes Serra as of January 31 2009 for payments made to Arres Capital and Management fees by Wes Serra.
2. A total of up to \$95,000 (including the Wes Serra investment assignment attached) are hereby assigned by Wes Serra to Bishop Mc Kensie in trust for Terrapin Mortgage.

Dated this 27nd day of September, 2017.



Wes Serra

YK first mortgage, 2nd mortgage, equity mortgage, winery (Belago), Watermark mortgage, Show home and Discovery center trust agreements and commitments letters that have been paid to date. As well as all future amounts of new loans or amounts owed for administrative charges what so ever are assigned until all payments of share holders loan and management fees due are paid in full by Arres Capital. The amounts owing will accrue until the project is sold or the borrower makes payments. This receivable is secured by way of assignment of trust agreements and commitment letters and all rights that are derived under the terms of the agreement. Arres Capital will not withhold a

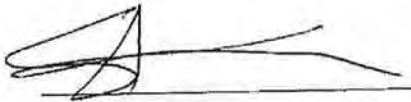
further assignment unreasonably to a party that will make these payments to Staci or Wes Serra.

This assignments and assumptions will be binding upon the assignee and its successors.

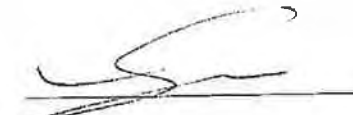
Arres Capital does hereby agree to assign and acknowledges that the amounts owed and due are hereby reduced. Arres agrees to collect these funds for Staci and Wes Serra at its sole cost.

Arres Capital Inc.

Per: 



Stacia Serra



Wes Serra

Acknowledgement

Receipt and consent of this notice is hereby acknowledged by the trustee this 31
day of January 2009.

S136 Ventures Ltd.

Per: 

Authorized signatory

ASSIGNMENT AND ASSUMPTION

TO: ARRES CAPITAL INC. ("Arres")

RE: Amended Declaration of Bare Trust and Agency Agreement, dated January 7, 2006 and October 27, 2006 between S 136 Ventures Ltd. and Kurt and Friedlinde Fuss, and any amendments thereto (the "Trust Agreement")

Unless otherwise indicated, terms defined in the Trust Agreement have the same meanings when used herein.

1. Arres acknowledges that its proper officers have received and reviewed a copy of the Trust Agreement.
2. Kurt Fuss and Friedlinde Fuss (the "Assignors") have agreed to and do hereby sell, assign and transfer to the undersigned (the "Assignee") their entire interest in the Trust Agreement including 100% of their Proportionate Share, and accordingly, the undersigned has agreed to execute this Assignment and Assumption and deliver an original of it to the Trustee.
3. The Assignee agrees to assume all liabilities and obligations of the Assignors to the extent of the Assignee's commitment as proposed for in the Trust Agreement and herein and the Assignors are hereby released and discharged completely from all such obligations and liabilities flowing under or relative to the Trust Agreement.

[The rest of this page is left intentionally blank]

This Assignment and Assumption will be binding upon the Assignee and its successors and permitted assigns and may be executed in counterpart and by facsimile.

Dated this 1 day of Decem, 2012. 2013

Assignee: ARRES HOLDINGS INC.

Per: [Signature]

Name: WES SERRA

Title: PRESIDENT

The Assignors hereby acknowledge the above Assignment and Assumption and agree that their commitment is reduced by an amount equal to the commitment assigned to the Assignee hereby.

Dated this 2 day of Nov., 2013 11.9.
2012. 8.8

Per: [Signature]

Name: Kurt Fuss

Per: [Signature]

Name: Friedlinde Fuss

Consented to and acknowledged this 1 day of Decem, 2012 2013 by:

ARRES CAPITAL INC.

Per: [Signature]

Name: WES SERRA

Title: PRESIDENT

ASSIGNMENT AND ASSUMPTION

TO: Kelly Carins trustee for the Rise

RE: Assigned amounts owing to Arres Capital due from the trust agreements as affirmed by court order of the plan of arrangement.

1. Arres Capital has assigned the administrative charges of the trust agreement to Wes Serra as of January 31 2009 for payments made to Arres Capital and Management fees. These charges were voted on by investors and accepted by the court in the plan of arrangement.
2. A total of up to \$95,000 (including the Wes Serra investment assignment attached) are hereby assigned by Wes Serra.
3. The balance of the amounts due with interest at the rate of the existing terms of the mortgage as per court order shall be paid to Wes Serra.

Dated this 27nd day of September, 2017.

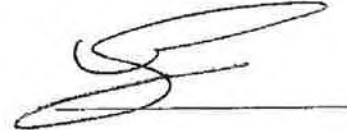

Wes Serra

This Assignment and Assumption will be binding upon the Assignee and its successors and permitted assigns and may be executed in counterpart and by facsimile.

Dated this 27nd day of September, 2017.

Assignee:

Per:

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'Z' shape with a horizontal line extending to the right.

The Assignor hereby acknowledge the above Assignment and Assumption and agree that their commitment is reduced by an amount equal to the commitment assigned to the Assignee hereby.

Dated this 27nd day of September, 2017.

Assignor:

Per:

NOTICE OF ASSIGNMENT

THIS NOTICE OF ASSIGNMENT is given the 9th day of September, 2009

TO: S136 Ventures Ltd and /or Arres Capital Inc.
(the "Trustee")

FROM: Arres Capital Inc.

AND FROM: Stacia Serra

Take notice that Arres Capital Inc. has assigned to Staci Serra all of its rights, title and ongoing and accrued interest in and to the loan and related loan security over the lands and premises:

YK Discovery Centre(as per the Trust agreement)

Lot 2, Plan KAP78953, Section 31, Township 9, ODYD, PID-026-773-660

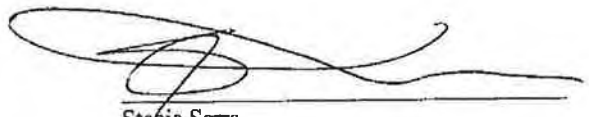
(As per the original trust agreement)

This is assigned for the original principle value of \$10,188.00 as described in the trust agreement attached hereto in consideration.

Arres Capital Inc.

Per: 

Witness


Stacia Serra

Acknowledgement

Receipt of this notice is hereby acknowledged by the trustee this _____ day of _____ 2010.

S136 Ventures Ltd.

Per: 

Authorized signatory

NOTICE OF ASSIGNMENT

THIS NOTICE OF ASSIGNMENT is given the 9th day of September, 2009

TO: S136 Ventures Ltd and /or Arres Capital Inc.
(the "Trustee")

FROM: Arres Capital Inc.

AND FROM: Stacia Serra

Take notice that Arres Capital Inc., has assigned to Staci Serra all of its rights, title and ongoing and accrued interest in and to the loan and related loan security over the lands and premises:

YK Show Home (as per the Trust agreement)

Lot 20, Plan KAP78952, Section 31, Township 9, ODYD, PID-026-472-414

(As per the original trust agreement)

This is assigned for the original principle value of \$15,750.00 as described in the trust agreement attached hereto in consideration.

Arres Capital Inc.

Per: _____

Witness _____

Stacia Serra

Acknowledgement

Receipt of this notice is hereby acknowledged by the trustee this _____ day of _____ 2010.

S136 Ventures Ltd.

Per: _____

Authorized signatory

IRREVOCABLE ASSIGNMENT, AUTHORIZATION AND DIRECTION

I, Staci Serra, currently of the City of Calgary, in the Province of Alberta, HEREBY IRREVOCABLY ASSIGN unto Bishop & McKenzie LLP in trust for Terrapin Mortgage Investment Corp., any and all funds payable to me by Kelly Cairns trustee for The Rise.

THIS ASSIGNMENT IS IRREVOCABLE. Once all payments of all funds owing to me are made this Irrevocable Assignment of Proceeds becomes null and void.

DATED at the City of Calgary, in the Province of Alberta, this 28 day of September, 2017.

SIGNED in the presence of:)

)
)

Witness) Staci Serra

WESERRA

I agree Staci Serra
[Signature]

IRREVOCABLE ASSIGNMENT, AUTHORIZATION AND DIRECTION

I, Wes Serra, currently of the City of Calgary, in the Province of Alberta, HEREBY IRREVOCABLY ASSIGN unto Bishop & McKenzie LLP in trust for Terrapin Mortgage Investment Corp. Funds up to the amount of \$95,000.00 payable to me by Kelly Cairns trustee for The Rise.

THIS ASSIGNMENT IS IRREVOCABLE. Upon payment of the above noted sum, this Irrevocable Assignment of Proceeds becomes null and void.

DATED at the City of Calgary, in the Province of Alberta, this 28 day of September, 2017.

SIGNED in the presence of:)

)
)
_____) Staci Serra.
Witness) Wes Serra



APPENDIX I



NOTICE OF STATEMENT OF RECEIVER
(Subsections 245(1) and 246(1) of the Act)

**IN THE MATTER OF THE RECEIVERSHIP OF
ARRES CAPITAL INC.
(the “Company” or “Arres”)**

The receiver gives notice and declares that:

1. On Wednesday, July 26, 2017, pursuant to Part 9 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 of Alberta, Alvarez & Marsal Canada Inc. became the Court-appointed receiver (the “**Receiver**”), without security, in respect of all the property of the Company, an insolvent person, including all Exigible Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings (collectively, the “**Property**”), as including but not limited to the following property:

	Estimated Book Value
Accounts receivable	Unknown
Other	Unknown
<hr/>	
Total net book value of assets	\$ Unknown

2. Alvarez & Marsal Canada Inc. became the Receiver in respect of the Property described above by virtue of an Order of the Court of Queen’s Bench of Alberta (the “**Court**”) dated July 26, 2017 (the “**Receivership Order**”). The effective date of the Receivership Order (date of pronouncement) is February 13, 2015. For a copy of the Receivership Order, it may be found on the Receiver website at: www.alvarezandmarsal.com/arrescapital.
3. Upon receiving the Receivership Order, the Receiver made arrangements with the Debtor and took possession and control of the Property described above between August 1 to 4, 2017. The books and records of the Debtor were located at the Debtor’s personal residence and the Receiver was unable to gain access by the Debtor to his personal residence until August 1, 2017.
4. The following information relates to the receivership:
 - a) Civic Address: 126 Spring Valley Way S.W.
 - b) Principal line of business: Mortgage Broker / Trustee
 - c) Location of business: Calgary, Alberta

d) Amounts owed by the Company to each creditor, according to books and records as at July 26, 2017 are shown below:

<u>Name</u>	<u>Claim Amount</u>
Secured creditors (see attached listing)	\$ 0
Unsecured creditors (see attached listing)	\$ 1,028,879.99
Total	\$ 1,028,879.99

e) The Receiver's contact is:

Alvarez & Marsal Canada Inc.
Bow Valley Square 4
Suite 1110, 250 6th Ave SW
Calgary, AB T2P 3H7

Attention: Mr. Bryan Krol
Telephone: (403) 538-7523
Facsimile: (403) 538-7551

- At the time of preparing this Notice of Statement of Receiver, the Company's books and records were incomplete and the Receiver did not have enough information to verify the book value of the Company's assets and liabilities. The Receiver continues to review the books and records of the Company pursuant to the Receivership Order.
- 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 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.

Dated at Calgary, Alberta this 4th day of August, 2017.

**Alvarez & Marsal Canada Inc., in its capacity as
the Court Appointed Receiver of
Arres Capital Inc., and not in its
personal or corporate capacity**



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

APPENDIX A

**IN THE MATTER OF THE RECEIVERSHIP OF
ARRES CAPITAL INC.**

Preliminary List of Creditors as at July 16, 2017, as submitted by the Debtor without Admission as to any Liabilities or Privilege Herein Shown

Secured Creditors	Address	City	Province/State	Postal Code/Zip Code	Country	Amount Outstanding
						\$
Total Secured creditors						\$0.00
Unsecured Creditors	Address	City	Province/State	Postal Code/Zip Code	Country	Amount Outstanding
Access Mortgage Corp.	Suite 230, 6125 11th Street S.E.	Calgary	AB	T2H 2L6	Canada	\$ 1,028,879.99
Total Unsecured Creditors						\$ 1,028,879.99
Total Creditors						\$1,028,879.99

APPENDIX J



Memorandum

September 24, 2017

To: Alvarez & Marsal Canada Inc.

From: McCarthy Tétrault LLP

Re: Exigible Property of Arres Capital Inc.

***PRIVILEGED & CONFIDENTIAL*:** This document is created for the purpose of providing legal advice to the Receiver and for the dominant purpose of advising and obtaining instructions from the Receiver. Privilege is claimed over the content of this memorandum on the grounds of solicitor-client privilege, litigation privilege and solicitors' brief privilege. To minimize the risk of inadvertently waiving privilege, circulation of this document should be restricted to the Receiver. This document should not be disclosed to third parties without the prior consent of McCarthy Tétrault LLP or the Receiver. We anticipate this memorandum being filed on the court record and, to the extent that it is so filed, such filing will not constitute or be deemed to constitute a waiver of privilege by the Receiver other than over the express contents of this memorandum including, without limitation, any previous drafts or advice relating thereto.

Introduction

Upon the application of Access Mortgage Corporation (2004) Limited (the "**Creditor**"), Alvarez & Marsal Canada Inc. was appointed under the *Civil Enforcement Act* (the "**CEA**")¹ to act as a receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**") pursuant to an order pronounced by Honourable Madam Justice Strekaf on February 13, 2015 and entered on July 26, 2017 (the "**Order**"). The Order appointed the Receiver, without security, over all of the Debtor's current and future Exigible Property, as defined the Order, wherever situated, including all proceeds thereof. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Order.

You have requested our advice on the scope of the Exigible Property in order to assist you in complying with the obligation contained in paragraph 30 of the Order that requires the Receiver to report on the determination and calculation of the Exigible Property. Accordingly, this memorandum will address the scope of the Exigible Property for the purposes of the Order.

As you are aware, the court-appointed Receiver represents neither the interests of the Creditor nor the Debtor. Rather the Receiver is an officer of the Court and is entrusted to discharge its powers granted by the Order. The Receiver has a duty to comply with such powers and to act honestly and in the best interest of all stakeholders. You have requested that we address this issue because of a dispute between the Creditor and the Debtor

¹ RSA 2000, c C-15, s 1(1)(u).

regarding the Exigible Property and for the express purposes of assisting you in fulfilling your duties and obligations under the Order.

Conclusion

Our conclusion is that the Exigible Property consists of all the Debtor's assets, properties and undertakings including, without limitation, (a) debts due to the Debtor either now or in the future and (b) causes of action.

The Order provides that the Exigible Property is all property that is not exempt from writ proceedings or distress proceedings. The Order has been issued pursuant to the CEA and both writ proceedings and distress proceedings are proceedings that are authorized and governed by the CEA. Under the CEA, only an individual can take the benefit of exemptions available from writ proceedings or distress proceedings. As the Debtor has no property of any type that is exempt from writ proceedings or distress proceedings, it necessarily follows that the Exigible Property consists of all of the assets, properties and undertakings of the Debtor.

The Exigible Property

1. The CEA

- Where exigible property of a debtor cannot be conveniently realized, Part 9 of the CEA enables the Court to appoint a receiver of the property on application of an enforcement creditor.² Unless otherwise ordered by the Court, a receiver may take into its custody and control the property over which it is appointed.³
- "Property" is defined under section 1(1)(II) of the CEA to include (and is not limited to):
 - (i) things, as well as rights or interests in things,
 - (ii) anything regarded in law or equity as property or as an interest in property,
 - (iii) any right or interest that can be transferred for value from one person to another,
 - (iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and
 - (v) any cause of action.
- With respect to exigible property, "exigible" is defined under section 1(1)(u) of the CEA as property that is "not exempt from writ proceedings or distress proceedings." Section 1(1)(t) of the CEA states that property may be:
 - exempt from writ proceedings in accordance with Part 10; or

² Ibid, s 85(1)(a).

³ Ibid, s 87(c).

- exempt from distress proceedings in accordance with sections 104(d) and 105(1)(b).
- With respect to exemptions under Part 10 of the CEA, section 93(a) of the CEA states that the exemptions set out in Part 10 do not apply to an enforcement debtor that is not an individual.
- With respect to exemptions under sections 104(d) and 105(1)(b) of the CEA, each of these sections pertains to exemptions for the benefit of spouses, adult interdependent partners and children under the age of majority in landlord or mortgagee distress proceedings.

2. The Order

- **“Debtor’s Property”** is defined at paragraph 2 of the Order as, “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.”
- **“Exigible Property”** is defined at paragraph 3 of the Order as, “any of the Debtor’s Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings.”

3. Analysis

The terms **“Debtor’s Property”** and **“Exigible Property”** in the Order are consistent with the definitions of “property” and “exigible” in the CEA, respectively. Thus, the terms of the Order should be applied in a similar manner to the way the CEA is interpreted.

*Stout & Company LLP v Chez Outdoors Ltd (“Stout”)*⁴ provides guidance on the interpretation of terms in the CEA and determining what constitutes exigible assets under the CEA. In this case, the Honourable Madam Justice Moreau adopted the Supreme Court of Canada’s analytical approach in *Saulnier v Royal Bank of Canada*, (**“Saulnier”**)⁵ to find that “the definition of ‘property’ should be interpreted in a purposeful way having regard to its entire context, in its grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.”⁶ Although *Saulnier* involves the interpretation of the term “property” under the BIA and *Personal Property Security Act* (Nova Scotia), and not the CEA, these statutes have basic policy objectives of non-exempt assets being made available to creditors. Furthermore, in *Stout*, Justice Moreau rejected the defendant’s argument that *Saulnier* was distinguishable because it involved other statutes and proceeded to apply *Saulnier* in the context of the CEA.⁷

⁴ 2009 ABQB 444 [Stout].

⁵ 2008 SCC 58 at para 16.

⁶ Stout, supra note 6 at para 35.

⁷ Ibid at paras 33, 35.

Justice Moreau considered the Alberta Court of Appeal's decision in *Phan v Lee*⁸ where the Court identified the purpose of the CEA as providing creditors workable remedies against debtors.⁹ She went on to consider the report and recommendations issued by the Alberta Law Reform Institute in March 1991, *Enforcement of Money Judgments*, Report #61 ("**Report #61**"), which guided the Legislature in enacting the CEA. Justice Moreau held that the concepts of universal exigibility and just exemptions identified in Report #61, when considered together:

...signify that all the property of a judgement debtor should be subject to enforcement regardless of its form or character, excepting only property that has been excluded deliberately from enforcement that is sufficient to permit debtors to maintain themselves and their dependents at a reasonable standard.¹⁰

Justice Moreau went on to confirm that, in view of section 93(a) of the CEA, which states that the exemptions set out in Part 10 do not apply to a debtor that is not an individual, it was clear that these exemptions did not apply to the defendant corporation.¹¹

Justice Moreau provided a broad definition of "property" that was to be interpreted purposefully and according to the scheme of the CEA. The definitions of "property" in the CEA and "Debtor's Property" in the Order both include non-exhaustive lists through the use of the term "includes". This also used in the definition of the term "property" in the BIA as interpreted in *Saulnier*. Given the similarities between the terms and the Supreme Court of Canada interpretation, the term Exigible Property should be interpreted broadly as well.

Pursuant to section 93(a) of the CEA and the Court's application in *Stout*, the property exemptions listed in Part 10 of the CEA are inapplicable to this case as they do not apply to an enforcement debtor that is a corporation. We are therefore of the view that the Exigible Property consists of all the assets, properties and undertakings of the Debtor. In particular, we are of the view that the Exigible Property includes (a) debts due to the Debtor either now or in the future and (b) causes of action.

The Debtor's Authorities

The Debtor has provided the Receiver with two case authorities that purport to support its interpretation of the Order. We have assessed these authorities below.

The Debtor relies on *Cobalt Construction Inc v Kluane First Nation* (2013) ("**Cobalt Construction**"),¹² where the Court states at paragraph 14 that "...land which is encumbered by debts exceeding its value would not be considered exigible, since the secured creditors would be paid in priority to any unsecured judgment creditors". The CEA does contain various provisions that deal with secured creditors and secured obligations. It is trite law that if property is subject to a valid lien, charge or other encumbrance the proceeds from the disposition of such property must be used to pay the beneficiary of such security in full

⁸ 2005 ABCA 142 at para 44.

⁹ *Stout*, supra note 6 at para 36.

¹⁰ *Ibid* at para 38.

¹¹ *Ibid*.

¹² 2013 YKSC 124.

before being used to satisfy the claims of the Creditor or other unsecured creditors. However, we are unaware of there being any secured creditors of this estate. Therefore, even in *Cobalt* is applicable, it is irrelevant to the current fact situation.

The Debtor also relies on the decision in *Frueh v Mair* ("**Frueh**")¹³ that stands for the proposition that a court cannot appoint a receiver under the *Judicature Act* for a money judgment. Given the broad scope of section 85 and 86 of the CEA, in the event that the Receiver is desirous of amending or varying the Order there is no need to invoke section 13(2) of the *Judicature Act*. In addition, *Frueh* involves a personal enforcement debtor where exemptions were applicable and a receiver was appointed over a specifically identified asset (benefits payable by Air Canada to enforcement debtor). Conversely, our case involves a corporate debtor and a receiver who has been appointed over all Exigible Property, which as previously concluded, is all of the Debtor's Property.

Neither of the authorities provided by the Debtor change our conclusion on the Exigible Property issue.

¹³ 1998 ABQB 738.

APPENDIX K

Government of Alberta ■ Corporation/Non-Profit Search Corporate Registration System

Date of Search: 2017/09/22
Time of Search: 09:22 AM
Search provided by: THE LICENSING COMPANY (CALGARY) INC.

Service Request Number: 27717223
Customer Reference Number:

Corporate Access Number: 208758920
Legal Entity Name: 875892 ALBERTA LTD.

Legal Entity Status: Active
Alberta Corporation Type: Numbered Alberta Corporation
Registration Date: 2000/04/17 YYYY/MM/DD

Registered Office:

Street: C/O PELLETIER LAW, #3300, 205 - 5 AVENUE S.W.
City: CALGARY
Province: ALBERTA
Postal Code: T2P 2V7

Records Address:

Street: C/O PELLETIER LAW, #3300, 205 - 5 AVENUE S.W.
City: CALGARY
Province: ALBERTA
Postal Code: T2P 2V7

Directors:

Last Name: SERRA
First Name: STACIA
Street/Box Number: 1324 - 11 AVENUE SW, SUITE 204
City: CALGARY
Province: ALBERTA

Postal Code: T3C 0M6

Voting Shareholders:

Last Name: SERRA
First Name: STACIA
Street: 1324 - 11 AVENUE SW, SUITE 204
City: CALGARY
Province: ALBERTA
Postal Code: T3C 0M6
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SCHEDULE "A" ATTACHED HERETO AND FORMING PART
 HEREOF.

Share Transfers NO SHARES OF THE CAPITAL OF THE CORPORATION SHALL BE
Restrictions: TRANSFERRED WITHOUT THE SANCTION OF A MAJORITY OF THE
 DIRECTORS OF THE CORPORATION, AS EVIDENCED BY A
 RESOLUTION IN WRITING OF THE DIRECTORS.

Min Number Of 1
Directors:

Max Number Of 10
Directors:

Business
Restricted To: NO RESTRICTIONS

Business
Restricted NO RESTRICTIONS
From:

Other SEE SCHEDULE "B" ATTACHED HERETO AND FORMING PART
Provisions: HEREOF.

Holding Shares In:

Legal Entity Name
GRAYWOOD TERRACE DEVELOPMENT INC.
COPPERTREE MORTGAGE INC.
1740247 ALBERTA LTD.

1798582 ALBERTA LTD.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2017	2017/04/26

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2000/04/17	Incorporate Alberta Corporation
2011/11/15	Change Director / Shareholder
2015/03/30	Change Address
2017/04/26	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2000/04/17
Other Rules or Provisions	ELECTRONIC	2000/04/17

This is to certify that, as of this date, the above information is an accurate reproduction of data contained within the official records of the Corporate Registry.



COURT FILE NUMBER 1401 - 12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA

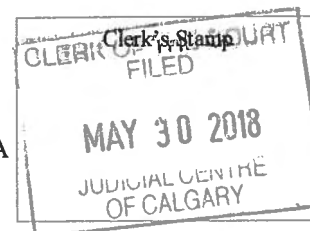
JUDICIAL CENTRE CALGARY

PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LIMITED

DEFENDANT ARRES CAPITAL INC.

DOCUMENT **SECOND REPORT OF THE RECEIVER**

May 29, 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/Amelia Tritter
Phone: (403) 260-3531 / 3710 / 3613
Fax: (403) 260-3501
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca /
atritter@mccarthy.ca



ALVAREZ & MARSAL

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APPENDIX V	McCarthy Fee Schedule

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. Accordingly the Bankruptcy Order is stayed and A&M is taking no steps in the bankruptcy.
3. On October 23, 2017, the Receiver sought advice and direction from this Honourable Court to amend the Receivership Order. The Receiver informed the Court that it did not believe it could properly administer the estate of the Debtor on the current terms of the Receivership Order. As a result, an amended and restated order to the Receivership Order (the "**Amended Receivership Order**") was granted by Madame Justice B.E.C Romaine that, amongst other things, amended the existing Receivership Order to that of the Alberta Model Order.
4. The purpose of this second report of the Receiver (the "**Second Report**" or "**this Report**") is to provide this Honourable Court with information in respect of the following:
 - a) the activities, generally, of the Receiver since its First Report dated October 11, 2017;

- b) an update on the Receiver's review with respect to the validity, priority and existence of the Assigned AR, Purported Project Receivables and the various assignments.
 - c) confirmation that the Receiver's Charge applies to approximately \$1.38 million held either in Court or held in a solicitor's trust account, which arise from the sale of the certain units (townhomes) owned by the Graybriar Project (the "**Graybriar Funds**");
 - d) confirmation that the Receiver's Charge applies to the \$235,000 currently held in Court File No. 1201-16440 (the "**Court Funds**"), which, for clarity, does not form part of the **Graybriar Funds**, as defined above;
 - e) a direction from this Court that the **Graybriar Funds** and the **Court Funds** (collectively, the "**Funds**") be released to and held by the Receiver (with authority to make payment of amounts due on the Receiver's Charge);
 - f) the approval by this Court of a proposed Claims Process Order in within the Receivership Proceedings that is limited to claims as against the Graybriar Funds;
 - g) the cash flow for the period from July 26, 2017 to May 27, 2018 (the "**Reporting Period**") and forecast fees and costs of the Receiver;
 - h) the Receiver's next steps and recommendations.
5. Capitalized words or terms not defined or ascribed a meaning in the Second Report are as defined or ascribed a meaning in the Receivership Order, Amended Receivership Order and the First Report.
 6. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

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

BACKGROUND

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 not limited to all types of residential and commercial, first and second mortgages, builders mortgages, debt consolidations and interim financing. As part of its business, Arres arranges mortgage loans with borrowers, raises the mortgage funds through a group of private investors and then administers the mortgages (trustee) on behalf of the investors.
10. Arres acts as a trustee and is a registered mortgage broker for certain projects in British Columbia and also has interests in various other projects in Alberta, but is currently not registered as a mortgage broker in Alberta.
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 has been posted by the Receiver on its website at: www.alvarezandmarsal.com/arrescapital (the "Receiver's Website").

ACTIVITIES OF THE RECEIVER

12. Since the First Report, the Receiver's activities have included the following, but are not limited to:

- a) the continued review of the accounting, books and records various of the Company that were known and available to the Receiver;
- b) reviewing Arres' various trust agreements in greater detail with respect to the Projects (as discussed and defined in the First Report) that is considered Exigible Property, in consultation with its independent legal counsel McCarthy Tetrault LLP ("McCarthy");
- c) multiple meetings with Mr. Wes Serra of Arres at the Receiver's office to review additional information provided by Mr. Serra regarding various Project "assignments" made by Arres to Mr. Serra's spouse, a corporation controlled by Mr. Serr's spouse or a third-party and/or Mr. Serra, personally, relating to Project accounts receivables and investments;
- d) numerous meetings with representatives of Access and other Project investors with respect to Arres' matters;
- e) specific review of the Graybriar Greens Inc. ("Graybriar"), as discussed further below;
- f) calls with former legal counsel of Arres (British Columbia counsel) regarding obtaining information relating to certain BC Projects;
- g) collection of certain outstanding funds held in court relating to the Jervis Inlet Resort ("Jervis") Project;
- h) organizing, analyzing, and evaluating the books and records as well as information pertaining to the various Arres projects; and

- i) attending numerous and on-going meetings and discussions with the Debtor, Access and their respective legal counsels regarding the Receivership Proceedings, generally, and discussion on the Receiver's interpretation of Exigible Property.

UPDATED ON BOOKS AND RECORDS AND PURPORTED RECEIVABLES

Projects

13. As previously reported, the Receiver understands that there are several "projects" where Arres raised mortgage funds for borrowers from a group of investors and then (in certain cases) administered these mortgages (as a trustee) on behalf of the various investors over the years. These "projects" are outlined in the First Report, which are summarized below:

- a) Graybriar Greens Inc. ("**Graybriar**")
- b) Jervis Inlet Resort ("**Jervis**")
- c) Coppertree Meadows - Millet ("**CT Millet**")
- d) Copper Oaks – Millet ("**CO Millet**")
- e) Copperhorn Chateau ("**Chateau**")
- f) Copperhorn Chalets Koeller-Holms ("**Koeller**")
- g) Timber Creek Mobile Home ("**Timber Creek**")
- h) Chestermere - Dockman & Associate ("**Dockman**")
- i) Strathmore ("**Strathmore**"); and
- j) Okanagan Hills Corporation Ltd. (the "**Rise**")

(collectively referred to as the "**Projects**")

14. The majority of the Projects have either been sold and/or Arres is no longer the trustee or broker on these projects, with the exception of a few of the Projects.
15. The interest Arres' (Mr. Serra) claims in the Projects is an interest relating to outstanding brokerage fees, renewal fees, interests and other costs, in Arres' capacity as the administrator of these loans and/or trustee, as discussed further below.

Accounting Records

16. Based on the Receiver's review, the books and records are incomplete and are not up to date.
17. Since the First Report, the Receiver continued to review the accounting records of Arres and obtain certain additional financial statements from Mr. Serra with respect to the Company. The Receiver is now in possession of Arres' financial statements for the year-ending July 31, 2014, 2015 and 2016.
18. The Receiver further reviewed the electronic accounting records of Arres and based on its review of these records, the last accounting entries recorded by Arres in the accounting system were on July 31, 2014. The Receiver was unable to identify any electronic journal entries or accounting entries that would support the financial statements for fiscal 2014 – 2016.
19. Based on July 31, 2016 balance sheet, it would appear that the Purported Project Receivables (defined below) of approximately \$21.2 million, which includes certain "assigned account receivables", continues to be not recorded in the Company's financial statements nor its accounting records. The only asset reported in Arres is for property plant and equipment of approximately \$6,000. The Company reports approximately \$91,000 in total liabilities and did not include the outstanding obligation (judgement creditor) of Access for approximately \$1 million (as discussed below) its financial statements nor the Company's books and records.

Update on Purported Project Receivables

20. Since the First Report, the Receiver had continued communication with Mr. Serra and further reviewed the excel schedules that calculated the amounts Mr. Serra believed was owing to Arres with respect to various brokerage fees, interest and costs from the above-mentioned Projects (the “**Purported Project Receivables**”).
21. As previously reported, the total outstanding obligations Mr. Serra believes is owing to Arres with respect to the Purported Project Receivables total approximately \$21.2 million. The Receiver has not been able trace the majority of the Purported Project Receivables back to the Company’s accounting records and/or to any of physical back-up (invoices), other than certain of the trust agreements that outline specific fees, costs and interest % rates Arres may be permitted to charge investors. The various fees, interest and costs calculated by Mr. Serra on the excel files calculated by Mr. Serra dates back largely to July 2008 and is calculated to May 2017.
22. Other than certain additional information that Mr. Serra was able to provide the Receiver respecting the “AR Assignments” (defined below) since the First Report, there was limited additional accounting information that was provided to substantiate the validity and collectible of the Purported Project Receivables.
23. Based on the Receiver’s and its legal counsels review of the various Project trust agreements, the Receiver’s review of various accounting information and its understanding when the Projects seized to have the Arres’ involvement (i.e. Arres no longer being the trustee or broker on the Projects, with the exception of a few of the Projects), the Receiver believes that the majority of the \$21.2 million being claimed by Arres as against the Projects appear unsubstantiated, save and expect certain administrative and out-of-pocket costs that were incurred. The Receiver is currently finalizing its review of these certain administrative and out-of-pocket costs said to have been incurred for each Project, but expects that these amounts are not material and/or may not be collectible for certain Projects.

Assigned AR and Assignments

Assigned AR

24. As previously reported to this Court, on October 20, 2014, Mr. Serra (a representative of the Debtor) reported on a statutory declaration, pursuant to section 35.10 of the CEA, indicating that Arres has a significant asset of outstanding accounts receivables owed to the Company of approximately \$9.7 million from the various Projects. A copy of the statutory declaration was attached as an appendix to the First Report.
25. The \$9.7 million listed on the statutory declaration form was purportedly assigned either to Mr. Serra's spouse, a corporation controlled by Mr. Serra's spouse or a third party, as discussed further below. The dates of these "assignments" were made in the period March 2010 to July 2012, which was prior to the statutory declaration being made by Mr. Serra (the "**Assigned AR**"). The statutory declaration makes no mention that these receivables were assigned to a third party and therefore are not assets of the estate. The Receiver is advised by Mr. Serra that the Assigned AR forms part of the Purported Project Receivables.

Assignments

26. As discussed above, the Receiver is in possession of various assignments made by Arres to his wife and/or a company owned and controlled by her (875892 Alberta Ltd.) and another party since March 2010 to July 2012 with respect to the various project receivables, which largely relate to the Purported Project Receivables and Assigned AR (the "**Assignments**"). A copy these Assignments were attached as an appendix to the First Report.
27. Since the First Report, the Receiver met with Mr. Serra on a couple of occasions and was provided additional (new) assignments on various other projects Arres was involved in the past, including back up of cheques showing payment of the consideration mentioned for certain of the Assignments (not all), bank statements and certain other information. The Receiver understands that the Receiver in the

Receivership Proceedings and Trustee in the bankruptcy proceedings continue to look into the validity of parties claims in the Receivership and bankruptcy and also, determining the validity and enforceability of the assignments (when they were made) vis a vi the initial bankruptcy event of Arres. The issues and concerns of the Assignments, in particular the Graybriar Assignment (defined below), is discussed further below.

28. The Receiver understands that a proof of claim was filed by Mr. Serra, Ms. Staci Serra (Mr. Serra's spouse) and Ms. Marlene Serra (Mr. Serra's mother) with the Trustee in the bankruptcy proceedings. The three (3) parties filed secured claims largely relating to the Purported Project Receivables that were "assigned" by Arres to the three parties for over \$21 million. The Receiver further understands that the Trustee will be responding pursuant to these proof of claims filed in the bankruptcy proceedings in the event that the Trustee has assets vest in it.

THE GRAYBRIAR FUNDS AND COURT FUNDS

Overview

29. The Graybriar Funds and the Court Funds represent the most significant realizable assets of the Debtor to date. However, the history of the various proceedings concerning the Graybriar Funds and the Court Funds has been contentious, protracted, and costly. The Receiver has appended various records relevant to the Graybriar Funds and Court Funds to this Report.

The Graybriar Project, Arres Mortgages and the Investor Agreements

30. Graybriar Land Company Ltd. ("**Graybriar**") was the owner of certain lands (the "**Lands**") which were developed into the Graybriar Phase 1 and Graybriar Phase II condominiums which included units 48, 55, 63, 65, 67, 68, and 69 (collectively, the "**Units**" and individually, a "**Unit**") under Condominium Plan 0827766. The Units are the source of the "Graybriar Funds".

31. In order to finance the development of the Lands, the Debtor advanced certain funds, in the approximate cumulative amount of \$9.7 million, to Graybriar (collectively, the “**Arres Advances**”).

32. The Arres Advances were secured pursuant to the following Mortgages:
 - a) a Mortgage, dated November 5, 2006, as granted by Graybriar to and in favour of Arres, as security for the repayment of \$2,800,000; and,
 - b) a Mortgage, dated August 15, 2007, as granted by Graybriar to and in favour of Arres, as security for the repayment of \$9,700,000.

(collectively referred to as, the “**Arres Mortgages**”)

33. Arres was able to raise the funds necessary to make the Arres Advances by soliciting investment from various persons (collectively, the “**Graybriar Investors**”) pursuant to various commitment letters and trust agreements (the “**Investor Agreements**”) a sample of which is attached as Appendix A hereto. The Receiver’s view is that, pursuant to such Investor Agreements, Arres holds the Arres Mortgages and is to administer same as bare trustee to and for the benefit of the Graybriar Investors. Furthermore, in accordance with the terms and conditions of the Investor Agreements, Arres is allowed to set off and deduct certain administrative costs, fees, and expenses, associated with Arres’ management of the Arres Mortgages, prior to distributing any and all proceeds realized thereon to the Graybriar Investors, as beneficial owners of the Debtor’s interests under Arres Mortgages. As previously discussed, the Receiver has reviewed Arres’ claim of purported funds outstanding to Arres from the Graybriar Investors and believes these claims to be unsupported, with the exception of certain administrative and out-of-pocket costs.

34. The Arres Mortgages attached to, encumbered, and were registered against all of the Units prior to the Units being sold as part of the Graybriar foreclosure proceedings.

The Graybriar Foreclosure Proceedings

35. Arres preliminary attempted to acquire the Units was under the Amended Order – Sale to Plaintiff, granted by Master L.A. Smart on February 3, 2014 (the “**Sale to Plaintiff Order**”), which declared one of the Arres Mortgages as being valid and enforceable over the Units and accepted Arres’ offer to purchase the Units, by way of a credit bid, of the outstanding obligations thereunder. A copy of the Sale to Plaintiff Order is attached as Appendix “E” hereto. However, the Sale to Plaintiff Order was subsequently temporarily stayed pursuant to the Order of the Honourable Justice S.D. Hillier, granted on February 14, 2014 (the “**Stay Order**”). A copy of the Stay Order is attached as Appendix “F” hereto.
36. As discussed in greater detail below, Terrapin Mortgage Investment Corp. (“**Terrapin**”) was financing the acquisition of four of the Units by 1798582 Alberta Ltd. (“**179 Alberta**”), a related party to Arres. 179 Alberta was intending to acquire four Units from Arres after Arres acquired them by way of the Sale to Plaintiff Order. Terrapin ultimately advanced funds in releasable form to its counterparty borrower, 179 Alberta, after the Sale to Plaintiff Order and prior to the issuance of the Stay Order. On December 17, 2014 the Stay Order was amended by subsequent Order (the “**December 17 Order**”) such that: (i) Units 48, 68, and 69 would be transferred to 1798582 Alberta Ltd. (“**179 Alberta**”), a related party to Arres, and directed the Registrar of Land Titles to register a mortgage granted by 179 Alberta to and in favour of Terrapin, in the amount of \$426,000, against Units 48, 68 and 69; and, (ii) Units 63, 65, and 67 were to be transferred to Arres.
37. The December 17, 2014 Order was subsequently appealed and the transfers contemplated by the December 17, 2014 Order were never completed. On December 9, 2015, the Court of Appeal issued its Order (the “**Appeal Order**”) allowing the appeal of the December 17, 2014 Order. The Court of Appeal held that the judicial sale of the Units was a matter that was subject to the control of the Court and that all proceeds from the judicially approved sale of the Units were

- to be paid into Court and disbursed only in accordance with any further Orders of the Court.
38. As a result of the Stay Order, the December 17, 2014 Order and the Appeal Order, the sale of the Units to Arres and 179 Alberta was never completed and Terrapin never registered security against any of the Units.
 39. All of the Units have now been sold and most of the proceeds derived therefrom have been paid into Court under Court File Numbers 0903-17684 and 0903-17685 (the “**Graybriar Actions**”). Specifically:
 - a) \$269,900.00 was derived from the sale of Unit 55, pursuant to the Order of Master L.A. Smart granted on February 28, 2014;
 - b) \$200,584.38 was derived from the sale of Unit 48 and paid into Court, pursuant to the Order of Master K. Laycock granted on February 1, 2016;
 - c) \$198,649.51 was derived from the sale of Unit 63 and paid into Court, pursuant to the Order of Master A. Robertson granted on March 10, 2016;
 - d) \$207,517.58 was derived from the sale of Unit 65 and paid into Court, pursuant to the Order of Master J. Farrington granted on June 14, 2016;
 - e) \$211,996.15 was derived from the sale of Unit 67 and paid into Court, pursuant to the Order of Master A. Robertson dated November 1, 2017 as subsequently amended pursuant to the Amended Order of Master J.L. Mason dated December 15, 2017;
 - f) \$211,177.96 was derived from the sale of Unit 68 and paid into Court, pursuant to the Consent Order of Master J.L. Mason dated December 15, 2017; and,

- g) \$200,175.17 was derived from the sale of Unit 69 and paid into Court, pursuant to the Order of Master A. Robertson dated August 25, 2017.

(collectively, the “**Graybriar Sale Approval Orders**”). The Graybriar Sale Approval Orders are attached as Appendices “L,M,N,O,P, R,S” hereto.

40. As previously mentioned, all of the Units have now been sold, pursuant to the Graybriar Sale Approval Orders, and all net proceeds, other than those derived from the sale of Unit 55, have been paid into Court. The proceeds of Unit 55 comprise the Graybriar Solicitor Funds and have been used throughout the ongoing litigation under the Graybriar Actions to fund the property management and development fees associated with the remaining Units. Currently, the residual proceeds from Unit 55 are being held by Terrapin’s counsel, B&M, in accordance with the provisions of the Order granted on June 26, 2015, by Master Prowse Q.C.

The Terrapin Financing and the Court Funds

41. The Receiver understands that Terrapin agreed to loan to 179 Alberta, a related party to Arres, the sum of \$426,000 pursuant to the terms and conditions set out under a Commitment letter, dated on or about January 23, 2014. The fund advanced by Terrapin were to be secured pursuant to a Memorandum of Mortgage, dated February 5, 2014, (the “Terrapin Mortgage”), as granted by 179 Alberta to and in favour of Terrapin. Pursuant to the Terrapin Mortgage, 179 Alberta granted a mortgage to and in favour of Terrapin with respect to Units 48, 55, 68, and 69. Graybriar, the owner of the Units, never granted any mortgage or security interest to or in favour of Terrapin. Also, the Receiver is not aware of any agreement to which both Arres and Terrapin are parties to.
42. Terrapin advanced the \$426,000 to counsel to 179 Alberta which, on February 13, 2014, released the fund advanced by Terrapin in the following manner:

- a) \$235,000 was advanced to the then Arres' counsel to be paid by Arres' Counsel into Court, under Action No. 1201-16440, for the benefit of Arres;
 - b) \$134,444.61 was advanced to 179 Alberta; and,
 - c) the remainder was used to cover outstanding condominium fees, property taxes, and other fees, costs, and expense.
43. The Court Funds, being the \$235,000 paid into Action No. 1201-16440 further to the Order granted by the Honourable Justice Wilkins on February 11, 2014 (the "Court Funds **Order**"), are still held in Court. A copy of the Court Funds Order is attached as Appendix "E" hereto.
44. Based on the Receiver's understanding of the facts concerning the Terrapin transaction, the Receiver does not believe that Terrapin is a creditor of Arres. Terrapin's claims is against 179 Alberta.

Related Party Claims (Graybriar Assignment)

45. The Receiver is aware that each of Ms. Staci Serra and 875892 Alberta Ltd. (collectively, the "**Related Parties**") are related to Arres. The Receiver has been provided with an "assignment" that suggests that Arres has agreed to assign its accounts receivable/investment with respect to all or part of the Arres Mortgages to the Related Parties on September 30, 2010 (the "**Graybriar** "B" to this Report. The Receiver was provided by Mr. Serra a copy of a cheque for the consideration of the Graybriar Assignment totaling \$97,500 and it appears that these funds have been deposited into the Arres' bank account and recorded in Arres' accounting records.
46. While the determination of the Related Parties claims, including this purported assignment will be dealt with as part of the Receiver's proposed Claims Process, the Receiver does note that there are certain inherent difficulties associated with such claims, including:

- a) the value of consideration that appears to have been received by the Debtor in a transaction that occurred within the applicable insolvency “look back” period;
 - b) the failure of the assignment of the receivable to be registered in the Personal Property Registry prior to Arres’ bankruptcy; and
 - c) whether Arres had the capacity to convey the beneficial interest in the Arres Mortgages, given the trust arrangement arising under the Investor Agreements.
47. The Receiver has noted similar issues and concerns with respect to several other Assignments made by Arres on the Projects and the Receiver will deal with their Assignments in the Receivership Proceedings (if relevant to do so) or the Receiver is advised that the Trustee will address these matters in the bankruptcy proceedings.

RECEIPTS AND DISBURSMENTS – JULY 26, 2017 TO MAY 28, 2018

Overview

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

Arres Capital Inc. - In Receivership Statement of Receipts & Disbursements CAD\$, unaudited July 26, 2017 - May 28, 2018	
	Total
Opening Cash Balance	\$ -
Receipts	\$ 263,156
	\$ 263,156
Disbursements	
Storage costs	\$ (1,273)
Contractor services	\$ (3,623)
Municipal property taxes	\$ (3,576)
General & Administrative	\$ (1,171)
Professional Fees and Costs	
Receiver	\$ (147,408)
Receiver's legal counsel	\$ (60,429)
OSB Fee	\$ (150)
GST Paid	\$ (8,064)
	\$ (225,692)
Remaining Balance	\$ 37,463

49. There was no opening cash available as at July 26, 2017.
50. The Receiver collected \$263,156 in receipts, primarily relating to:
- a) \$130,156 owing to Arres with respect to a settlement agreement between Arres and another party prior to the Receivership Proceedings totaling \$65,000 and certain funds held in court in British Columbia totaling \$65,165 that were released to the Receiver with respect to the Rise Project;
 - b) \$132,444 of advances made by Access pursuant to the Amended Receivership Order to pay certain costs incurred by the Receiver pursuant to the Receiver's Charge (including partial payment of the Receiver's and its legal counsels fees and costs); and
 - c) \$556 relating to interest and miscellaneous receipts.

51. The Receiver disbursed approximately \$225,692, primarily relating to:
- a) \$1,273 in storage costs to store the books and records of Arres at a secure storage facility;
 - b) \$3,623 in contractor service fees with respect to the moving of the books and records to the storage facility;
 - c) \$3,576 in delinquent property taxes outstanding with respect to the Timber Creek Project, as discussed above. The Receiver understands that there remains a further \$7,539.00 in outstanding property taxes (not delinquent taxes) relating to 2016 and 2017. The Township advises that if the 2016 property taxes of approximately \$3,800 are not paid by January 2018, these arrears will move to “delinquent status” and the property will be subject to tax sale again in September 2018 (while accruing interest and penalties);
 - d) \$1,171 in general and administrative costs;
 - e) \$207,836 relating to professional fees and costs of the Receiver and its legal counsels fees from the Receivership Date (July 26, 2017) to December 15, 2017, as detailed further below;
 - f) \$8,214 with respect to filing fees of \$150 to the Office of the Superintendent of Bankruptcy and the remaining balance relating to GST paid on certain disbursements listed above;
52. Total cash on hand held by the Receiver as at May 28, 2018 is \$37,463.

Forecast Costs and Funding Requirements

53. The Receiver has incurred certain fees and costs throughout the administration of the estate that remain unpaid. The fees and costs incurred, but not paid, total approximately \$61,846 (after GST), which relate to the period of December 15,

2017 to April 30, 2018. The outstanding professional fees and costs of the Receiver and its legal counsel over this period are broken down as follows:

- a) Receiver's fees and costs of approximately \$29,623; and
- b) McCarthy fees and costs of approximately \$32,443.

54. As previously discussed, the Receiver currently does not have adequate funds available to cover the current and future costs to administer this estate in the Receivership Proceedings; however, the Receiver is currently working with Access to secure a Receiver's Certificate.
55. If this Honourable Court should grant the order being sought by the Receiver with respect to releasing the funds held in Court to the Receiver, the Receiver will be able to rely on these funds to adequately fund the remaining aspects of the Receivership Proceeding to cover the Receiver's Charge for costs it has been incurring but remain unpaid.
56. If the Receiver is unable to borrow or secure funding to administer the estate and/or not able to seek obtain the Graybriar Funds held in court to seek to maximize realizations for the stakeholders, the Receiver will necessarily have to consider an application to terminate its continued review of the Exigible Property pursuant to the Receivership Order and apply for its immediate discharge.

PROPOSED CLAIMS PROCESS ORDER

Overview

57. As previously discussed, the Receiver anticipates that should this Honourable Court declare and confirm that the Graybriar Funds are subject to the Receiver's Charge and the Receiver's Borrowing Charge and authorizing the Receiver to utilize the funds to pay current and future indebtedness owing on each of the Receiver's Charge and the Receiver's Borrowing Charge, it would be appropriate (subject to approval of this court) for the Receiver to initiate a Claims Process for determining the claims of all persons with claims that relate to the Graybriar

Funds and to take any and all such actions as the Receiver determines necessary or advisable to complete the various steps contemplated in the Claims Process.

58. The Receiver has prepared a proposed Claims Process Order (the “Proposed Claims Process Order”) seeking approval for establishing a claims procedure process and claims bar date (the “Proposed Claims Process”) by this Honourable Court.
59. The Proposed Claims Process set out in the Proposed Claims Process Order is aimed at establishing and determining any and all claims in respect of solely the Graybriar Funds as at the Receivership Date (the “Claims”).

Proposed Claims Process

60. Should the Proposed Claims Process Order is granted by this Court (the “Claims Order Date”), the Proposed Claims Process is as summarized as follows:
 - a) on or before June 8, 2018, the Receiver will post on the Receiver’s website a Notice to Creditor, a Proof of Claim Form and an instruction letter (collectively, the “**Claims Package**”), and the Proposed Claims Process Order;
 - b) on or before June 8, 2018, the Receiver will send a Claims Package to the last known address of all Graybriar Investors and Lien Creditors who had or may have had a Claim as at the Receivership Date;
 - c) on or before June 22, 2018, cause the Notice to Creditor to be advertised in a newspaper determined appropriate by the Receiver;
 - d) any Graybriar Investors, Lien Creditors and/or any other creditor (the “**Creditor**”) that wishes to assert a claim as against the Graybriar Funds must deliver a Proof of Claim to the Receiver by no later than July 16, 2018 (the “**Claims Bar Date**”). Any Creditor that does not file its Claim with the Receiver on or before the Claims Bar Date will have its Claim forever barred and extinguished, unless otherwise

ordered by the Court and not be entitled to any further notice of these proceedings or to any distribution in the Receivership Proceedings;

- e) in the event that the Receiver elects to revise or disallow the Proof of Claim, the Receiver shall send a Notice of Revision or Disallowance setting out the revision or disallowance of the Proof of Claim;
- f) any person who wishes to dispute the Notice of Revision or Disallowance received from the Receiver, shall, within 15 days of receipt of the Notice of Revision or Disallowance from the Receiver, file an Application before the Court for the determination of its Claim (“Notice of Dispute”);
- g) an person who received a Notice of Revision or Disallowance from the Receiver and who fails to comply in filing a Notice of Dispute or file and serve the Notice of Application and supporting affidavit(s) in accordance with the Proposed Claims Process, such persons Claim shall be deemed to be as set out in the Notice of Revision or Disallowance, except as otherwise may be ordered by the Court.

Receiver’s comments regarding the Proposed Claims Process

- 61. The Receiver is of the view that the Proposed Claims Process will provide Creditors with sufficient and timely notification to allow them to review the Claims Package and allow Creditors to submit their Proofs of Claim prior to the Claims Bar Date.
- 62. The Receiver believes that the period of time for a Creditor to file a Dispute Notice is reasonable in the circumstances.
- 63. The Receiver believes it is appropriate to commence a Claim Process at this time, subject to the Court granting order that releases the Graybriar Funds from Court to the Receiver as discussed above. In particular, the Receiver understands that several of the Graybriar Investors are unrepresented and may not be aware that

there are assets available for distribution. The Receiver is of the view that the Claims Process is the most practical and efficient method of resolving the various competing Claims to the Graybriar Funds and facilitating distribution to properly entitled Creditors.

APPROVAL OF THE RECEIVER'S AND ITS COUNSEL'S FEES AND COSTS

64. The Receiver seeks approval from this Honourable Court of its, and those of its legal counsel's fees and disbursements from the Receivership Date (July 26, 2017) to April 30, 2018 (the "Interim Taxation Period"), pursuant to paragraph 17 and 18 of the Amended Receivership Order.
65. The total fees and disbursements of A&M, in its capacity as the court-appointed Receiver of API, during the Interim Taxation Period aggregate \$176,741 (excluding GST). A summary of the Receiver's fees and disbursements are attached as Appendix "U" to this Report.
66. The total fees and disbursements of McCarthy, the Receiver's independent legal counsel during the Interim Taxation Period aggregate \$91,342 (excluding GST). A summary of McCarthy's fees and disbursements are attached as Appendix "V" to this Report.
67. The Receiver and McCarthy's fee accounts outline the date of the work completed, the description of the work completed, the length of time taken to complete the work and the name of the individual who completed the work. Copies of the invoices will be brought to the Receiver's application before this Honourable Court set for June 4, 2018 and made available to the Court at its direction, if necessary.
68. The Receiver is respectfully of the view that its and its counsel's fees and costs are fair and reasonable under the circumstances and respectfully requests that this Honourable Court approve the accounts of the Receiver's and its counsel's during the Interim Taxation Period.

RECEIVER'S NEXT STEPS

69. The Receiver will require the continued funding from the Applicants to pay for administration of the estate pursuant to paragraph 24 of the Receivership Order. Alternatively, if the Court authorizes the release of the Funds to the Receiver, the Funds will be subject to the Receiver's Charge and Borrowing Charge, which will allow the Receiver to proceed with the following:
- a) Administer the Proposed Claims Process and distribute the Graybriar Funds accordingly to the proven Creditors, subject to approval of this Honourable Court;
 - b) address the remaining possible assets of Arres, such as the Jervis Project, and determine the ability for the Receiver to maximize realizations on these assets for the benefit of the estate;
 - c) CRA and other regulatory matters; and
 - d) final administration matters in the Receivership Proceedings and seek the Receiver's discharge.

RECOMMENDATIONS

70. The Receiver respectfully recommends that this Honourable Court:
- a) direct the Clerk of the Court and B&M to pay out to the Receiver the Funds
 - b) declaring and confirming that the Funds are subject to the Receiver's Charge and the Receiver's Borrowing Charge;
 - c) authorizing the Receiver to utilize the Funds to pay current and future indebtedness owing on each of the Receiver's Charge and Receiver's Borrowings Charge
 - d) grant the Proposed Claims Process Order;

- e) approve Receiver's and McCarthy's, professional fees and costs with respect to the Interim Taxation Period; and
- f) approve the actions and activities of itself as of the date of this Report;

All of which is respectfully submitted this 29th day of May, 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

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 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 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 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 against 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: 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.

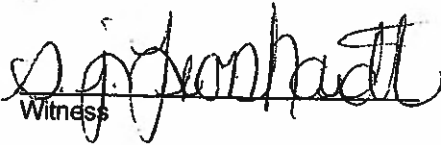
ARRES CAPITAL INC.

Per:  (c/s)

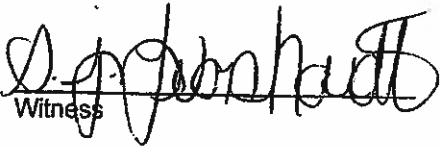
INVESTOR

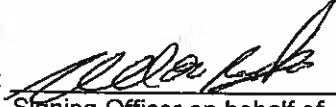
Per:  (c/s)
Signing Officer on behalf of
Access Mortgage Corporation (2004) Ltd.

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 comprising a first charge on all assets of the Borrowers.

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

A Certificate of 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.

\$9,700,000.00 TOTAL MORTGAGE AMOUNT APPROVED AT THIS TIME.

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 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 agreement to provide the loan or advance any funds, at

the sole discretion of Arres capital Inc. and/or its assigns, shall expire.

18. Amendment:

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

19. Governing Laws:

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

20. Headings:

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

21. Previous Agreements: n/a

22. Successors and Assigns:

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

23. Severability:

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

24. Survival:

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

25. Time:

Time shall in all respects be of the essence hereof.

26. Waiver:

No terms or requirements of this commitment of any security documents may be waived or varied orally or by any course of conduct of any office, employee, or agent of the lender. Any failure by

Arres Capital Inc. and/or its assigns to exercise any rights or remedies hereunder or under any of the Security shall not constitute a waiver thereof.

The terms of this letter are open for acceptance by you by executing the duplicate copy of this letter where indicated below and returning it to Arres Capital Inc. and/or its assigns on or before 2:00 p.m. on October 15, 2007, after which date and time, this offer shall lapse, if it is not accepted.

Sincerely,
Arres Capital Inc.

Wes Serra
President

SCHEDULE "B"**ARRES**

Capital Inc.

#1002, 1520 – 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.

APPENDIX B

This agreement made the 30th day of September 2010

**Assignment of account receivable with Arres capital
(Herein after called "Arres")**

Between: Arres Capital A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the GRAYBRIAR 2 Mortgage and its receivables derived from the loan administration agreement in the amount of \$97,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Graybriar 2 and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

land mortgage registered to plan 052-0941 block 1 lot c
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of its receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 ave sw t2r 0b3 (Arres)
126 Spring Valley Way (Serra)

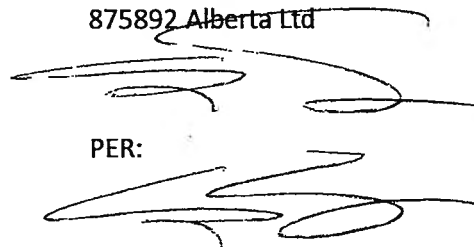
Arres Capital

Per:



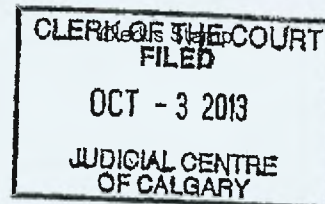
875892 Alberta Ltd

PER:



APPENDIX C

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



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

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

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

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 SUGIMOTO & COMPANY
 Barristers & Solicitors
 204, 2635 - 37th Avenue NE
 Calgary, Alberta, T1Y 5Z6
 Solicitor of Record: Loran V. Halyn
 Direct: 403-219-4213
 Fax: 403-291-4099
 Email: lhalyn@sugimotolaw.com
 File: 15,054 LVH

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

Dated this 3 day of Oct, 2013
[Signature]
 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

THIS IS EXHIBIT 'A'
 REFERRED TO IN THE
 AFFIDAVIT of SHELLY
 BECK sworn before
 me THIS 16 DAY of
 December, 2013.

BRIAN SEKIYA
 Barrister & Solicitor

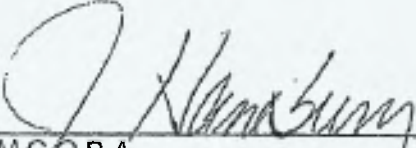
AMENDED ORDER

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

IT IS HEREBY ORDERED THAT:

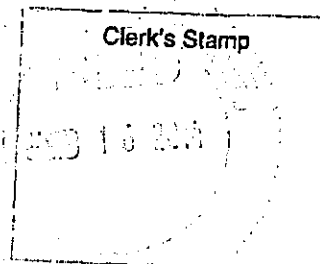
1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the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

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


M.C.Q.B.A.

APPENDIX D

COURT FILE NUMBER 0903 17685
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF ARRES CAPITAL INC.
 DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and
 GRAYBRIAR GREENS INC.
 DOCUMENT **AMENDED ORDER - SALE TO PLAINTIFF**



ADDRESS FOR
 SEP () DUNCAN CRAIG LLP
 Lawyers Mediators
 2800 Scotia Place
 10060 Jasper Avenue
 Edmonton, Alberta T5J 3V9
 N OF
 3 THIS
 DOCUMENT

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

WHICH ORDER WAS PRONOUNCED:

February 3, 2014

LOC. WHERE ORDER WAS PRONOUNCED:

EDMONTON, ALBERTA

NAME OF MASTER WHO MADE THIS ORDER:

L.A. Smart.

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

- X no one appearing for the Defendants
 _____ hearing from the Defendants
 _____ hearing from Counsel for the Defendants

THIS IS EXHIBIT " B "
 referred to in the Affidavit of
GAYE SARUWATARI
 Sworn before me this 14
 day of FEB 2014
TAIMUR R. AKBAR
 A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF ALBERTA

IT IS HEREBY ORDERED AND DECLARED THAT:

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

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

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

TAIMUR R. AKBAR
 BARRISTER & SOLICITOR

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

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

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

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

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

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

be and is hereby approved and accepted.

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

directed by the Plaintiff's Counsel in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear from the Plaintiff's Mortgage Number 072 008 561 and all subsequent encumbrances but subject to:

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

MASTER IN CHAMBERS

APPENDIX E

COURT FILE NUMBER 1201-16440

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS
(PLAINTIFFS)

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

RESPONDENTS
(DEFENDANTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD
PARTY DEFENDANTS)

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

DOCUMENT

CONSENT ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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

Ryan P. Pelletier
Direct: 403.407.2630
File: 13002.008

I hereby certify that the copy of this document is the original.
Dated this 11 day of February, 2014.
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 11, 2014

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Wilkins

LOCATION WHERE THIS ORDER WAS MADE: Calgary

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

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

IT IS HEREBY ORDERED THAT:

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

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

CONSENTED TO:

Suginoto & Company

Per: 

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

APPENDIX F

COURT FILE NUMBER 0903-17685 and 0903-17684

CLERK'S STAMP

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS ARRES CAPITAL INC.

DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

DOCUMENT ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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

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

for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 14, 2014

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

LOCATION WHERE THIS ORDER WAS MADE: EDMONTON

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

IT IS HEREBY ORDERED THAT:

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

CONDOMINIUM PLAN 0827766

UNIT 48

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 55

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 63

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 65

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 67

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 68

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 0827766

UNIT 69

AND 83 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY

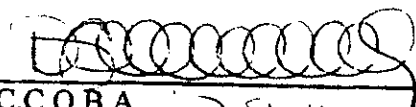
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively the "Land")

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

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

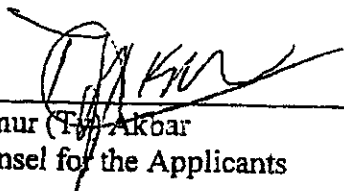
4. This Order shall be registered by the Land Titles Office in respect of the Land forthwith and in priority to the above noted Foreclosure Order, notwithstanding the Land Titles registration process.
5. The Applicants are granted leave to register their interest in the Land by way of a Caveat registered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


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

APPROVED AS TO FORM AND CONTENT:


Sugimoto & Company

Per:


 Taimur Faruk Akbar
 Counsel for the Applicants

Pelletier Law

Per:


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

APPENDIX G

COURT FILE NUMBER 0903 17684

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ARRES CAPITAL INC.

DEFENDANTS GRAYBRIAR LAND COMPANY
LTD. and GRAYBRIAR GREENS
INC.

DOCUMENT ORDER



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

[Signature]
for Clerk of the Court

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT Pelletier Law
Suite 350, 444 - 5th Avenue SW
Calgary Alberta T2P 2T8
Phone: 403 407 2600
Fax: 403 407 2601

Attn: Ryan Pelletier

DATE ON WHICH ORDER WAS PRONOUNCED: February 28, 2014

NAME OF MASTER WHO MADE THIS ORDER: L.A. Smart

LOCATION OF WHERE ORDER WAS PRONOUNCED: EDMONTON

UPON the application of the Plaintiff; AND UPON NOTING the consent of counsel for both parties; AND UPON hearing reference to the stay ordered by the Honourable Justice S. D. Hillier filed February 19, 2014 ("Justice Hillier's Order"); AND UPON hearing reference to the Order of Master L.A. Smart dated March 8, 2010 (the "Smart Order"); AND UPON hearing that Unit 55 of Condominium Plan 082776 is a unit subdivided from the Unit B of Condominium Plan 082776 in the Smart Order, AND UPON hearing that the liens referred to in paragraph 20 of the Smart Order have been settled,

IT IS HEREBY ORDERED AND DECLARED THAT:

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


CONDOMINIUM PLAN 082776
UNIT 55
AND 83 UNDIVIDED ONE TEN THOUSANDTH
SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS
2. The Offer to Purchase submitted by GLEN MEAD and JOANNE MEAD (the "Purchasers") in the amount of \$269,900.00, inclusive of GST, for the purchase of the secured property is hereby approved and accepted.
3. The Purchaser shall, on or before February 28, 2014 (the "Closing Date") pay to Birdsell Grant Gardner LLP the adjusted purchase price, or enter into reasonable conveyancing arrangements with Birdsell Grant Gardner LLP to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the secured property pursuant to paragraph 7 of this Order.
4. A copy of the Statement of Adjustments and Statement of Receipts and Disbursements shall be provided within a reasonable period of time after closing to the Solicitors for the Plaintiff.
5. The net sale proceeds, less the fees and disbursements of the Construction Manager, will remain in Birdsell Grant Gardner LLP trust account to be addressed by this Honourable Court concurrently and in conjunction with the stay set out in Justice Hillier's Order.

6. The Defendants, tenants, and other occupants shall, on or before February 28, 2014, deliver up to the Purchasers vacant possession of the secured property. Service of this Order may be made on the occupants by posting same on the main entrance door to the secured property. A Civil Enforcement Agency has authority, after service of this Order has been affected, to evict any occupant of the secured property on the later of the aforesaid date or 20 days after the posting has occurred.
7. Upon written confirmation from the Plaintiff's Counsel, or its agent at Prowse Chowne LLP, 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 secured property and shall issue a new Certificate of Title in the names of GLEN MEAD and JOANNE MEAD of 703 Graybriar Greens, Stony Plain, Alberta T7Z 0G1, or such nominee as may be designated in writing by the Purchasers free and clear of the Plaintiff's mortgage and all subsequent encumbrances, but subject to:
 - a. Utility Right of Way # 082 100 457
 - b. Easement # 082 409 616
 - c. Utility Right of Way # 082 409 617
 - d. Agreement # 082 409 619
8. Any interest in the secured property of the Defendants, anyone claiming through the Defendant, or any other subordinate encumbrance is hereby extinguished.
9. Compliance with Rule 9.34(4) and the requirement for service of the documents prior to entry of this Order, set out in Rule 9.35(1)(a), is hereby waived.
10. The Registrar of Land Titles shall comply with this Order forthwith, notwithstanding Section 19(1) of the *Land Titles Act*.

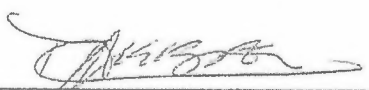
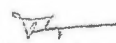
II. The consent of Counsel may be endorsed hereon by facsimile and in counterpart.


APPROVED AS TO FORM AND CONTENT:

Per:


 Paul Barrette
 Prowse Chowne LLP
 Agents of Pelletier Law, Solicitors for the Plaintiff

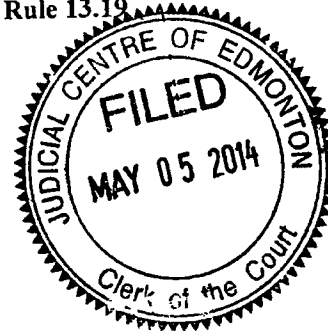
Per:


 Taimur (Ty) Akbar
 Sugimoto & Company 
 Solicitors for the ~~Defendants~~ / Applicants respecting Justice Hillier's February
 14, 2014 Order, filed February 19, 2014


 MASTER OF THE COURT OF
 QUEEN'S BENCH OF ALBERTA

APPENDIX H

Form 49
Alberta Rules of Court
Rule 13.19



COURT FILE NO. 0903-17685 and 0903-17684
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Edmonton
PLAINTIFF(S) **ARRES CAPITAL INC.**
DEFENDANT(S) **GRAYBRIAR LAND COMPANY LTD. and
GRAYBRIAR GREENS INC.**
DOCUMENT **AFFIDAVIT**
ADDRESS FOR
SERVICE AND
CONTACT **GREGORY J. FORREST PROFESSIONAL CORPORATION**
INFORMATION OF
PARTY FILING THIS
DOCUMENT Barrister & Solicitor
#603, 1333 - 8th Street S.W.
Calgary, AB T2R 1M6
Solicitor: Gregory J. Forrest
Direct: 403-531-3309
Fax: 403-531-0807
Email: greg@reallaw.biz
File: 6270

AFFIDAVIT OF GREGORY J. FORREST

SWORN ON MAY 2, 2014

I, **GREGORY J. FORREST**, of Calgary, Alberta, SWEAR AND SAY THAT:

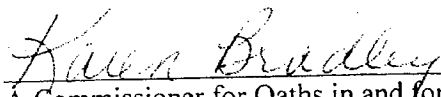
1. I am the solicitor for 1798582 Alberta Ltd. in connection with a mortgage to Terrapin Mortgage Investment Corp. for \$425,000.00 on the lands legally described as Condominium Plan 0827766, Units 48, 55, 68 and 69.
2. My client had arranged to acquire the four condominium units from Arres Capital Inc. which had obtained an Order for Sale to Plaintiff granted by Master Smart for these units and two others.
3. After discussions with Mr. Ryan Pelletier, the lawyer for Arres Capital Inc., a certified copy of that Order and a letter of direction attached as Exhibits "A" and "B" respectively were delivered to my office by Arres Capital Inc. on February 13, 2014.
4. Relying on the Order we obtained title insurance to authorize the advance of the mortgage proceeds prior to registration of the mortgage which was submitted for registration February 14, 2014.
5. The mortgage proceeds were advanced on February 13 and 14, 2014 in the following manner:

FCT Insurance Company (Title Insurance)	\$300.00
Core Management Group (Estoppel Certs.)	\$966.00
Condo Corp 0827766 (outstanding condo fees)	\$956.88
Town of Stony Plan (outstanding property taxes)	\$8,460.41


Government of Alberta (payment into court)	\$235,000.00
1798582 Alberta Ltd. (balance of mortgage funds)	\$138,444.61

6. Mr. Pelletier had received from my office a cheque for \$235,000.00 which he delivered to the Courthouse and provided the receipt attached as Exhibit "C".
7. Without notice to me, it appears that Sugimoto & Company acting for a group of investors and Mr. Pelletier acting for Arres Capital Inc. appeared by telephone on February 14, 2014 before Justice Hillier who granted a stay order of the foreclosure.
8. Late on February 18, 2014 the letter and Order attached as Exhibit "D" were faxed from Sugimoto & Company. I had no notice of the application before Justice Hillier until receiving that letter on February 19, 2014.
9. According to the Affidavit of Gaye Saruwatari filed in these proceedings counsel for Arres, Mr. Ryan Pelletier, advised the court during the hearing on the Stay Order that the Smart Order had been submitted to Land Titles for registration.
10. By email on February 25, 2014 Mr. Pelletier forwarded to me a draft order attached as Exhibit "E" to allow for the sale of one of the condominiums (Unit Number 55) units on the basis the proceeds would be forwarded to my office as part of the mortgage transaction I was involved with.
11. By email dated March 1, 2014, attached as Exhibit "F", Mr. Pelletier forwarded to me the consent order which resulted and which deleted the reference to forwarding funds to me.
12. I make this Affidavit in support of an Order to remove the stay of order in the within action and allow the registration of the titles in the name of 1798582 Alberta Ltd. subject to the Terrapin Mortgage and the release to my office of the net proceeds of the sale of Unit 55 in accordance with the mortgage security.

SWORN BEFORE ME
ON MAY 2, 2014
AT CALGARY, ALBERTA


A Commissioner for Oaths in and for
the Province of Alberta

KAREN ANN BRADLEY
Commission Expires: September 10, 2014


GREGORY J. FORREST

COURT FILE NUMBER 0903 17685
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF ARRES CAPITAL INC.
 DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and
 GRAYBRIAR GREENS INC.
 DOCUMENT **AMENDED ORDER - SALE TO PLAINTIFF**

Clerk's Stamp

ADDRESS FOR
 SERVICE AND
 CONTACT
 INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

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

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

DATE ON WHICH ORDER WAS PRONOUNCED: February 3, 2014

LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON, ALBERTA

NAME OF MASTER WHO MADE THIS ORDER:

LA Smart

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

- X no one appearing for the Defendants
 _____ hearing from the Defendants
 _____ hearing from Counsel for the Defendants

IT IS HEREBY ORDERED AND DECLARED THAT:

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

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

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

THIS IS EXHIBIT "A"

referred to in the Affidavit of
Douglas P. Gahn
 Sworn before me this 2
 day of May, A.D. 2014

Karen Bradley
 A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF ALBERTA
 A NOTARY PUBLIC

KAREN ANN BRADLEY
 A Commissioner for Oaths in and for the
 Province of Alberta
 My Commission Expires: September 10, 2014

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

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

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

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

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

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

be and is hereby approved and accepted.

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

directed by the Plaintiff's Counsel in correspondence sent to the Registrar of Land Titles at the time this Order is submitted for registration) free and clear from the Plaintiff's Mortgage Number 072 008 561 and all subsequent encumbrances but subject to:

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



MASTER IN CHAMBERS

Arres Capital Inc.
 Suite 204, 1324-11th Avenue SW
 Calgary, AB T3C 0M6 Canada
 Tel: 403-261-9955 Fax: 403-264-9954
 arrescapital.com

ARRES
 We Provide Unique Financial Solutions

February 12, 2014

To: registrar of land titles

Further to the order of the learned Mather Breitkeruz, pronounce February 3rd 2014 and submitted for registration concurrent with this letter, please accept this letter as your authority pursuant to paragraph 5 above noted order to transfer title units 63, 65 and 67 of condominium Plan 0827766 to Arres Capital Inc of #204 1324 11 Avenue SW Calgary Alberta, T3C0M6

Per: Wes Serra

Director

THIS IS EXHIBIT " B
 referred to in the Affidavit of
Gregory J. Forest
 Sworn before me this 2
 day of May A.D. 2014
Karen Bradley
 A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF ALBERTA
 A NOTARY PUBLIC

KAREN ANN BRADLEY

A Commissioner for Oaths in and for the
 Province of Alberta

My Commission Expires: September 10, 2014

Arres Capital Inc.
Suite 204, 1324-11th Avenue SW
Calgary, AB T3C 0M6 Canada
Tel: 403-261-9955 Fax: 403-264-9954
arrescapital.com



We Provide Unique Financial Solutions

February 12, 2014

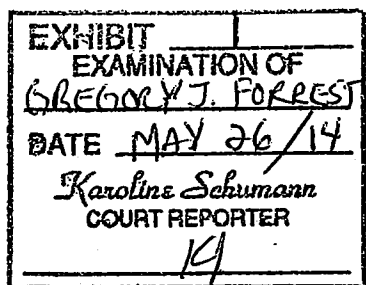
To: registrar of land titles

Further to the order of the learned Mather Breitkeruz, pronounce February 3rd 2014 and submitted for registration concurrent with this letter, please accept this letter as your authority pursuant of paragraph 5 above noted order to transfer title units 48,,55 68 and 69 of condominium Plan 0827766 to 1798582 Alberta Ltd of #204 1324 11 Avenue SW Calgary Alberta , T3C0M6



Per. Wes Serra

Director



COURT OF QUEENS BENCH
OFFICIAL RECEIPT
603N 601 5TH STREETSW
CALGARY, ALBERTA

2/14/14 11:30:41 AM

CM

DOCUMENT #: 1201-16440
ORDER

\$235,000.00

TOTAL \$235,000.00
CHEQUE \$235,000.00
Item count: 1
Trans: 39805 Terminal: 040100012-001001
RETAIN RECEIPT FOR RECORDS

THIS IS EXHIBIT " C "
referred to in the Affidavit of
Gregory J. Forest
Sworn before me this 2
day of May A.D. 20 14
Karen Bradley
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
A NOTARY PUBLIC

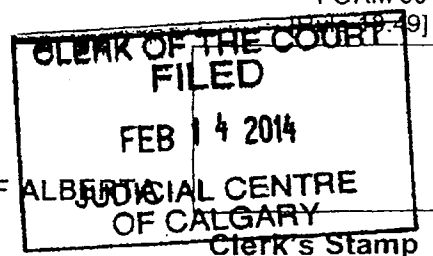
KAREN ANN BRADLEY

A Commissioner for Oaths in and for the
Province of Alberta

My Commission Expires: September 10, 2014

FORM 50

[1991-1999]



COURT FILE NUMBER: 1201-16440

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS
(PLAINTIFFS)

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

RESPONDENTS
(DEFENDENTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD
PARTY DEFENDENTS)

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

DOCUMENT:

MONEY PAID INTO COURT

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

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

File No. 13002.008

NOTICE TO COURT CLERK

You have received money paid into Court.

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

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

NOTICE TO COURT CLERK

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

SUGIMOTO & COMPANY
BARRISTERS & SOLICITORS

THOMAS S. SUGIMOTO, B.A., LL.B. *
CLARK B. FOWLER, B.A., LL.B.
BRIAN A. SEKIYA, B.A., LL.B.
ORA-LEE G. PHILLIPS, B.Sc., LL.B.
LORAN V. HALYN, LL.B.
TAIMUR (Ty) AKBAR, B.A., LL.B.

SUITE 204, WEST ATRIUM
2835 - 37 AVENUE N.E.
CALGARY, ALBERTA
T1Y 5Z6

TELEPHONE (403) 291-4650
FAX (403) 291-4099
REAL ESTATE FAX
(403) 735-1712
E-mail: takbar@sugimotolaw.com
Direct: Taimur (Ty) Akbar: 403-219-4211

OUR FILE NO. 15146

February 18, 2014

Gregory James Forrest
603, 1333 - 8th Street S.W.
Calgary, Alberta T2R 1M6

Attention: Mr. Gregory Forrest

Faxed to: 403-531-0807

Dear Sir:

Re: Orders, Mortgage and Caveat submitted for registration on February 14, 2014 with respect to Short Legal 0827766;48

Please be advised our office acts for investors who claim a beneficial interest in the above referenced property. I can further advise that the February 3, 2014, Order- Sale to Plaintiff of Master Breikreuz as Amended by Master L.A. Smart on February 7, 2014 in action 0903-17685 is to be stayed by Order of Justice Hillier pronounced on February 14, 2014 an approved copy of which I included for your review.

I can advise Justice Hillier's Order currently awaits execution by a Justice of the Court of Queen's Bench and will be filed at Land Titles forthwith and shall take priority to the Order in Action 0903-17685.

We reserve any remedy available to us at law or in equity pursuant to the dealing with the property referenced in the attached Order.

Respectfully yours,

SUGIMOTO & COMPANY

Per:

TAIMUR (Ty) AKBAR

ta
encis

THIS IS EXHIBIT "D"
referred to in the Affidavit of
Gregory J. Forrest
Sworn before me this 2
day of May A.D. 2014
Karen Bradley
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
A NOTARY PUBLIC

KAREN ANN BRADLEY
A Commissioner for Oaths in and for the
Province of Alberta
My Commission Expires: September 10, 2014

Gregory Forrest

From: Ryan Pelletier <RPelletier@pelletierlaw.ca>
Sent: Tuesday, February 25, 2014 7:03 PM
To: Gregory Forrest
Cc: Karen Bradley; Sherry Fallon
Subject: Fwd: Arres Capital Inc. v. Graybriar Land Company Ltd.
Attachments: EDMONTON-#384985-v2-Order_Vesting_Title_(Mead).docx; ATT00001.htm; Unit 55 Consent Order.pdf; ATT00002.htm

Greg,

Just an FYI, below and attached, as to how we're proposing to address the sale of unit 55 at Graybriar within the context of Justice Hillier's stay order.

Paragraph 5 of the attached addresses holding the money or, if the stay is lifted, forwarding the funds to your office to deal with as if the stay order wasn't granted (ie, based on pre-Feb 14 instructions).

Regards,

RYAN P. PELLETIER
 Litigator
 D. 403.407.2630
 E. rpelletier@pelletierlaw.ca

PELLETIER LAW
 350, 444 - 5 Avenue SW
 Calgary, AB T2P 2T8
 M. 403.407.2600
 F. 403.407.2601
www.pelletierlaw.ca

Begin forwarded message:

From: "Paul Barrette" <PBarrette@prowsechowne.com>
To: "takbar@sugimotolaw.com" <takbar@sugimotolaw.com>
Cc: "Ryan Pelletier" <RPelletier@pelletierlaw.ca>, "Ray Frayne" <rfrayne@birdsell.ca>
Subject: Arres Capital Inc. v. Graybriar Land Company Ltd.

Hello Ty,

Further to our discussions, please see attached a proposed consent order to allow the sale of Unit 55 in which I have attempted to address your concerns. I look forward to hearing back from you. Hopefully we can have it filed tomorrow.

Please note I am awaiting confirmation from Doug Gahn that all the liens have been paid out (as set out in the preamble).

Paul

THIS IS EXHIBIT " E "
 referred to in the Affidavit of
Gregory J. Forrest
 Sworn before me this 2
 day of May A.D. 2014
Karen Bradley
 A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF ALBERTA
 A NOTARY PUBLIC

KAREN ANN BRADLEY
 A Commissioner for Oaths in and for the
 Province of Alberta
 My Commission Expires: September 10, 2014

Paul Barrette, B.A., M.A., J.D.

Prowse Chowne LLP
#1300, Phipps-McKinnon Building
10020 101A Ave.
Edmonton, AB T5J 3G2

Tel: (780) 439-7171 ext. 233
Cell: (780) 718 7237
Fax: (780) 439-0475
Toll Free: 1-888-801-5304

www.prowsechowne.com<blocked::http://www.prowsechowne.com/>

This message is intended for the addressee only and may contain confidential, proprietary or privileged information. Any unauthorized review, distribution or other use of, or the taking of any action in reliance upon this information is prohibited. If you have received this message in error, please contact the sender and immediately delete or destroy the original and all copies of this message.

COURT FILE NUMBER 0903 17684

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ARRES CAPITAL INC.

DEFENDANTS GRAYBRIAR LAND COMPANY
LTD. and GRAYBRIAR GREENS
INC.

DOCUMENT ORDER

Clerk's Stamp

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Pelletier Law
Suite 350, 444 - 5th Avenue SW
Calgary Alberta T2P 2T8
Phone: 403 407 2600
Fax: 403 407 2601

Attn: Ryan Pelletier

DATE ON WHICH ORDER WAS PRONOUNCED: _____

NAME OF JUDGE WHO MADE THIS ORDER: _____

LOCATION OF WHERE ORDER WAS PRONOUNCED: EDMONTON

UPON the application of the Plaintiff; AND UPON NOTING the consent of counsel for both parties; AND UPON hearing reference to the stay ordered by the Honourable Justice S. D. Hillier filed February 19, 2014 ("Justice Hillier's Order") AND UPON hearing reference to the Order of Master L.A. Smart dated March 8, 2010 (the "Smart Order"); AND UPON hearing that Unit 55 of Condominium Plan 082776 is a unit subdivided from the Unit B of Condominium Plan 082776 in the Smart Orders, AND UPON hearing that the liens referred to in paragraph 20 of the Smart Order have been paid and satisfied:

IT IS HEREBY ORDERED AND DECLARED THAT:

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

CONDOMINIUM PLAN 082776
UNIT 55
AND 83 UNDIVIDED ONE TEN THOUSANDTH
SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

2. The Offer to Purchase submitted by GLEN MEAD and JOANNE MEAD (the "Purchasers") in the amount of \$269,900.00, inclusive of GST, for the purchase of the secured property is hereby approved and accepted.
3. The Purchaser shall, on or before February 28, 2014 (the "Closing Date") pay to Birdsell Grant Gardner LLP the adjusted purchase price, or enter into reasonable conveyancing arrangements with Birdsell Grant Gardner LLP to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the secured property pursuant to paragraph 7 of this Order.
4. The sale proceeds, together with a copy of the Statement of Adjustments and Statement of Receipts and Disbursements, and less the fees and disbursements of the Construction Manager, shall be provided within a reasonable period of time after closing in trust to Prowse Chowne LLP, agents of the solicitors for the Plaintiff.
5. The sale proceeds will remain in Prowse Chowne LLP's trust account subject to continuation of the stay in Justice Hillier's Order or further court order or agreement of the parties. Should the stay of enforcement in Justice Hillier's Order be expired or lifted, then the funds held by Prowse Chowne LLP are to be immediately released to Gregory J. Forrest's office to be applied in compliance with

instructions provided to Gregory J. Forrest's office by Arres Capital Inc. prior to February 14, 2014.

6. The Defendants, tenants, and other occupants shall, on or before February 28, 2014, deliver up to the Purchasers vacant possession of the secured property. Service of this Order may be made on the occupants by posting same on the main entrance door to the secured property. A Civil Enforcement Agency has authority, after service of this Order has been affected, to evict any occupant of the secured property on the later of the aforesaid date or 20 days after the posting has occurred.
7. Upon written confirmation from the Plaintiff's Counsel, or its agent at Prowse Chowne LLP, 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 secured property and shall issue a new Certificate of Title in the names of GLEN MEAD and JOANNE MEAD of 703 Graybriar Greens, Stony Plain, Alberta T7Z 0G1, or such nominee as may be designated in writing by the Purchasers free and clear of the Plaintiff's mortgage and all subsequent encumbrances, but subject to:
 - a. Utility Right of Way # 082 100 457
 - b. Easement # 082 409 616
 - c. Utility Right of Way # 082 409 617
 - d. Agreement # 082 409 619
8. Any interest in the secured property of the Defendants, anyone claiming through the Defendant, or any other subordinate encumbrance is hereby extinguished.
9. Compliance with Rule 9.34(4) and the requirement for service of the documents prior to entry of this Order, set out in Rule 9.35(1)(a), is hereby waived.

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

11. The consent of Counsel may be endorsed hereon by facsimile and in counterpart.

APPROVED AS TO FORM AND CONTENT:

Per: _____

Paul Barrette
Prowse Chowne LLP
Agents of Solicitors for the Plaintiff, Pelletier Law

Per: _____

Taimur (Ty) Akbar
Sugimoto & Company
Solicitors for the Defendants

JUSTICE OF THE COURT OF
QUEEN'S BENCH OF ALBERTA

Gregory Forrest

From: Ryan Pelletier <RPelletier@pelletierlaw.ca>
Sent: Saturday, March 01, 2014 5:54 PM
To: Gregory Forrest
Cc: Marlene Darby
Subject: Fwd: Arres Capital Inc. v. Graybriar
Attachments: Smart Order Feb 28, 2014.pdf; ATT00001.htm

Greg,

Further to your voicemail from earlier today, which I just picked up now, attached is the filed Consent Order to complete the sale of Unit 55 in Graybriar.

The filed Order is slightly different from the draft I forwarded to you earlier in the week as opposing counsel insisted on a few changes at the last minute, which were agreed to as I did not consider them to be substantive.

If you have any questions it is likely easiest to reach me by email, but I do have my mobile on me most of the time.

Regards,

RYAN P. PELLETIER
 Litigator
 D. 403.407.2630
 E. rpelletier@pelletierlaw.ca

PELLETIER LAW
 350, 444 - 5 Avenue SW
 Calgary, AB T2P 2T8
 M. 403.407.2600
 F. 403.407.2601
www.pelletierlaw.ca

Begin forwarded message:

From: "Paul Barrette" <PBarrette@prowsechowne.com>
To: "Loran Halyn" <lhaly@ SugimotoLaw.com>, "Taimur Akbar" <takbar@ SugimotoLaw.com>
Cc: "Ryan Pelletier" <RPelletier@pelletierlaw.ca>, "Ray Frayne" <rfrayne@birdsell.ca>
Subject: Arres Capital Inc. v. Graybriar

Please see attached the filed order.

Regards,

Paul Barrette, B.A., M.A., J.D.

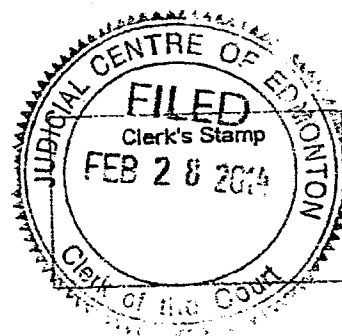
THIS IS EXHIBIT " F "

referred to in the Affidavit of
Gregory J. Forrest
 Sworn before me this 2
 day of May A.D. 2014

Karen Bradley
 A COMMISSIONER FOR OATHS
 IN AND FOR THE PROVINCE OF ALBERTA
 A NOTARY PUBLIC

KAREN ANN BRADLEY
 A Commissioner for Oaths in and for the
 Province of Alberta
 My Commission Expires: September 10, 2014

COURT FILE NUMBER 0903 17684
 COURT COURT OF QUEEN'S BENCH
 OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF ARRES CAPITAL INC.
 DEFENDANTS GRAYBRIAR LAND COMPANY
 LTD. and GRAYBRIAR GREENS
 INC.
 DOCUMENT ORDER



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

[Signature]
 for Clerk of the Court

ADDRESS FOR SERVICE AND CONTACT
 INFORMATION OF PARTY
 FILING THIS DOCUMENT Pelletier Law
 Suite 350, 444 - 5th Avenue SW
 Calgary Alberta T2P 2T8
 Phone: 403 407 2600
 Fax: 403 407 2601

Attn: Ryan Pelletier

DATE ON WHICH ORDER WAS PRONOUNCED: February 28, 2014

NAME OF MASTER WHO MADE THIS ORDER: L.A. Smart

LOCATION OF WHERE ORDER WAS PRONOUNCED: EDMONTON

UPON the application of the Plaintiff; AND UPON NOTING the consent of counsel for both parties; AND UPON hearing reference to the stay ordered by the Honourable Justice S. D. Hillier filed February 19, 2014 ("Justice Hillier's Order"); AND UPON hearing reference to the Order of Master L.A. Smart dated March 8, 2010 (the "Smart Order"); AND UPON hearing that Unit 55 of Condominium Plan 082776 is a unit subdivided from the Unit B of Condominium Plan 082776 in the Smart Order, AND UPON hearing that the liens referred to in paragraph 20 of the Smart Order have been settled,

IT IS HEREBY ORDERED AND DECLARED THAT:

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

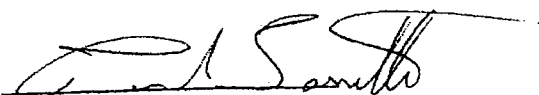
CONDOMINIUM PLAN 082776
UNIT 55
AND 83 UNDIVIDED ONE TEN THOUSANDTH
SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

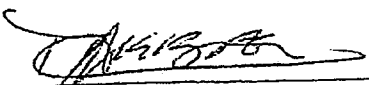
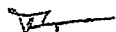
2. The Offer to Purchase submitted by GLEN MEAD and JOANNE MEAD (the "Purchasers") in the amount of \$269,900.00, inclusive of GST, for the purchase of the secured property is hereby approved and accepted.
3. The Purchaser shall, on or before February 28, 2014 (the "Closing Date") pay to Birdsell Grant Gardner LLP the adjusted purchase price, or enter into reasonable conveyancing arrangements with Birdsell Grant Gardner LLP to assure payment of the adjusted purchase price, and upon doing so the Purchaser is entitled to obtain possession of the secured property pursuant to paragraph 7 of this Order.
4. A copy of the Statement of Adjustments and Statement of Receipts and Disbursements shall be provided within a reasonable period of time after closing to the Solicitors for the Plaintiff.
5. The net sale proceeds, less the fees and disbursements of the Construction Manager, will remain in Birdsell Grant Gardner LLP trust account to be addressed by this Honourable Court concurrently and in conjunction with the stay set out in Justice Hillier's Order.

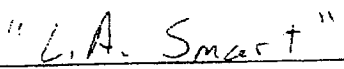
6. The Defendants, tenants, and other occupants shall, on or before February 28, 2014, deliver up to the Purchasers vacant possession of the secured property. Service of this Order may be made on the occupants by posting same on the main entrance door to the secured property. A Civil Enforcement Agency has authority, after service of this Order has been affected, to evict any occupant of the secured property on the later of the aforesaid date or 20 days after the posting has occurred.
7. Upon written confirmation from the Plaintiff's Counsel, or its agent at Prowse Chowne LLP, 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 secured property and shall issue a new Certificate of Title in the names of GLEN MEAD and JOANNE MEAD of 703 Graybriar Greens, Stony Plain, Alberta T7Z 0G1, or such nominee as may be designated in writing by the Purchasers free and clear of the Plaintiff's mortgage and all subsequent encumbrances, but subject to:
 - a. Utility Right of Way # 082 100 457
 - b. Easement # 082 409 616
 - c. Utility Right of Way # 082 409 617
 - d. Agreement # 082 409 619
8. Any interest in the secured property of the Defendants, anyone claiming through the Defendant, or any other subordinate encumbrance is hereby extinguished.
9. Compliance with Rule 9.34(4) and the requirement for service of the documents prior to entry of this Order, set out in Rule 9.35(1)(a), is hereby waived.
10. The Registrar of Land Titles shall comply with this Order forthwith, notwithstanding Section 191(1) of the *Land Titles Act*.

11. The consent of Counsel may be endorsed hereon by facsimile and in counterpart.

APPROVED AS TO FORM AND CONTENT:

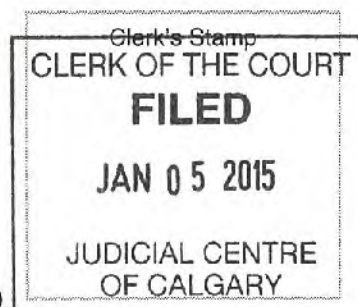
Per: 
 Paul Barrette
 Prowse Chowne LLP
 Agents of Pelletier Law, Solicitors for the Plaintiff

Per: 
 Taimur (Ty) Akbar
 Sugimoto & Company 
 Solicitors for the ~~Defendants~~ / Applicants respecting Justice Hillier's February
 14, 2014 Order, filed February 19, 2014


 MASTER OF THE COURT OF
 QUEEN'S BENCH OF ALBERTA

APPENDIX I

COURT FILE NUMBER **0901-02753 and 0901-03332**
~~0903-17684 and 0903-17685~~
 COURT COURT OF QUEEN'S BENCH
 OF ALBERTA
 JUDICIAL CENTRE CALGARY
 RESPONDENT ARRES CAPTIAL INC.
 (PLAINTIFF)
 NON-PARTICIPANTS GRAYBRIAR LAND COMPANY LTD. AND
 (DEFENDANTS) GRAYBRIAR GREENS INC
 APPLICANT
 (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 TERRAPIN MORTGAGE INVESTMENT CORP.
 (INTERVENOR)
 RESPONDENT 1798583 ALBERTA LTD.
 (INTERESTED PARTY)
 DOCUMENT **ORDER**
 ADDRESS FOR SERVICE Bishop & McKenzie LLP
 AND CONTACT Barristers & Solicitors
 INFORMATION OF PARTY 1700, 530 – 8th Avenue SW
 FILING THIS DOCUMENT Calgary, Alberta, T2P 3S8
 Attention: Kerry Lynn Okita
 Phone: 403-237-5550
 Fax: 403-263-3423
 File No. 100,672-003 (KLO/ce)



DATE ON WHICH ORDER WAS PRONOUNCED:	December 17, 2014
LOCATION WHERE ORDER WAS PRONOUNCED:	CALGARY, ALBERTA
NAME OF JUSTICE WHO MADE THIS ORDER:	J. STREKAF

UPON THE RETURN of the Applicant's application seeking to extend a temporary continuation the Order of Justice S.D. Hillier (the "Hillier Order"); **UPON REVIEWING** the form of Undertaking as to Damages submitted by the Applicants on October 31, 2014; **UPON REVIEWING** the written arguments of the Applicants, submitted October 31, 2014, and the joint submissions of Arres Capital Inc., Terrapin Mortgage Investment Corp. and 1798582 Alberta Ltd., submitted October 31, 2014;

AND UPON NOTING the Order-Sale to Plaintiff, granted by Master W. Breitreuz on February 3, 2014, and as amended by Master L.A. Smart ("Order-Sale to Plaintiff"); **UPON NOTING** the emergency application of the Applicants and the resulting Hillier Order, on February 14, 2014; **UPON NOTING** the Order, granted by Master L.A. Smart on February 28, 2014 selling Unit 55:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Undertaking as to Damages proffered by the Applicant was not a meaningful undertaking satisfactory to the Court.
2. The Order of the Honourable Mr. Justice S.D. Hillier, dated February 14, 2014 (the "Hillier Order"), shall be vacated and of no force or effect as of January 15, 2015.
3. The Order of the Learned Master W. Breitreuz, dated February 3, 2014, as amended by the February 7, 2014 Order of the Learned Master L.A. Smart (the "Order-Sale to Plaintiff") shall be given full force and effect, and shall be:
 - a. submitted to the Land Titles Office currently with a copy of this Order, and correspondence from the Plaintiff's counsel directing the actions set out in paragraph 4(a) and (b); and
 - b. to be varied by this Order as set out in paragraph 4(d).
4. Recognizing the effect of paragraph 3, the Registrar of Land Titles is directed to take the following steps:
 - a. The Registrar of Land Titles shall transfer title to the following properties to 1798582 Alberta Ltd.:
 - i. Condominium Plan 0827766
Unit 48
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
 - ii. Condominium Plan 0827766
Unit 68
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
 - iii. Condominium Plan 0827766
Unit 69
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals.
 - b. The Registrar of Land Titles shall resister the mortgage of Terrapin Mortgage Investment Corp. in the amount of \$426,000.00, against title to each of the 179 Properties.

c. The Registrar of Land Titles shall transfer title to the following properties to Arres Capital Inc.:

- i. Condominium Plan 0827766
Unit 63
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
- ii. Condominium Plan 0827766
Unit 65
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
- iii. Condominium Plan 0827766
Unit 67
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals.

d. Recognizing the effect of the Order-Sale to Plaintiff and the Order of Master L. A. Smart, granted and filed on February 28, 2014 in this action, the Registrar of Land Titles is directed to leave unaffected title to the following property:

- i. Condominium Plan 0827766
Unit 55
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals.

5. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding the provisions of Section 191 of the *Land Titles Act*

JUSTICE IN CHAMBERS

APPROVED AS ORDER GRANTED:

Bishop & McKenzie LLP

Per: 
Kerry Lynn Okita, counsel for
Terrapin Mortgage Investment Corp.

DLBH LAW

Per: _____
Judy Burke, counsel for
1798582 Alberta Ltd.

Pelletier Law

Per: 
Ryan P. Pelletier, counsel for
Arres Capital Inc.

Sugimoto & Company

Per: 
Loran V. Halyn, counsel for
the Applicants

c. The Registrar of Land Titles shall transfer title to the following properties to Arres Capital Inc.:

- i. Condominium Plan 0827766
Unit 63
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
- ii. Condominium Plan 0827766
Unit 65
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals
- iii. Condominium Plan 0827766
Unit 67
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals.

d. Recognizing the effect of the Order-Sale to Plaintiff and the Order of Master L. A. Smart, granted and filed on February 28, 2014 in this action, the Registrar of Land Titles is directed to leave unaffected title to the following property:

- i. Condominium Plan 0827766
Unit 55
And 83 Undivided One Ten Thousandth Shares in the Common Property
Excepting Thereout All Mines and Minerals.

5. The Registrar of Land Titles shall comply with this Order forthwith notwithstanding the provisions of Section 191 of the *Land Titles Act*

" J. Strekal "

JUSTICE IN CHAMBERS

APPROVED AS ORDER GRANTED:

Bishop & McKenzie LLP

Per: _____
Kerry Lynn Okita, counsel for
Terrapin Mortgage Investment Corp.

DLBH LAW

Per: _____
Judy Burke, counsel for
1798582 Alberta Ltd.

Pelletier Law

Per: _____
Ryan P. Pelletier, counsel for
Arres Capital Inc.

Sugimoto & Company

Per: _____
Loran V. Halyn, counsel for
the Applicants

APPENDIX J

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NO. 1501-0006AC

TRIAL COURT FILE NUMBER 0903-17684 and 0903-17685

REGISTRY OFFICE CALGARY

PLAINTIFF ARRES CAPITAL INC.

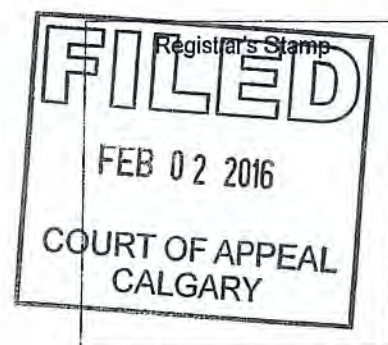
STATUS ON APPEAL RESPONDENT

STATUS ON APPLICATION RESPONDENT

DEFENDANTS GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

STATUS ON APPEAL NOT A PARTY TO THE APPLICATION

STATUS ON APPLICATION NOT A PARTY TO THE APPLICATION



APPLICANTS

I hereby certify this to be a true copy.

Robin Campbell
 For Deputy Registrar
 Court of Appeal of Alberta

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 DREFFS, ROBERT ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ, KEVIN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO SEKIYA, HOLLY SEKIYA AND STEVEN OGG

STATUS ON APPEAL APPELLANTS

STATUS ON APPLICATION APPLICANTS

Schedule "A", with the proceeds of such judicially approved sales to be paid into Court and disbursed only in accordance with further Court order.

"R. Campbell"
 fcl Registrar, Court of Appeal

RC Entered this _____ day of _____, 2016
 at Calgary, Alberta

 Deputy Registrar of the
 Court of Appeal of Alberta RC

APPROVED AS BEING THE ORDER GRANTED:

Sugimoto & Company

Per: _____
 Loran V. Halyn
 Counsel for the Appellants

Pelletier Law

Per: _____
 Ryan P. Pelletier
 Counsel for the Respondent, Arres Capital
 Inc.

Bishop & McKenzie LLP

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

Demiantschuk Lequier Burke & Hoffinger LLP

Per: _____
 Judy D. Burke
 Counsel for the Respondent, 1798583 Alberta
 Ltd.

Schedule "A", with the proceeds of such judicially approved sales to be paid into Court and disbursed only in accordance with further Court order.

Registrar, Court of Appeal

Entered this _____ day of _____, 2016
at Calgary, Alberta

Deputy Registrar of the
Court of Appeal of Alberta

APPROVED AS BEING THE ORDER GRANTED:

Sugimoto & Company

Per: _____
Loran V. Halyn
Counsel for the Appellants

Pelletier Law Litigation

Per: _____
Ryan P. Pelletier
Counsel for the Respondent, Arres Capital
Inc.

Bishop & McKenzie LLP

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

Demianschuk Lequier Burke & Hoffinger LLP

Per: _____
Judy D. Burke
Counsel for the Respondent, 1738583 Alberta
Ltd.

Schedule "A", with the proceeds of such judicially approved sales to be paid into Court and disbursed only in accordance with further Court order.

Registrar, Court of Appeal

Entered this _____ day of _____, 2016
at Calgary, Alberta

Deputy Registrar of the
Court of Appeal of Alberta

APPROVED AS BEING THE ORDER GRANTED:

Sugimoto & Company

Pelletier Law

Per: _____
Loran V. Halyn
Counsel for the Appellants

Per: _____
Ryan P. Pelletier
Counsel for the Respondent, Arres Capital
Inc.

Bishop & McKenzie LLP

Demiantschuk Lequier Burke & Hoffinger LLP

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

Per: _____
Judy D. Burke
Counsel for the Respondent, 1798583 Alberta
Ltd.

Schedule "A", with the proceeds of such judicially approved sales to be paid into Court and disbursed only in accordance with further Court order.

Registrar, Court of Appeal

Entered this _____ day of _____, 2016
at Calgary, Alberta

Deputy Registrar of the
Court of Appeal of Alberta

APPROVED AS BEING THE ORDER GRANTED:

Sugimoto & Company


Pelletier Law

Per: _____
Loran V. Halyn
Counsel for the Appellants

Per: _____
Ryan P. Pelletier
Counsel for the Respondent, Arres Capital
Inc.

Bishop & McKenzie LLP

Demianschuk Lequier Burke & Hoffinger LLP

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

Per: _____
Judy D. Burke
Counsel for the Respondent, 1798583 Alberta
Ltd.



COURT FILE NUMBER	0901-02753 and 0901-03332
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
RESPONDENT (INTERVENOR)	TERRAPIN MORTGAGE INVESTMENT CORP.
RESPONDENT (INTERESTED PARTY)	1798583 ALBERTA LTD.
DOCUMENT	CONSENT ORDER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Bishop & McKenzie LLP Barristers and Solicitors 1700, 530 – 8 th Avenue SW Calgary, Alberta T2P 3S8 Attention: Kerry Lynn Okita Telephone: 403-237-5550 Fax: 403-263-3423 File No: 100,672-003 (KLO/ce)

I hereby certify this to be a true copy of
the original
Dated this 13th day of October 2015
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: _____, October ____, 2015

LOCATION WHERE ORDER WAS PRONOUNCED: **Calgary, Alberta**

NAME OF JUSTICE WHO MADE THIS ORDER:

UPON the consent of the parties, as noted below; AND UPON noting the within Order 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 Strekaf, granted on December 17, 2014, lifting the temporary stay of the Order-Sale to Plaintiff (the "Dismissal Order"); AND UPON noting the outstanding appeal of Justice Strekaf's order as Court of Appeal File No. 1501-0006AC (the "Appeal");

IT IS HEREBY ORDERED THAT

Clarification of Action Nos. and the Units

1. Without limiting the general application of this Consent Order, but to clarify and confirm, this Consent Order shall apply equally and be enforceable in each of Action Nos. 0901-02753 and 0901-03332 and Action Nos. 0903-17684 and 0903-17685 as these four Actions are effectively the same Actions having been first consolidated in the Judicial Centre of Edmonton, in the 0903 Actions, and transferred to the Judicial Centre of Calgary, in the 0901 Actions.

2. The Land at issue in this Order is the following:

- a. Condominium Plan 0827766
Unit 48
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- b. Condominium Plan 0827766
Unit 55
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- c. Condominium Plan 0827766
Unit 63
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- d. Condominium Plan 0827766
Unit 65
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- e. Condominium Plan 0827766
Unit 67
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- f. Condominium Plan 0827766
Unit 68
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS
- g. Condominium Plan 0827766
Unit 69
And 83 Undivided One Ten Thousandth Shares in the Common Property
EXCEPTING THEREOUT ALL MINES AND MINERALS

(hereinafter these properties shall be collectively referred to in this Order as the "Units" and individually according to their respective Unit number).

Prior Sale of Unit 55

- 3. The Order-Sale to Plaintiff is hereby amended to remove any reference therein to Unit 55 such that the Unit 55 Sale Order is given full force and effect in respect of the sale of Unit 55 and the transfer of title thereto.
- 4. All funds received by any party pursuant to the Unit 55 Sale Order shall be transferred and addressed pursuant to terms of this Order.

Sale of the Units

5. The Units, with the exception of Unit 55, shall be listed for sale with a licensed real estate agent (the "Realtor") to be selected on the agreement of the parties or pursuant to further advice and direction from this Honourable Court, upon the terms and conditions set out in the Judicial Listing Agreement attached to this Consent Order (the "Judicial Sale" of the Units).
6. The Realtor shall be entitled to post a "FOR SALE" sign of the type customarily posted by a realtor at a conspicuous location on the mortgaged lands, which sign shall remain during the period of the judicial listing and shall not be interfered with by any person.
7. During the period of the Judicial Sale ordered herein, any person in possession or control of the Units shall cooperate with the Realtor, and shall allow access to the Units to the Realtor, any representative of the Realtor, any other realtor approved by the Realtor, and any prospective purchaser, upon receiving (24) hours written notice given by the Realtor for a viewing between 8:00 A.M. and 8:00 P.M. The written notice may be posted on the front door of the Units or the condominium complex where the Units are located.
8. Any and all other real estate listings relative to the Units shall be cancelled during the period of the Judicial Sale ordered herein.
9. As the Units are otherwise vacant, the Realtor and any other person authorized by this Court to deal with the Units, may enter the Units for the purpose of doing any and all things necessary to preserve them, and no such party shall be a mortgagee in possession or trespasser.
10. The Judicial Sale shall immediately terminate upon the earlier of (i) the sale of the last of the Units pursuant to this Consent Order, (ii) the transfer of title to the Units to Arres Capital Inc. ("Arres Capital") and 1798583 Alberta Ltd. ("179 AB") pursuant to this Consent Order, (iii) the dismissal of the Appeal, or (iv) further Order of this Honourable Court.

Sale Proceeds from Judicial Sale

11. Subject to the terms of any subsequent Order Confirming Sale and Vesting Title or the equivalent, the Judicial Sale proceeds for:

- a. Units 48, 68, and 69 shall be transferred to and held in trust by counsel for Terrapin Mortgage Investment Corp. ("Terrapin");
- b. Units 63, 65, and 67 shall be transferred to and held in trust by counsel for Arres Capital.

12. The Judicial Sale proceeds for any of the Units shall be held in trust until the earlier of:

- a. The Appeal is dismissed, whereon any funds held in trust by any person in relation to:
 - i. Units 48, 55, 68, and 69 shall first be released to or to the benefit of Terrapin in the amount equal to the amount outstanding pursuant to the relevant Terrapin Mortgage granted by 179 AB with excess funds released to or to the benefit of 179 AB; and
 - ii. Units 63, 65, and 67 shall be released to counsel for Arres Capital Inc., in trust.
- b. The Appeal is granted, whereon the parties shall return to the Court of Queen's Bench for a determination of the proper judicial process in this matter and determination of the release of funds, including direction on a litigation plan and schedule.

Preservation/Reservation of Rights and Costs

13. The sale of any of the Units pursuant to this Order is 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 Units shall be effectively alternate, but equivalent security for the Units.

14. The sale of any of the Units is specifically without prejudice to the position of each or all of Terrapin, 179 AB, and Arres Capital that the Order-Sale to Plaintiff should have been registered, the Units 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.

15. Costs of this Application shall be in the cause.

"Justice Newbl"
JUSTICE IN CHAMBERS

BISHOP & MCKENZIE LLP

Per: _____
Kerry Lynn Okita, counsel for
terrapin Mortgage Investment Corp

PELLETIER LAW

Per: _____
Ryan P. Pelletier, counsel for
Arres Capital Inc.

SUGIMOTO & COMPANY

Per:  _____
Taimur Akbar, counsel for
Richcrooks *et al.*

DLBH Law

Per: _____
Judy Burke, counsel for
1798583 Alberta Ltd.

15. Costs of this Application shall be in the cause.

JUSTICE IN CHAMBERS

BISHOP & MCKENZIE LLP

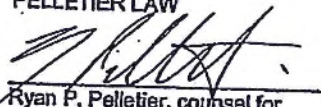
Per:



Kerry Lynn Okita, counsel for
terrapin Mortgage Investment Corp

PELLETIER LAW

Per:



Ryan P. Pelletier, counsel for
Ares Capital Inc.

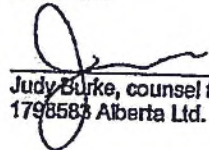
SUGIMOTO & COMPANY

Per:

Taimur Akbar, counsel for
Richcrooks *et al.*

DLBH Law

Per:



Judy Burke, counsel for
1798583 Alberta Ltd.

JUDICIAL LISTING AGREEMENT

TO: The Realtor

1. You are hereby given authority as an officer of the Court to list for sale the mortgaged lands with the Multiple Listing Service, if any, in effect in the area in which the Units are located.
2. The Units shall be offered for sale subject to registered encumbrances, liens and interests prior to the plaintiff's mortgage but free and clear of all registered encumbrances, liens and interests subsequent to the plaintiff's mortgage.
3. The listing price shall be set at the following prices:

Unit 48 - \$250,000
Unit 63 - \$266,000
Unit 65 - \$270,000
Unit 67 - \$270,000
Unit 68 - \$270,000
Unit 69 - \$265,000

or such higher prices as the Realtor may recommend after a comparative market analysis is conducted by you prior to the commencement of this judicial listing.

4. The listing shall take effect on the date the listing is accepted in writing by the realtor, and shall continue until terminated pursuant to the Consent Order to which this Judicial Listing Agreement is attached.
5. Within a reasonable time of receiving any offer, you shall forward a true copy of the said offer to counsel for the plaintiffs. If the offer is for a purchase price less than:

Unit 48 - \$250,000
Unit 63 - \$266,000
Unit 65 - \$270,000
Unit 67 - \$270,000
Unit 68 - \$270,000
Unit 69 - \$265,000

it may be rejected by the plaintiffs. Otherwise counsel for the plaintiffs shall apply on notice to reject an offer or for the court to consider that offer. Where the plaintiffs reject an offer they shall forthwith serve the parties to the Action with a true copy of such offer.

6. If no offers are received during the listing period, you shall so advise counsel for the plaintiffs in writing, immediately following the expiry of the judicial listing.
7. In the event that, as a result of the listing, a purchaser is introduced whose offer is accepted by the Court, and the transaction is completed by the purchaser paying the full purchase price and title is registered in the name of the purchaser or its nominee, then, in such event, you will receive a commission as follows:

7% of the first \$100,000 – 3% of the balance – or such lesser amount as may agreed by you – plus applicable taxes thereon

8. You shall have a first charge against the sale proceeds in the amount of any commission payable hereunder. If the Court accepts an offer to purchase and the purchaser fails to complete the purchase, and the Court does not order relief from forfeiture of the deposit, you will retain, as compensation for services rendered, fifty per cent (50%) of the said deposit (provided such amount does not exceed the commission payable had the sale been fully completed) and you will pay the balance of the deposit to counsel for the plaintiff to be applied against the indebtedness.
9. If the defendants, any subsequent encumbrancer, or anyone else entitled to do so, pays all principal, interest and other amounts owing under the mortgage at any time after the judicial listing takes effect, or brings the mortgage current after the judicial listing takes effect, there shall be paid as part of the costs of redemption, the reasonable expenses incurred by you as the Realtor during this judicial listing.
10. All offers submitted pursuant to the judicial listing shall, subject to further order of the Court:
 - (a) be in writing and shall be signed by the offeror; and
 - (b) be subject to the approval and acceptance by the Court on such terms as the Court considers appropriate; and
 - (c) provide for a possession date to be determined by the Court; and
 - (d) contain and be subject to the terms and conditions as are contained in Schedule "A" which is attached to these directions; and
 - (e) be accompanied by a certified cheque or money order payable to your real estate company for the deposit amount referred to in the offer.
11. Nothing in the listing shall:
 - (a) affect the right of the defendants or anyone else entitled to do so to pay all principal, interest and other amounts owing under the mortgage, or to bring the mortgage current or to privately sell the mortgaged lands;
 - (b) affect the plaintiffs' right to make a proposal to purchase the mortgaged property, if applicable or otherwise acquire the mortgaged property after the expiry of the judicial listing without liability for any real estate commission or any other compensation payable to the Realtor hereunder;
 - (c) create or impose any liability on the plaintiff or the Court for the payment of any real estate commission or other compensation arising out of this listing.
12. The terms of the listing may be modified by the Court on application of any party or subsequent encumbrancer on five days notice.

ACCEPTED THIS ____ DAY OF AUGUST, 2015

By: _____
An Agent licensed pursuant to the
Real Estate Act, R.S.A. 2000, c. R-5

APPROVED this ____ day of AUGUST, 2015.

MASTER IN CHAMBERS

SCHEDULE "A" TO THE REAL ESTATE PURCHASE CONTRACT entered into between
THE COURT OF QUEEN'S BENCH OF ALBERTA (the "Seller")
 and

_____ (the "Buyer")

The terms of this schedule replace, modify or add to the terms of the agreement of purchase and sale (the "Real Estate Purchase Contract") to which this schedule is attached. Where there is any inconsistency between the terms of this Schedule and the Real Estate Purchase Contract, the provisions of this Schedule shall prevail.

AS IS - WHERE IS

1. The Buyer acknowledges and agrees to purchase the mortgaged lands, all buildings and improvements located on the mortgaged lands (the "Property"), and any and all fixtures ("Attached Goods") and chattels ("Unattached Goods") included in the Real Estate Purchase Contract or included in the sale of the property, "as is" and agrees with the Seller that neither the Seller, nor its agents or representatives have made any representations or warranties with respect to the Property or any Attached Goods or Unattached Goods included in the sale of the Property. Without limiting the generality of the foregoing, the Buyer agrees that neither the Seller nor its agents have made any representations or warranties with respect to:
 - a) the condition of any buildings or improvements located on the Property;
 - b) the condition of any Attached Goods or Unattached Goods included in the Real Estate Purchase Contract or otherwise sold with the Property;
 - c) whether the Property complies with any existing land use or zoning bylaws or regulations, or municipal development agreements or plans;
 - d) the location of any buildings and other improvements on the Property and whether such location complies with any applicable municipal bylaws or regulations;
 - e) whether or not any buildings or improvements located on the Property encroach onto any neighbouring lands or any easements or rights of way;
 - f) whether or not any buildings or improvements located on any neighbouring lands encroach onto the Property;
 - g) the size and dimensions of the Property or any building or improvements located thereon;
 - h) whether or not the Property is contaminated with any hazardous substance; and
 - i) whether or not any of the buildings or other improvements located on the Property have been insulated with urea formaldehyde insulation.

OWNERSHIP OF UNATTACHED GOODS

2. The Buyer agrees that the Seller is selling only such interest as it may have in any Attached goods or Unattached Goods referred to in the Real Estate Purchase Contract, or which may be located on the

Buyer's Initial _____

Date: _____

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

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

Attention: Jeffrey Oliver

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*.

"K. Laycock"

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.

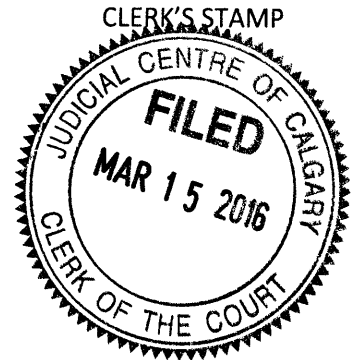
NON-PARTICIPANTS
(DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. AND
GRAYBRIAR GREENS INC.

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. 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 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

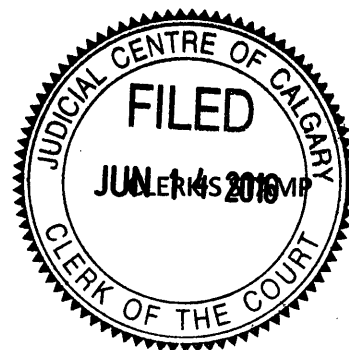
3. The Offer to Purchase submitted by Carolyn Ann Miller (the "Purchaser") in the amount of \$241,000, inclusive of GST, for the purchase of the mortgaged lands, is hereby approved and accepted and any deposit of the Purchaser held by the Clerk of the Court shall be forwarded to the plaintiff's counsel. 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 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

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)

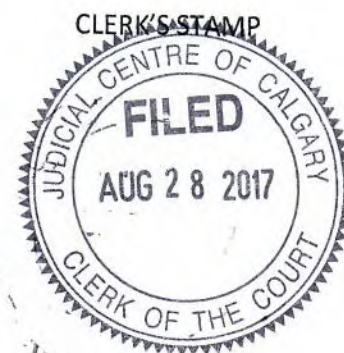
TERRAPIN MORTGAGE INVESTMENT CORP.

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.

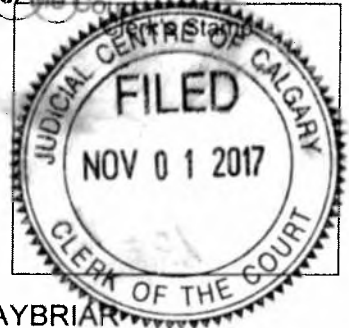


MASTER IN CHAMBERS

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:

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:

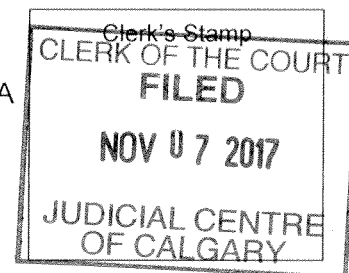
- (a) Instrument No. 082 100 457 – Utility Right of Way;
 - (b) Instrument No. 082 409 616 – Easement;
 - (c) Instrument No. 082 409 617 – Utility Right of Way;
 - (d) Instrument No. 082 409 619 – Agreement.
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the Defendant, 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.

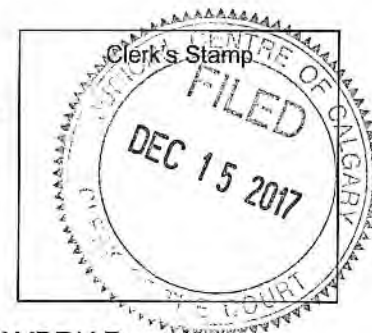
You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND by serving your statement of defence or a demand for notice on the plaintiff's address for service.

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 KORYLO, MAX FELDMAN, SONYA SMITH, NORMAN MARTIN, BERNICE MARTIN, R. BRUCE CARSON, DELORES CARSON, LEELA KRISHNOMOURTHY, MARGUERITE MCRITCHIE, PRITI GAUR, MADHU GAUR, WENDY MCKENNA, JANET LORRAINE WATSON, JIM WATT, GASTON RAJAKARUNA, SHIRLEY RAJAKARUNA, GARY DREFS, ROBERT ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ, KEVEN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO SEKIYA, HOLLY SEKIYA and STEVEN OGG

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

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:

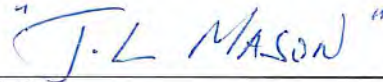
- (a) Instrument Number 072 008 561: Mortgage, Mortgagee – Arres Capital Inc., in the original principal amount of \$2,800,000;
- (b) Instrument Number 072 008 562: Caveat re: Assignment of Rents, Caveator – Arres Capital Inc.;
- (c) Instrument Number 072 512 005: Mortgage, Mortgagee Arres Capital Inc., 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;

- 6 -


- (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 -

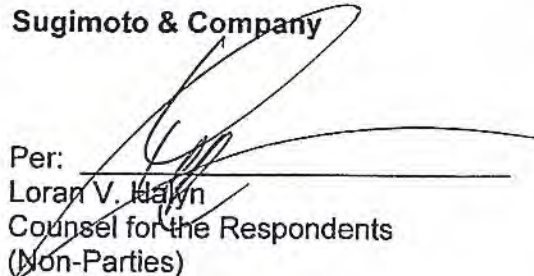
- (y) Instrument No. 082 409 617 – Utility Right of Way, Grantee – The Town of Stony Plain;
 - (z) Instrument No. 082 409 619 – Agreement re: Easement, Restrictive Covenant, Party Wall and Encroachment.
10. Subject to paragraph 6 of this Order, any interest in the mortgaged lands of the Defendant, anyone 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.



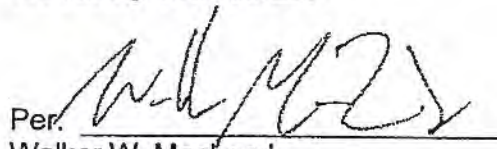
M.C.Q.B.A.

ORDER CONSENTED TO:

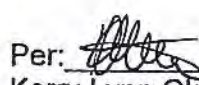
Sugimoto & Company

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

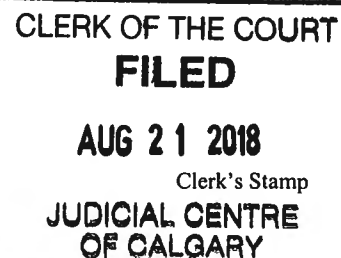
Inv. No.	Period	Fees	Disbursements	Total Fees & Disbursements	GST	Total
1	August 31, 2017	\$ 51,868.50	\$ 411.23	\$ 52,279.73	\$ 2,613.99	\$ 54,893.72
2	September 30, 2017	52,121.50	415.44	52,536.94	2,626.85	55,163.79
3	December 15, 2017	43,417.50	294.22	43,711.72	2,185.57	45,897.29
4	March 31, 2018	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

TABLE OF CONTENTS OF THE THIRD REPORT OF THE RECEIVER

INTRODUCTION	3
TERMS OF REFERENCE.....	4
BACKGROUND.....	4
ADDITIONAL CLAIMS INFORMATION	5

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.

11

12

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

14 Kathryn Fanter, Transcriber

15 Order No. 47514-14-1

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36 Pages: 6

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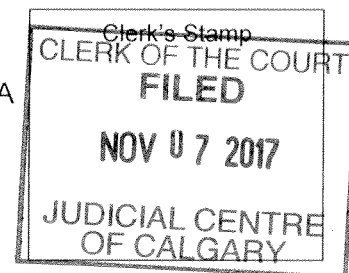
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Wed Jun 4 16:33:21 2014

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

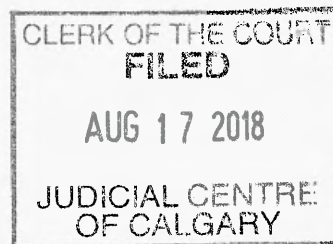
2 months if you are served outside Canada.

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.

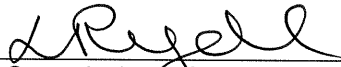
SWORN BEFORE ME at the City of Calgary, in)
 the Province of Alberta, this 17th day of August)
 2018)


 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

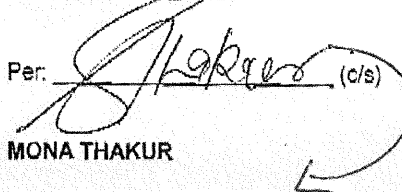
Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other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

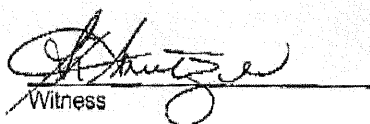
ARRES CAPITAL INC.

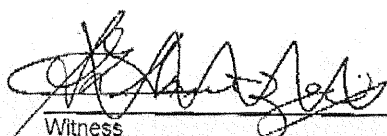
Per:  (c/s)
MONA THAKUR

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.

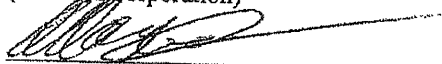
7.5 **Relationship.** Arres Capital is, and shall perform its duties hereunder as, an independent contractor on

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 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 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 rate of 10% 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

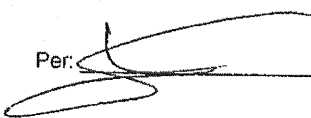
Neither the execution of this Agreement, nor the sharing of the Loan nor any agreement to share in profits or losses arising as a result of this transaction is intended to be nor shall it be construed to be the formation of a partnership or joint venture between the Trustee and the Investor or Other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

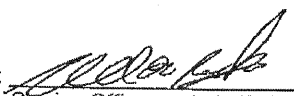
Per:  (c/s)

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:

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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.